

1 Clifford A. Chanler, State Bar No. 135534
Laralei S. Paras, State Bar No. 203319
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiffs
6 PETER ENGLANDER and
RUSSELL BRIMER

7
8 ROGERS JOSEPH O'DONNELL
JAMES ROBERT MAXWELL (State Bar No. 143203)
9 311 California Street
San Francisco, California 94104
10 Telephone: 415.956.2828
Facsimile: 415.956.6457

11 Attorneys for Defendant
12 TOYS "R" US, INC.

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION
16

17 RUSSELL BRIMER and
18 PETER ENGLANDER,

19 Plaintiff,

20 v.

21 JAKKS PACIFIC, INC.; KIDS ONLY, LLC;
KIDS ONLY, INC.; KID BRANDS, INC.;
22 KIDS LINE, LLC; TOYS "R" US, INC.; and
DOES 1-150, inclusive,

23 Defendants.

Case No. RG13677619

Assigned for All Purposes to
Judge George C. Hernandez, Jr.,
Department 17

**[PROPOSED]
CONSENT JUDGMENT
AS TO TOYS "R" US, INC.**

(Health & Safety Code § 25249.6 et seq.)

Complaint Filed: April 23, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander (“Plaintiff”
4 or “Englander”) and Toys “R” Us, Inc. (“Settling Defendant”), with Englander and Settling
5 Defendant collectively referred to as the “Parties.”

6 **1.2 Peter Englander**

7 Englander is an individual residing in the State of California who seeks to promote
8 awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating
9 hazardous substances contained in consumer and commercial products.

10 **1.3 Settling Defendant**

11 Settling Defendant employs ten or more persons and is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 **1.4.1** Englander alleges that Settling Defendant manufactured, imported, sold
16 and/or distributed for sale in California, products with foam cushioned components containing
17 tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 warnings.

18 **1.4.2** Pursuant to Proposition 65, on October 28, 2011, California identified and
19 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
20 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
21 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). TDCPP is
22 hereinafter referred to as the “Listed Chemical.” Englander alleges that the Listed Chemical
23 escapes from foam padding, leading to human exposures.

24 **1.5 Product Description**

25 The category of products that is covered by this Consent Judgment as to Settling Defendant
26 is identified on Exhibit A (hereinafter “Products”).

27 ///

28 ///

1 **1.6 Notice of Violation**

2 On March 27, 2013, plaintiff Peter Englander served Settling Defendant and certain
3 requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided
4 the recipients with notice of alleged violations of Proposition 65 based on the alleged failure to
5 warn California consumers that the Products expose users to the Listed Chemical. To the best of
6 the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the
7 allegations set forth in the Notice.

8 **1.7 Complaint**

9 On April 30, 2013, plaintiff Russell Brimer filed a Complaint (“Complaint”) in the Superior
10 Court in and for the County of Alameda against Settling Defendant, other defendants and Does 1
11 through 150, captioned *Russell Brimer v. Jakks Pacific, Inc., et al.*, Case No. RG 13-677679,
12 alleging violations of Proposition 65, based on the alleged unwarned exposures to TDCPP
13 contained in children’s padded upholstered chairs. On August 15, 2013, plaintiffs Russell Brimer
14 and Peter Englander filed a First Amended Complaint (“Complaint”), alleging violations of
15 Proposition 65 against Settling Defendant, other defendants and Does 1 through 150 based on
16 alleged unwarned exposures to TDCPP contained in children’s padded upholstered chairs.

