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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

10
11 RUSSELL BRIMER and
PETER ENGLANDER,

12 Plaintiff,

13 v.

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

17 Defendants.

Case No. RG13677618

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

**[PROPOSED] CONSENT JUDGMENT
AS TO JAKKS PACIFIC, 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 Russell Brimer (“Brimer”)
4 and Jakks Pacific, Inc. (“Settling Defendant”), with Brimer and Settling Defendant collectively
5 referred to as the “Parties.”

6 **1.2 Brimer**

7 Brimer is an individual residing in the State of California who seeks to promote awareness
8 of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 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 Brimer alleges that Settling Defendant manufactured, imported, sold and/or
16 distributed for sale in California, products with foam cushioned components containing tris(1,3-
17 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 hereinafter
22 referred to as the “Listed Chemical.” Brimer alleges that the Listed Chemical escapes from foam
23 padding, leading to human exposures.

24 **1.5 Product Description**

25 The categories of products that are covered by this Consent Judgment as to Settling
26 Defendant are identified on Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied,
27 shaped or manufactured by Settling Defendant for use as a component of another product, but

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1 which is not itself a finished product, is specifically excluded from the definition of Products and
2 shall not be identified by a Settling Defendant on Exhibit A as a Product.

3 **1.6 Notice of Violation**

4 On February 15, 2013, plaintiff Russell Brimer served Settling Defendant and certain
5 requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided
6 the recipients with notice of alleged violations of Proposition 65 based on the alleged failure to
7 warn customers, consumers, and workers in California that the Products expose users to the Listed
8 Chemical. To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently
9 prosecuting the allegations set forth in the Notice.

10 **1.7 Complaint**

11 On June 18, 2013, Brimer filed a Complaint (“Complaint”) in the Superior Court in and for
12 the County of Alameda against *Jakks Pacific, Inc.*, other defendants and Does 1 through 150,
13 *Russell Brimer v. Jakks Pacific, Inc., et al.*, Case No. RG 13-677679, alleging violations of
14 Proposition 65, based on the alleged unwarned exposures to TDCPP contained in the Products. On
15 June 18, 2013, Brimer and plaintiff Peter Englander filed a First Amended Complaint
16 (“Complaint”), alleging violations of Proposition 65 against Settling Defendant, other defendants
17 and Does 1 through 150.

18 **1.8 No Admission**

19 Settling Defendant denies the material factual and legal allegations contained in Brimer’s
20 Notice and Complaint and maintains that all products that it has manufactured, imported,
21 distributed, and/or sold in California, including the Products, have been and are in compliance with
22 all laws. Nothing in this Consent Judgment shall be construed as an admission by Settling
23 Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance
24 with this Consent Judgment constitute or be construed as an admission by any Settling Defendant of
25 any fact, finding, conclusion, issue of law, or violation of law. However, this Section shall not
26 diminish or otherwise affect Settling Defendant’s obligations, responsibilities, and duties under this
27 Consent Judgment.

1 **1.9 Consent to Jurisdiction**

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

7 **2. DEFINITIONS**

8 **2.1 California Customers**

9 “California Customer” shall mean any customer to whom Settling Defendant supplied
10 Products or Additional Products that is located in California, has a California warehouse or
11 distribution center, maintains a retail outlet in California, or that has made internet sales of the
12 Products or Additional into California on or after January 1, 2011.

13 **2.2 Detectable**

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

26 **2.3 Effective Date**

27 “Effective Date” shall mean October 31, 2013.

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1 2.4 **Private Label Covered Products**

2 “Private Label Covered Products” means Products or Additional Products that bear a brand
3 or trademark owned or licensed by a Retailer or affiliated entity that are sold or offered for sale by a
4 Retailer in the State of California.

5 2.5 **Reformulated Products**

6 “Reformulated Products” means Products or Additional Products that contain no Detectable
7 amount of TDCPP or TCEP.

8 2.6 **Reformulation Standard**

9 The “Reformulation Standard” shall mean containing no more than 25 ppm for each of
10 TDCPP and TCEP.

11 2.7 **Retailer**

12 “Retailer” means an individual or entity that offers a Product or Additional Product for retail
13 sale to consumers in the State of California.