17 **1.8 No Admission**

18 The Parties enter into this Consent Judgment as a full and final settlement of all claims that
19 were raised in the Notice and Complaint, or that could have been raised in the Notice and
20 Complaint, arising out of the facts and/or conduct concerning unwarned exposures to the Listed
21 Chemical in the Products alleged therein. Settling Defendant denies the material factual and legal
22 allegations contained in Englander’s Notice and the Complaint, and maintains that all products that
23 it has manufactured, imported, distributed, and/or sold in California, including the Products, have
24 been and are in compliance with all laws, and are completely safe for their intended use. Nothing in
25 this Consent Judgment shall be construed as an admission by Settling Defendant of any fact,
26 finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent
27 Judgment constitute or be construed as an admission by Settling Defendant of any fact, finding,

28

1 conclusion, issue of law, or violation of law. However, this Section shall not diminish or otherwise
2 affect Settling Defendant's obligations, responsibilities, and duties under this Consent Judgment.

3 **1.9 Consent to Jurisdiction**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
5 jurisdiction over Settling Defendant as to the allegations contained in the Complaint, that venue is
6 proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
7 provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil
8 Procedure § 664.6.

9 **2. DEFINITIONS**

10 **2.1 Detectable**

11 "Detectable" means containing more than 25 parts per million ("ppm") (the equivalent of
12 .0025%) of TDCPP in foam padding of the Products, when analyzed by a laboratory accredited by
13 the State of California, a federal agency, NVLAP (National Volunteer Laboratory Accreditation
14 Program), American Association for Lab Accreditation (A2LA), ANSI-ASQ National
15 Accreditation Board (ANAB) – ACLASS brand (an ANAB company), International Accreditation
16 Service, Inc. (IAS), Laboratory Accreditation Bureau (L-A-B), Perry Johnson Laboratory
17 Accreditation, Inc. (PJLA), International Laboratory Accreditation Cooperation (ILAC), or similar
18 nationally recognized accrediting organization (such laboratory referred hereinafter as an
19 "Accredited Lab") pursuant to EPA testing methodologies 3545 and 8270C, or equivalent
20 methodologies utilized by federal or state agencies to determine the presence, and measure the
21 quantity, of TDCPP and/or tris(2-chloroethyl) phosphate ("TCEP") in a solid substance.

22 **2.2 Effective Date**

23 "Effective Date" shall mean the date this consent judgment is entered by the Court.

24 **2.3 Reformulated Products**

25 "Reformulated Products" means Products that contain no Detectable amount of TDCPP or
26 TCEP.

27 ///

28 ///

1 2.4 **Reformulation Standard**

2 The "Reformulation Standard" shall mean containing no more than 25 ppm for each of
3 TDCPP and TCEP.

4 **3. INJUNCTIVE RELIEF: PRODUCT REFORMULATION AND WARNINGS**

5 3.1 **Reformulation Commitment**

6 Commencing on December 15, 2015, Settling Defendant shall not distribute, sell or offer for
7 sale in California any Products that are not Reformulated Products.

8 3.2 **Vendor Notification/Certification**

9 To the extent that Settling Defendant intends to procure any more Products, on or before
10 October 15, 2015, Settling Defendant shall provide written notice to its vendor of Products,
11 requiring it to provide it with only Reformulated Products, to the extent the Products will be offered
12 for sale in California. In addressing the obligation set forth in the preceding sentence, Settling
13 Defendant shall not employ statements that will encourage its vendor to delay compliance with the
14 Reformulation Standard. To the extent that Settling Defendant procures any more Products for sale
15 in California, Settling Defendant shall subsequently obtain written certifications prior to such
16 procurement, from its vendor that the Products are in compliance with the Reformulation Standard.
17 Any such certifications obtained under this paragraph shall be held by Settling Defendant for at
18 least two years after their receipt and shall be made available to Plaintiff upon his reasonable
19 written request.

20 3.3 **Current Inventory**

21 Any Products in, or manufactured and en route to, Settling Defendant's inventory as of or
22 after the Effective Date, that do not qualify as Reformulated Products and that Settling Defendant
23 has reason to believe may be sold or distributed for sale in California, shall contain a clear and
24 reasonable warning as set forth in Section 3.4 below unless Section 3.5 applies.