14 **3. INJUNCTIVE RELIEF: REFORMULATION**

15 3.1 **Reformulation Commitment**

16 Commencing on March 31, 2014, Settling Defendant shall not manufacture or import for
17 distribution or sale to California Customers, or cause to be manufactured or imported for
18 distribution or sale to California Customers, any Products that are not Reformulated Products.

19 3.2 **Vendor Notification/Certification**

20 On or before the Effective Date, Settling Defendant shall provide written notice to all of its
21 then-current vendors of the Products, instructing each such vendor to use reasonable efforts to
22 provide it with only Reformulated Products. In addressing the obligation set forth in the preceding
23 sentence, Settling Defendant shall not employ statements that will encourage a vendor to delay
24 compliance with the Reformulation Standard. Settling Defendant shall subsequently obtain written
25 certifications, no later than April 1, 2014, from such vendors, and any newly engaged vendors, that
26 the Products manufactured by such vendors are in compliance with the Reformulation Standard.
27 Certifications shall be held by Settling Defendant for at least two years after their receipt and shall
28 be made available to Brimer upon his reasonable request.

1 **3.3 Products No Longer in a Settling Defendant's Control**

2 No later than 30 days after the Effective Date, Settling Defendant shall send a letter,
3 electronic or otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer to
4 which it, after October 28, 2011, supplied the item for resale in California described as an exemplar
5 in the Notice Settling Defendant received from Brimer ("Exemplar Product"); and (2) any
6 California Customer and/or Retailer that Settling Defendant reasonably understands or believes had
7 any inventory for resale in California of Exemplar Products as of the Notice's date. The
8 Notification Letter shall advise the recipient that the Exemplar Product "contains TDCPP, a
9 chemical known to the State of California to cause cancer," and request that the recipient either: (a)
10 label the Exemplar Products remaining in inventory for sale in California, or to California
11 Customers, pursuant to Section 3.5; or (b) return, at Settling Defendant's sole expense, all units of
12 the Exemplar Product held for sale in California, or to California Customers, to the Settling
13 Defendant or a party Settling Defendant has otherwise designated. The Notification Letter shall
14 require a response from the recipient within 15 days confirming whether the Exemplar Product will
15 be labeled or returned. Settling Defendant shall maintain records of all correspondence or other
16 communications generated pursuant to this Section for two years after the Effective Date and shall
17 promptly produce copies of such records upon Brimer's reasonable written request.

18 **3.4 Current Inventory**

19 Any Products in, or manufactured and en route to, Settling Defendant's inventory as of or
20 after December 31, 2013, that do not qualify as Reformulated Products and that Settling Defendant
21 has reason to believe may be sold or distributed for sale in California, shall contain a clear and
22 reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies.

23 **3.5 Product Warnings**

24 **3.5.1 Product Labeling**

25 Any warning provided under Section 3.3 or 3.4 above shall be affixed to the packaging,
26 labeling, or directly on each Product. Each warning shall be prominently placed with such
27 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
28 to be read and understood by an ordinary individual under customary conditions before purchase.

1 Each warning shall be provided in a manner such that the consumer or user understands to which
2 specific Product the warning applies, so as to minimize the risk of consumer confusion.

3 A warning provided pursuant to this Consent Judgment shall state:

4 **WARNING:** This product contains TDCPP, a flame
5 retardant chemical known to the State
of California to cause cancer.¹

6 Attached as Exhibit B are template warnings developed by Brimer that are deemed to be
7 clear and reasonable for purposes of this Consent Judgment.² Provided that the other requirements
8 set forth in this Section are addressed, including as to the required warning statement and method of
9 transmission as set forth above, Settling Defendant remains free not to utilize the template
10 warnings.

11 3.5.2 Internet Website Warning

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

18 **WARNING:** This product contains TDCPP, a flame
19 retardant chemical known to the State
of California to cause cancer.³

20 ¹The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if the
21 Settling Defendant had begun to use it prior to the Effective Date. If Settling Defendant seeks to use
22 alternative warning language, other than the language specified above or the safe harbor warning specified in
23 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning, it must obtain the
24 Court's approval of its proposed alternative and provide all Parties and the Office of the Attorney General
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."