25 3.4 **Product Warnings**

26 3.4.1 **Product Labeling**

27 Any warning provided under Section 3.3 above shall be affixed to the packaging, labeling,
28 or directly on each Product. Each warning shall be prominently placed with such conspicuousness

1 as compared with other words, statements, designs, or devices as to render it likely to be read and
2 understood by an ordinary individual under customary conditions before purchase. Each warning
3 shall be provided in a manner such that the consumer or user understands to which specific Product
4 the warning applies, so as to minimize the risk of consumer confusion.

5 A warning provided pursuant to this Consent Judgment shall state (language in brackets
6 optional):

7 **WARNING:** This product contains TDCPP, a
8 [flame retardant] chemical known to
9 the State of California to cause
10 cancer.¹

9 3.4.2 Internet Website Warning

10 A warning shall be given in conjunction with Settling Defendant's sale of the Products to
11 consumers in California via the internet, which warning shall appear on one or more web pages
12 displayed to a purchaser during the checkout process. The following warning statement shall be
13 used and shall: (a) appear adjacent to or immediately following the display, description, or price of
14 the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer.
15 The warning text shall be the same type size or larger than the Product description text (language in
16 brackets optional):

17 **WARNING:** This product contains TDCPP, a
18 [flame retardant] chemical known to
19 the State of California to cause
20 cancer.²

19 3.5 Alternatives to Interim Warnings

20 The obligations of Settling Defendant under Section 3.4 shall be relieved provided Settling
21 Defendant certifies on or before October 15, 2015 that, after the Effective Date, it will only
22 distribute or cause to be distributed for sale in, or sell in, California, Products (i.e., Products beyond

23 ¹The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if the
24 Settling Defendant had begun to use it prior to the Effective Date. If Settling Defendant seeks to use
25 alternative warning language, other than the language specified above or the safe harbor warning specified in
26 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning, it must obtain the
27 Court's approval of its proposed alternative and provide all Parties and the Office of the Attorney General
28 with timely notice and the opportunity to comment or object before the Court acts on the request. The
Parties agree that the following warning language shall not be deemed to meet the requirements of 27 CCR
§ 25601 *et seq.* and shall not be used pursuant to this Consent Judgment: (a) "cancer or birth defects or other
reproductive harm" and (b) "cancer, birth defects or other reproductive harm."

²Footnote 1, *supra*, applies in this context as well.

1 the Exemplar Product) meeting the Reformulation Standard. The certifications provided by this
2 Section are material terms and time is of the essence.³

3 **4. MONETARY PAYMENTS**

4 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

5 In settlement of all the claims referred to in this Consent Judgment, Settling Defendant shall
6 pay the civil penalties shown for it on Exhibit A in accordance with this Section. Each penalty
7 payment will be allocated by Englander in accordance with California Health & Safety Code
8 § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental
9 Health Hazard Assessment ("OEHHA"), and 25% of the penalty retained by Englander. Each
10 penalty payment shall be delivered pursuant to Section 4.5 below. Settling Defendant shall be
11 liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under
12 this Section that are not received within two business days of the due date.

13 4.1.1 Initial Civil Penalty. Within ten (10) days of the full execution of this
14 Consent Judgment by the Parties, Settling Defendant shall deliver the initial civil penalty payment
15 in the amount identified on Exhibit A to Rogers Joseph O'Donnell at the address set forth in
16 Section 8, to be held in trust pending the Court's approval of this Consent Judgment.

17 4.1.2 Second Civil Penalty. On or before October 15, 2015, Settling Defendant
18 shall make a second civil penalty payment in the amount identified on Exhibit A. The amount of
19 the second penalty may be reduced according to any penalty waiver for which Settling Defendant is
20 eligible under Section 4.1.3, below.