25 ²The characteristics of the template warnings are as follows: (a) a yellow hang tag measuring 3" x
26 5", with no less than 12 point font, with the warning language printed on each side of the hang tag, which
27 shall be affixed directly to the Product; (b) a yellow warning sign measuring 8.5" x. 11", with no less that 32
point font, with the warning language printed on each side, which shall be affixed directly to the Product;
and (c) for Products sold at retail in a box or packaging, a yellow warning sticker measuring 3" x 3", with no
less than 12 point font, which shall be affixed directly to the Product packaging.

28 ³Footnote 1, *supra*, applies in this context as well.

1 **3.6 Alternatives to Interim Warnings**

2 The obligations of Settling Defendant under Section 3.3 shall be relieved provided Settling
3 Defendant certifies on or before December 15, 2013 that only Exemplar Products meeting the
4 Reformulation Standard will be offered for sale in California, or to California Customers, after
5 December 31, 2013. The obligations of Settling Defendant under Section 3.4 shall be relieved
6 provided Settling Defendant certifies on or before December 15, 2013 that, after June 30, 2014, it
7 will only distribute or cause to be distributed for sale in, or sell in, California, or to California
8 Customers, Products (i.e., Products beyond the Exemplar Product) meeting the Reformulation
9 Standard. The certifications provided by this Section are material terms and time is of the essence.

10 **4. MONETARY PAYMENTS**

11 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

12 In settlement of all the claims referred to in this Consent Judgment, Settling Defendant shall
13 pay the civil penalties shown for it on Exhibit A in accordance with this Section. Each penalty
14 payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1)
15 and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
16 Assessment (“OEHHA”), and 25% of the penalty remitted to “The Chanler Group in Trust for
17 Russell Brimer.” Each penalty payment shall be delivered to the addresses listed in Section 4.5
18 below. Settling Defendant shall be liable for payment of interest, at a rate of 10% simple interest,
19 for all amounts due and owing under this Section that are not received within two business days of
20 the due date.

21 4.1.1 Initial Civil Penalty. On or before the Effective Date, Settling Defendant
22 shall make the initial civil penalty payment in the amount identified on Settling Defendant’s Exhibit
23 A.

24 4.1.2 Second Civil Penalty. On or before January 15, 2014, Settling Defendant
25 shall make a second civil penalty payment in the amount identified on Settling Defendant’s Exhibit
26 A. The amount of the second penalty may be reduced according to any penalty waiver for which
27 Settling Defendant is eligible under Sections 4.1.4(i) and 4.1.4(iii), below.
28

1 4.1.3 Third Civil Penalty. On or before November 30, 2014, Settling Defendant
2 shall make a third civil penalty payment in the amount identified on Settling Defendant's Exhibit A.
3 The amount of the third penalty may be reduced according to any penalty waiver for which Settling
4 Defendant is eligible under Sections 4.1.4(ii) and 4.1.4(iv), below.

5 4.1.4 Reductions to Civil Penalty Payment Amounts. Settling Defendant may
6 reduce the amount of the second and/or third civil penalty payments identified on Settling
7 Defendant's Exhibit A by providing Brimer with certification of certain efforts undertaken to
8 reformulate the Products and Additional Products or limit the ongoing sale of non-reformulated
9 Products in California. The options to provide a written certification in lieu of making a portion of
10 Settling Defendant's civil penalty payment constitute material terms of this Consent Judgment, and
11 with regard to such terms, time is of the essence.

12 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
13 **Products Sold or Offered for Sale in California.**

14 As shown on Settling Defendant's Exhibit A, a portion of the second civil penalty shall be
15 waived, to the extent that Settling Defendant has agreed that, as of November 1, 2013, and
16 continuing into the future, it shall only manufacture or import for distribution or sale to California
17 Customers or cause to be manufactured or imported for distribution or sale to California Customers,
18 Reformulated Products. An officer or other authorized representative of Settling Defendant that has
19 exercised this election shall provide Brimer with a written certification confirming compliance with
20 such conditions, which certification must be received by Brimer's counsel on or before December
21 15, 2013.