21 4.1.3 Reductions to Civil Penalty Payment Amounts. Settling Defendant may
22 reduce the amount of the second civil penalty payment identified on Exhibit A by providing
23 Englander with certification of certain efforts undertaken to sell or offer for sale only Products that
24 are Reformulated Products. The options to provide a written certification in lieu of making a
25

26
27 ³ The term "Exemplar Product" means the product specifically noticed in Plaintiff's March 27, 2013
28 60-day notice to Settling Defendant alleging TDCPP in children's foam padded chairs in violation of
Proposition 65.

1 Settling Defendant's second civil penalty payment constitute material terms of this Consent
2 Judgment, and with regard to such terms, time is of the essence.

3 **4.1.3(i) Partial Penalty Waiver for Termination of Distribution to**
4 **California of Unreformulated Inventory.**

5 As shown on Exhibit A, the second civil penalty shall be waived, if an officer or other
6 authorized representative of Settling Defendant provides Englander with written certification, on or
7 before October 15, 2015, confirming that, as of October 15, 2015, and continuing into the future, it
8 will only offer for sale, or sell, in California, Reformulated Products.

9 **4.2 Representations**

10 Settling Defendant represents that the sales data and other information concerning its size,
11 knowledge of the Listed Chemical, and prior reformulation and/or warning efforts, that it provided
12 to Englander in negotiating this Consent Judgment was truthful to its knowledge at the time of
13 execution of this Consent Judgment and a material factor upon which Englander relied to determine
14 the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7. If, within nine
15 months of the Effective Date, Englander discovers and presents to Settling Defendant, evidence
16 demonstrating that the preceding representation and warranty was materially inaccurate, then
17 Settling Defendant shall have 30 days to meet and confer regarding Englander's contention. Should
18 this 30 day period pass without any such resolution between Englander and Settling Defendant,
19 Englander shall be entitled to file a formal legal claim including, but not limited to, a claim for
20 damages for breach of contract. Settling Defendant further represents that in implementing the
21 requirements set forth in Sections 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ
22 commercial best efforts to achieve reformulation of the Products on a nationwide basis and not
23 employ statements that will encourage a vendor to limit its compliance with the Reformulation
24 Standard to goods intended for sale to consumers in California.

25 **4.3 Stipulated Penalties for Certain Violations of the Reformulation Standard.**

26 If Englander provides notice and appropriate supporting information to Settling Defendant,
27 including but not limited to test results, that levels of TDCPP and/or TCEP in excess of the
28 Reformulation Standard have been detected in one or more Products labeled or otherwise marked in

1 an identifiable manner as sold or offered for sale in California after a deadline for meeting the
2 Reformulation Standard set forth in Section 3.1 above, Settling Defendant may elect to pay a
3 stipulated penalty to relieve any further potential liability under Proposition 65 or sanction under
4 this Consent Judgment as to Products sourced from the vendor in question.⁴ The stipulated penalty
5 shall be \$1,500 if the violation level is below 100 ppm and \$3,000 if the violation level is between
6 100 ppm and 249 ppm, this being applicable for any amount in excess of the Reformulation
7 Standards but under 250 ppm.⁵ Englander shall further be entitled to reimbursement of his
8 associated expenses in an amount not to exceed \$5,000 regardless of the stipulated penalty level.
9 Settling Defendant under this Section must provide notice and appropriate supporting information
10 relating to the purchase (e.g. vendor name and contact information including representative,
11 purchase order, certification (if any) received from vendor for the exemplar or subcategory of
12 products), test results, and a letter from a company representative or counsel attesting to the
13 information provided, to Englander within 30 calendar days of receiving test results from
14 Englander's counsel. Any violation levels at or above 250 ppm shall be subject to the full remedies
15 provided pursuant to this Consent Judgment and at law. Before any payment is required or motion
16 to enforce is filed under this Section, Settling Defendant shall be entitled to present any evidence
17 rebutting Englander's claim, and the parties shall meet and confer in good faith in an attempt to
18 resolve any dispute. In the event that Moore's test results vary from those provided by Settling
19 Defendant and Settling Defendant's test result demonstrates less than 25 ppm for TDCPP and/or
20 TCEP, the parties shall meet and confer about an appropriate resolution and/or agree to test a
21 mutually selected sample of the Product by a third independent laboratory to be mutually agreed
22 upon. The expenses of the third party laboratory shall be borne by the party whose test results
23 reflect the greatest difference from those of the third laboratory. The results of the third laboratory