22 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation.**

23 As shown on Settling Defendant's Exhibit A, a portion of the third civil penalty shall be
24 waived, to the extent that Settling Defendant has agreed that, as of March 31, 2014, and continuing
25 into the future, it shall only manufacture or import for distribution or sale in California or cause to
26 be manufactured or imported for distribution or sale in California, Reformulated Products which
27 also do not contain tris(2,3-dibromopropyl) phosphate ("TDBPP") in a detectable amount of more
28 than 25 parts per million ("ppm") (the equivalent of .0025%) in any material, component, or

1 constituent of the Products or Additional Products, when analyzed by an Accredited Lab pursuant
2 to EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or
3 state agencies to determine the presence, and measure the quantity, of TDBPP in a solid substance.
4 An officer or other authorized representative of Settling Defendant that has exercised this election
5 shall provide Brimer with a written certification confirming compliance with such conditions,
6 which certification must be received by Brimer's counsel on or before November 15, 2014.

7 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
8 **Exemplar Products from the California Market.**

9 As shown on Settling Defendant's Exhibit A, a portion of the second civil penalty shall be
10 waived, if an officer or other authorized representative of Settling Defendant provides Brimer with
11 written certification, by December 15, 2013, confirming that each individual or establishment in
12 California to which it supplied the Exemplar Product after October 28, 2011, has elected to return
13 all remaining Exemplar Products held for sale in California.⁴

14 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
15 **California of Unreformulated Inventory.**

16 As shown on Settling Defendant's Exhibit A, a portion of the third civil penalty shall be
17 waived, if an officer or other authorized representative of Settling Defendant provides Brimer with
18 written certification, on or before November 15, 2014, confirming that, as of July 1, 2014, it has
19 and will continue to distribute, offer for sale, or sell in California, or to California Customers, only
20 Reformulated Products.

21 **4.2 Representations**

22 Settling Defendant represents that the sales data and other information concerning its size,
23 knowledge of the Listed Chemical, and prior reformulation and/or warning efforts, that it provided
24 to Brimer in negotiating this Consent Judgment was truthful to its knowledge at the time of
25 execution of this Consent Judgment and a material factor upon which Brimer relied to determine

26 _____
27 ⁴For purposes of this Section, the term Exemplar Products shall further include Products for which
28 Brimer has, prior to October 15, 2013, provided Settling Defendant with test results from an Accredited Lab
showing the presence of TDCPP, TCEP and/or TDBPP at a level in excess of 250 ppm pursuant to EPA
testing methodologies 3545 or 8270C.

1 the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7. If, within nine
2 months of the Effective Date, Brimer discovers and presents to Settling Defendant, evidence
3 demonstrating that the preceding representation and warranty was materially inaccurate, then
4 Settling Defendant shall have 30 days to meet and confer regarding Brimer's contention. Should
5 this 30 day period pass without any such resolution between Brimer and Settling Defendant, Brimer
6 shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for
7 breach of contract.

8 Settling Defendant further represents that in implementing the requirements set forth in
9 Sections 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to
10 achieve reformulation of its Products and Additional Products on a nationwide basis and not
11 employ statements that will encourage a vendor to limit its compliance with the Reformulation
12 Standard to goods intended for sale to California Consumers.

13 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**
14 **Standard.**

15 If Brimer provides notice and appropriate supporting information to Settling Defendant that
16 levels of TDCPP, TCEP and/or TDBPP in excess of the Reformulation Standard have been detected
17 in one or more Products labeled or otherwise marked in an identifiable manner as manufactured or
18 imported after a deadline for meeting the Reformulation Standard set forth in Sections 3.1 or 3.6
19 above, Settling Defendant may elect to pay a stipulated penalty to relieve any further potential
20 liability under Proposition 65 or sanction under this Consent Judgment as to Products sourced from
21 the vendor in question.⁵ The stipulated penalty shall be \$1,500 if the violation level is below 100
22 ppm and \$3,000 if the violation level is between 100 ppm and 249 ppm, this being applicable for
23 any amount in excess of the Reformulation Standards but under 250 ppm.⁶ Brimer shall further be

24 _____
25 ⁵This 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
July 1, 2015.

⁶Any 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 entitled to reimbursement of his associated expenses in an amount not to exceed \$5,000 regardless
2 of the stipulated penalty level. Settling Defendant under this Section must provide notice and
3 appropriate supporting information relating to the purchase (e.g. vendor name and contact
4 information including representative, purchase order, certification (if any) received from vendor for
5 the exemplar or subcategory of products), test results, and a letter from a company representative or
6 counsel attesting to the information provided, to Brimer within 30 calendar days of receiving test
7 results from Brimer's counsel. Any violation levels at or above 250 ppm shall be subject to the full
8 remedies provided pursuant to this Consent Judgment and at law. Before any payment is required
9 or motion to enforce is filed under this Section, Settling Defendant shall be entitled to present any
10 evidence rebutting Brimer's claim, and the parties shall meet and confer in good faith in an attempt
11 to resolve any dispute

12 4.4 Reimbursement of Fees and Costs

13 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without
14 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
15 reimbursement issue to be resolved after the material terms of the agreement had been settled.
16 Shortly after the other settlement terms had been finalized, Settling Defendant expressed a desire to
17 resolve the fee and cost issue. Settling Defendant then agreed to pay Brimer and his counsel under
18 general contract principles and the private attorney general doctrine codified at California Code of
19 Civil Procedure § 1021.5 for all work performed through the mutual execution of this agreement,
20 including the fees and costs incurred as a result of investigating, bringing this matter to Settling
21 Defendant's attention, negotiating a settlement in the public interest, and seeking court approval of
22 the same. In addition, the negotiated fee and cost figure expressly includes the anticipated
23 significant amount of time Brimer's counsel will incur to monitor various provisions in this
24 agreement over the next two years, with the exception of additional fees that may be incurred
25 pursuant to Settling Defendant's election in Section 11. More specifically, Settling Defendant
26 agrees under this Section to pay Brimer's counsel the amount of fees and costs indicated on Settling
27 Defendant's Exhibit A. Settling Defendant further agrees to tender and shall tender its full required
28 payment under this Section to a trust account at The Chanler Group (made payable "In Trust for

1 The Chanler Group”) on or before the Effective Date. Such funds shall be released from the trust
2 account upon the Court’s approval and entry of this Consent Judgment.

3 **4.5 Payment Procedures**

4 4.5.1 Issuance of Payments.

5 (a) All payments owed to Brimer and his counsel, pursuant to Sections
6 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

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

10 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
11 Section 4.1 and 4.3, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at one
12 of the following addresses, as appropriate:

13 For United States Postal Service Delivery:

14 Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

17 For Non-United States Postal Service Delivery:

18 Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

21 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
22 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in
23 Section 4.5.1(a) above, as proof of payment to OEHHA.

24 4.5.3 Tax Documentation. Settling Defendant shall issue a separate 1099 form for
25 each payment required by this Section to: (a) Russell Brimer, whose address and tax identification
26 number shall be furnished upon request after this Consent Judgment has been fully executed by the
27 Parties; (b) OEHHA, who shall be identified as “California Office of Environmental Health Hazard
28 Assessment” (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box

1 4010, Sacramento, CA 95814; and (c) “The Chanler Group” (EIN: 94-3171522) to the address set
2 forth in Section 4.5.1(a) above.

3 **5. CLAIMS COVERED AND RELEASED**

4 **5.1 Brimer’s Release of Proposition 65 Claims**

5 Brimer, acting on his own behalf and in the public interest, hereby releases Settling
6 Defendant, its parents, subsidiaries, affiliated entities under common ownership (“Affiliates”),
7 directors, officers, agents, employees, attorneys, and each entity to whom Settling Defendant
8 directly or indirectly distributes or sells the Products, including, but not limited to, downstream
9 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
10 (collectively, “Releasees”), from all claims for any violations of Proposition 65 through the
11 Effective Date based on unwarned exposures to the Listed Chemical in the Products, as set forth in
12 the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
13 Proposition 65 with respect to exposures to the Listed Chemical from the Products, as set forth in
14 the Notice. The Parties further understand and agree that this Section 5.1 release shall not extend
15 upstream to any entities, other than Settling Defendant and its Affiliates, that manufactured the
16 Products or any component parts thereof, or any distributors or suppliers who sold the Products or
17 any component parts thereof to Settling Defendant or its Affiliates, except that any entity upstream
18 of a Settling Defendant that is a Retailer of a Private Labeled Covered Product shall be released as
19 to the Private Labeled Covered Products offered for sale in California, or to California Customers,
20 by the Retailer in question.