24 _____
25 ⁴This Section shall not be applicable where the vendor in question had previously been found by
26 Settling Defendant to have provided unreliable certifications as to meeting the Reformulation Standard in its
27 Products on more than one occasion. Notwithstanding the foregoing, a stipulated penalty for a second
28 exceedance by Settling Defendant's vendor at a level between 100 and 249 ppm shall not be available after
December 31, 2015.

⁵Any stipulated penalty payments made pursuant to this Section should be allocated and remitted in
the same manner as set forth in Sections 4.1 and 4.5, respectively.

1 shall be deemed conclusive for purposes of determining the appropriate remedy under this
2 paragraph.

3 **4.4 Reimbursement of Fees and Costs**

4 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
5 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
6 this fee reimbursement issue to be resolved after the material terms of the agreement had been
7 settled. Shortly after the other settlement terms had been finalized, Settling Defendant expressed a
8 desire to resolve the fee and cost issue. Settling Defendant then agreed to pay Englander and his
9 counsel under general contract principles and the private attorney general doctrine codified at
10 California Code of Civil Procedure § 1021.5 for all work performed through the mutual execution
11 of this agreement, including the fees and costs incurred as a result of investigating, bringing this
12 matter to Settling Defendant's attention, negotiating a settlement in the public interest, and seeking
13 court approval of the same. In addition, the negotiated fee and cost figure expressly includes the
14 anticipated significant amount of time Englander's counsel will incur to monitor various provisions
15 in this agreement. More specifically, Settling Defendant agrees under this Section to pay
16 Englander's counsel the amount of fees and costs indicated on Settling Defendant's Exhibit A.

17 **4.5 Payment Procedures**

18 (a) All payments required by Sections 4.1.1, 4.1.2 (unless waived) and 4.4 shall
19 be delivered to Rogers Joseph O'Donnell at the address set forth in Section 8 within ten (10) days
20 of the full execution of this Consent Judgment by the Parties, to be held in trust pending the Court's
21 approval of this Consent Judgment. Rogers Joseph O'Donnell shall confirm, in writing within five
22 days of deposit, that the funds have been deposited in a trust account. Within five business days of
23 the Effective Date, Rogers Joseph O'Donnell shall deliver all payments required by Sections 4.1.1,
24 4.1.2 (unless waived) and 4.4 above held in trust pursuant to this Section 4.5(a) to:

25 (i) For the civil penalty payments required by Sections 4.1.1 and 4.1.2
26 (unless waived), to The Chanler Group at the address set forth in
27 Section 4.5(b) payable to "Peter Englander, Client Trust Account".

28 (ii) For reimbursement of fees and costs set forth in Section 4.4, to The

1 Chanler Group at the address set forth in Section 4.5(b) payable to "The
2 Chanler Group".

3 (b) All payments owed to Englander and his counsel, pursuant to Sections 4.1,
4 4.3, 4.4, and 4.5(a) shall be delivered to the following payment address:

5 The Chanler Group
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

8 (c) The Chanler Group shall have sole responsibility for delivering any required
9 portion of the penalty payments hereunder to OEHHA.