21 **5.2 Brimer’s Individual Release of Claims**

22 Brimer, in his individual capacity only and *not* in his representative capacity, on behalf of
23 himself, his past and current agents, representatives, attorneys, successors, and assignees, provides a
24 release herein to Settling Defendant and the Releasees, which shall be effective as a full and final
25 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
26 attorneys’ fees, damages, losses, claims, liabilities, and demands of any nature, character, or kind,
27 whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or
28 actual exposures to TDCPP, TCEP, and/or TDBPP in the Products or Additional Products (as

1 defined in Section 11.1 and delineated on Settling Defendant's Exhibit A) manufactured, imported,
2 distributed, or sold by Settling Defendant or its Affiliates prior to the Effective Date.⁷ The Parties
3 further understand and agree that this Section 5.2 release shall not extend upstream to any entities,
4 other than Settling Defendant and its Affiliates, that manufactured the Products or Additional
5 Products, or any component parts thereof, or any distributors or suppliers who sold the Products or
6 Additional Products, or any component parts thereof to Settling Defendant or its Affiliates, except
7 that entities upstream of Settling Defendant that is a Retailer of a Private Labeled Covered (or
8 Additional) Product shall be released as to the Private Labeled Covered (or Additional) Products
9 offered for sale in California by the Retailer in question. Nothing in this Section affects Brimer's
10 rights to commence or prosecute an action under Proposition 65 against a Releasee that does not
11 involve Settling Defendant's Products or Additional Products.

12 5.3 Settling Defendant's Release of Brimer

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 Brimer 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 Brimer and his attorneys and other representatives, whether in the course of
17 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
18 respect to the Products or Additional Products.

19 6. COURT APPROVAL

20 This Consent Judgment is not effective until it is approved and entered by the Court and
21 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court
22 within one year after it has been fully executed by all Parties unless the Parties otherwise agree. If
23 the Court does not approve the Consent Judgment, the Parties shall meet and confer as to whether to
24 modify the language or appeal the ruling. If the Parties do not jointly agree on a course of action to
25 take, then the case shall proceed in its normal course on the Court's trial calendar and any money
26 Settling Defendant has paid under this Consent Judgment shall be returned within 15 days of

27 _____
28 ⁷The injunctive relief requirements of Section 3 shall apply to Additional Products as otherwise
specified.

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

11 **7. GOVERNING LAW**

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

27 ///

1 To Settling Defendant:

To Brimer:

2 At the address shown on Exhibit A

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

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

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

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

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

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

15 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

16 11.1 In addition to the Products, where Settling Defendant has identified on Exhibit A
17 additional products that contained TDCPP or TCEP and that were sold or offered for sale by it in
18 California, or to California Customers ("Additional Products"), then by no later than December 1,
19 2013, Settling Defendant may provide Brimer with additional information or representations
20 necessary to enable him to issue a 60-Day Notice of Violation and valid Certificate of Merit
21 therefore, pursuant to Health & Safety Code § 25249.7, that includes the Additional Products.
22 Polyurethane foam that is supplied, shaped or manufactured by Settling Defendant for use as a
23 component of a product, such as padded upholstered children's chairs, is specifically excluded from
24 the definition of Additional Products and shall not be identified by Settling Defendant on Exhibit A
25 as an Additional Product. Except as agreed upon by Brimer, Settling Defendant shall not include a
26 product, as an Additional Product, that is the subject of an existing 60-day notice issued by Brimer
27 or any other private enforcer at the time of execution of this Consent Judgment. After receipt of the
28 required information, Brimer agrees to issue a supplemental 60-day notice in compliance with all

1 statutory and regulatory requirements for the Additional Products. Brimer will, and in no event
2 later than October 1, 2014, prepare and file an amendment to this Consent Judgment to incorporate
3 the Additional Products within the defined term “Products” and serve a copy thereof and its
4 supporting papers (including the basis for supplemental stipulated penalties, if any) on the Office of
5 the California Attorney General; upon the Court’s approval and finding that the supplemental
6 stipulated penalty amount, if any, is reasonable, the Additional Products shall become subject to
7 Section 5.1 in addition to Section 5.2. Settling Defendant shall, at the time it elects to utilize this
8 Section and tenders the additional information or representations regarding the Additional Products
9 to Brimer, tender to The Chanler Group’s trust account an amount not to exceed \$8,750 as
10 stipulated penalties and attorneys’ fees and costs incurred by Brimer in issuing the new notice and
11 engaging in other reasonably related activities, which may be released from the trust as awarded by
12 the Court upon Brimer’s application. Any fee award associated with the modification of the
13 Consent Judgment to include Additional Products shall not offset any associated supplemental
14 penalty award, if any. (Any tendered funds remaining in the trust thereafter shall be refunded to
15 Settling Defendant within 15 days). Such payment shall be made to “in trust for The Chanler
16 Group” and delivered as per Section 4.5.1(a) above.