10 **5. CLAIMS COVERED AND RELEASED**

11 **5.1 Englander's Release of Proposition 65 Claims**

12 Englander, acting on his own behalf and in the public interest, hereby releases Settling
13 Defendant, its parents, subsidiaries, affiliates, directors, officers, agents, employees, attorneys; and
14 each entity to whom Settling Defendant directly or indirectly distributes or sells the Products,
15 including, but not limited to, downstream distributors, wholesalers, customers, retailers,
16 franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for any
17 violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed
18 Chemical in the Products, as set forth in the Notice and Complaint. Compliance with the terms of
19 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the
20 Listed Chemical from the Products, as set forth in the Notice and Complaint. The Parties further
21 understand and agree that this Section 5.1 release shall not extend upstream to any entities, other
22 than Settling Defendant and its Affiliates, that manufactured the Products or any component parts
23 thereof, or any distributors or suppliers who sold the Products or any component parts thereof to
24 Settling Defendant or its Affiliates.

25 **5.2 Englander's Individual Release of Claims**

26 Englander, in his individual capacity only and *not* in his representative capacity, on behalf
27 of himself, his past and current agents, representatives, attorneys, successors, and assignees,
28 provides a release herein to Settling Defendant and the Releasees, which shall be effective as a full

1 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
2 expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of any nature, character,
3 or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged
4 or actual exposures to TDCPP, TCEP, and/or TDBPP in the Products manufactured, imported,
5 distributed, or sold by Settling Defendant or its Affiliates prior to the Effective Date. The Parties
6 further understand and agree that this Section 5.2 release shall not extend upstream to any entities,
7 other than Settling Defendant and its Affiliates, that manufactured the Products, or any component
8 parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof
9 to Settling Defendant or its Affiliates. Nothing in this Section affects Englander's rights to
10 commence or prosecute an action under Proposition 65 against a Releasee that does not involve
11 Settling Defendant's Products.

12 5.3 Settling Defendant's Release of Englander

13 Settling Defendant, on behalf of itself, its past and current agents, representatives, attorneys,
14 successors, and assignees, hereby waives any and all claims against Englander and his attorneys and
15 other representatives, for any and all actions taken or statements made (or those that could have
16 been taken or made) by Englander and his attorneys and other representatives, whether in the course
17 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
18 respect to the Products.

19 5.4 Dismissal of Remaining Claims

20 Upon the Court's entry of this Consent Judgment any remaining claims against Settling
21 Defendant in the Complaint that are not resolved by this Consent Judgment shall be deemed
22 dismissed without prejudice.

23 6. COURT APPROVAL

24 This Consent Judgment is not effective until it is approved and entered by the Court and
25 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court
26 within one year after it has been fully executed by all Parties unless the Parties otherwise agree. If
27 the Court does not approve the Consent Judgment, the Parties shall meet and confer as to whether to
28 modify the language or appeal the ruling. If the Parties do not jointly agree on a course of action to

1 take, then the case shall proceed in its normal course on the Court's trial calendar. If the Court's
2 approval is ultimately overturned by an appellate court, the Parties shall meet and confer as to
3 whether to modify the terms of this Consent Judgment. If the Parties do not jointly agree on a
4 course of action to take, then the case shall proceed in its normal course on the Court's trial
5 calendar. In the event that this Consent Judgment is entered by the Court and subsequently
6 overturned by any appellate court, any monies that have been provided to Englander or his counsel
7 pursuant to Section 4, above, shall be refunded within 15 days of the appellate decision becoming
8 final. If the Court does not approve and enter the Consent Judgment within one year of the
9 Effective Date, any monies that have been held in trust for Englander or his counsel pursuant to
10 Section 4, above, shall be refunded to Settling Defendant within 15 days unless the Parties agree
11 otherwise.

12 **7. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of California.
14 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
15 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
16 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered
17 inapplicable by reason of law generally as to the Products, then Settling Defendant may provide
18 written notice to Englander of any asserted change in the law, and shall have no further obligations
19 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so
20 affected. Nothing in this Consent Judgment shall be interpreted to relieve Settling Defendant from
21 any obligation to comply with any pertinent state or federal law or regulation.