17 11.2 Brimer and Settling Defendant agree to support the entry of this agreement as a
18 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
19 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed
20 motion is required to obtain judicial approval of this Consent Judgment, which Brimer shall draft
21 and file. If any third-party objection to the noticed motion is filed, Brimer and Settling Defendant
22 shall work together to file a reply and appear at any hearing before the Court. This provision is a
23 material component of the Consent Judgment and shall be treated as such in the event of a breach.

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1 **12. MODIFICATION**

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


5 **13. AUTHORIZATION**

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

9 AGREED TO:

10 
11 Plaintiff Russell Brimer

AGREED TO:

12 
13 Joel Bennett, Executive Vice President and
14 Chief Financial Officer
15 Jakks Pacific, Inc.

16 Date: October 31, 2013

17 Date: October 29, 2013

EXHIBIT A

I. Name of Settling Defendant:

Jakks Pacific, Inc.
22619 Pacific Coast Highway
Malibu, CA 90265

II. Names of Releasees (Optional; May be Partial)

Without limitation, including Kids Only, LLC, Kids Only, Inc; Toys "R" Us, Inc.

III. 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

IV. Types of Additional Products Settling Defendant Elects to Address (if any):

Tables _____

V. Settling Defendant's Required Settlement Payments

A. Penalties, \$58,000, as follows:

\$20,000 initial payment due on or before the Effective Date;

\$24,000 second payment due on or before January 15, 2014, of which \$14,000 may be waived pursuant to Section 4.1.4(i) and \$10,000 may be waived pursuant to Section 4.1.4(iii); and

\$14,000 third payment due on or before November 30, 2014, of which \$8,000 may be waived pursuant to Section 4.1.4(ii) and \$6,000 may be waived pursuant to Section 4.1.4(iv).

VI. Payment to The Chanler Group for reimbursement of attorneys' fees and costs pursuant to Section 4.4 of the Consent Judgment in total amount of \$51,000 as follows:

A. Fees and Costs of: \$47,000.

B. Additional Fees and Costs: \$4,000 supplemental fee for the release of Toys "R" Us, Inc. by this Consent Judgment.

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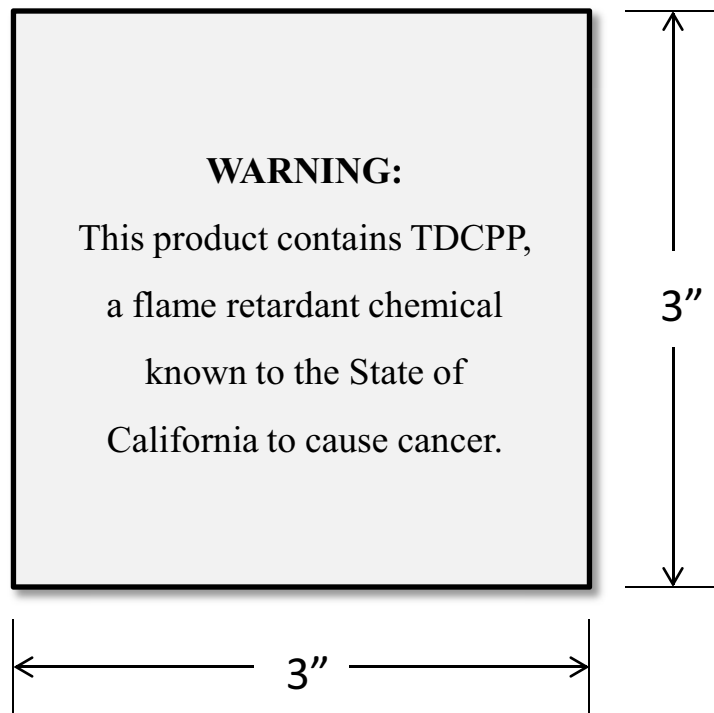
VII. Person(s) to receive Notices on behalf of Settling Defendant pursuant to Section 8:

Stephen Berman, President
Jakks Pacific, Inc.
22619 Pacific Coast Highway
Malibu, CA 90265

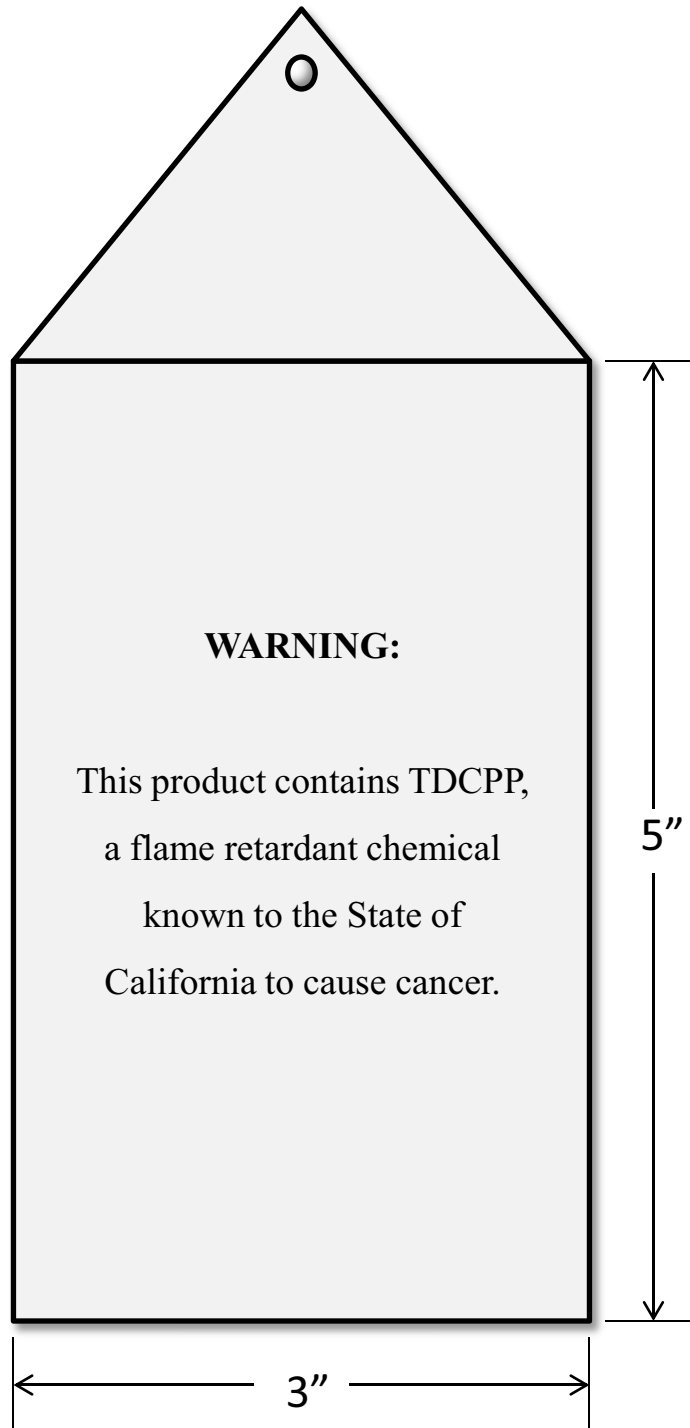
J. Robert Maxwell, Esq.
Rogers Joseph O'Donnell, A.P.C.
311 California Street, 10th floor
San Francisco, CA 94104

EXHIBIT B

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

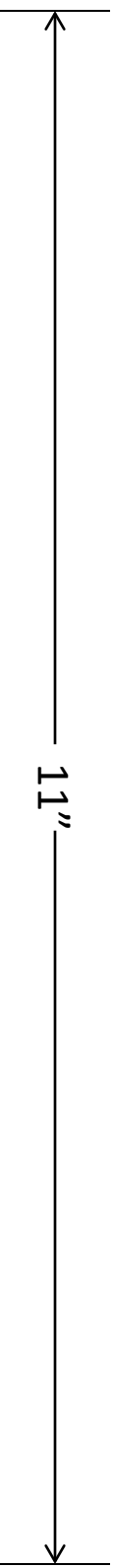


INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

WARNING:

This product contains TDCPP, a flame retardant 8.5"

chemical known to the State of California to
cause cancer.



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