22 **8. NOTICES**

23 Unless specified herein, all correspondence and notices required to be provided pursuant to
24 this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class
25 registered or certified mail, return receipt requested; or (iii) overnight courier to any Party by the

26 ///

27 ///

28 ///

1 other Party at the following addresses:

2 To Settling Defendant:

To Englander:

3 At the address shown on Exhibit A

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

4
5
6
7 Any Party, from time to time, may specify in writing to the other Party a change of address to
8 which all notices and other communications shall be sent.

9 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

10 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
11 each of which shall be deemed an original, and all of which, when taken together, shall constitute
12 one and the same document. A facsimile or pdf signature shall be as valid as the original.

13 **10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

14 Englander and his attorneys agree to comply with the reporting form requirements
15 referenced in California Health & Safety Code § 25249.7(f).

16 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

17 Englander and Settling Defendant agree to support the entry of this agreement as a Consent
18 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
19 Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion
20 is required to obtain judicial approval of this Consent Judgment, which Englander shall draft and
21 file. If any third-party objection to the noticed motion is filed, Englander and Settling Defendant
22 shall work together to file a reply on which Englander shall take the lead, and appear at any hearing
23 before the Court. This provision is a material component of the Consent Judgment and shall be
24 treated as such in the event of a breach.

25 **12. MODIFICATION**

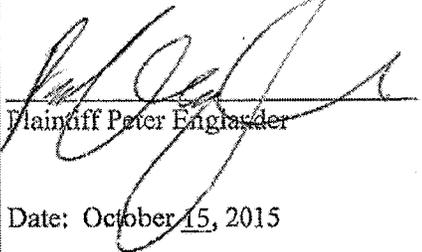
26 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
27 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
28 of any party and entry of a modified Consent Judgment by the Court.

1 **13. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

5 AGREED TO:

AGREED TO:

6
7 
8 Plaintiff Peter Englander
9 Date: October 15, 2015


Toys "R" Us, Inc.
Joel S. Tennenberg
Vice President - Litigation & Regulatory
Counsel
Date: October 15, 2015

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

I. Name of Settling Defendant:

Toys "R" Us, Inc.
One Geoffrey Way
Wayne, NJ 07470

II. Types of Covered Products Applicable to Settling Defendant (Check All That Match 60-Day Notice or Supplemental Notice Received)

Foam-cushioned pads for children and infants to lie on, such as rest mats

Upholstered furniture

Foam-filled mattresses, mattress toppers, pillows, cushions, travel beds

Car seats, strollers

Other (specify): Foam-filled padded upholstered children's chairs supplied by Kid Brands, Inc. or Kids Line, LLC.

III. Settling Defendant's Required Settlement Payments

A. Penalties, \$14,000, as follows:

\$ 4,000 initial payment due within ten (10) days of the full execution of this Consent Judgment by the Parties as specified in Section 4;

\$10,000 second payment due on or before October 15, 2015, which may be waived pursuant to Section 4.1.3(i); and

IV. Payment to The Chanler Group for reimbursement of attorneys' fees and costs:

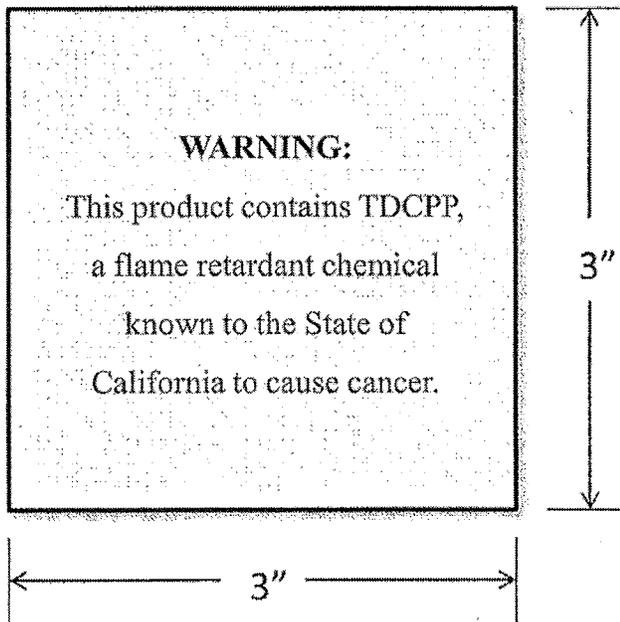
A. Fees and Costs are: \$16,000 payable as specified in Section 4.

V. Person(s) to receive Notices on behalf of Settling Defendant pursuant to Section 8:

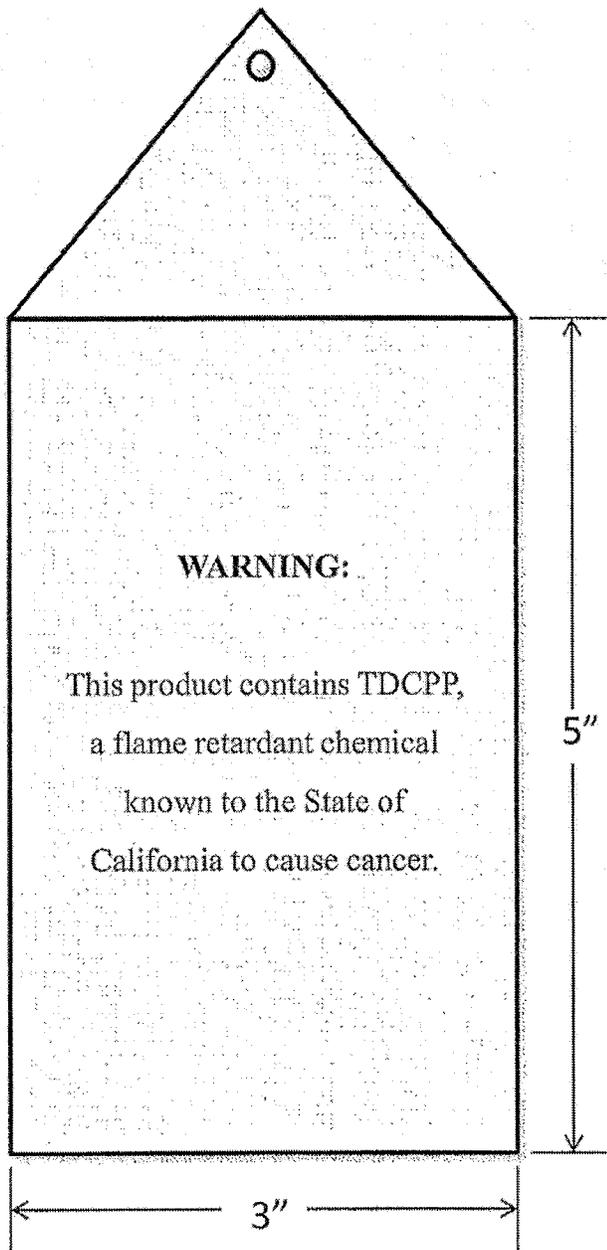
General Counsel
Toys "R" Us, Inc.
One Geoffrey Way
Wayne, NJ 07470

J. Robert Maxwell, Esq.
Rogers Joseph O'Donnell, A.P.C.
311 California Street, 10th floor
San Francisco, CA 94104

EXHIBIT B



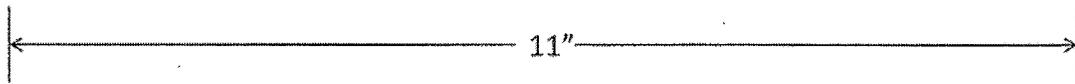
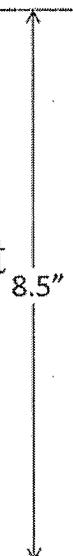
INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.



INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

WARNING:

This product contains TDCPP, a flame retardant
chemical known to the State of California to
cause cancer.



INSTRUCTIONS: Minimum 32 pt. Font. "WARNING:" text must be bold and underlined.