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10 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 (Unlimited Jurisdiction)

14 MATEEL ENVIRONMENTAL
15 JUSTICE FOUNDATION,

16 Plaintiff,

17 v.

18 HUFFY CORPORATION; RADIO FLYER,
19 INC., and DOES 1 through 100 inclusive,

20 Defendants.

ENDORSED
FILED
San Francisco County Superior Court

APR 6 - 2005

GORDON PARK-LI, Clerk
BY: CRISTINA E. BAUTISTA
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

PLAN I SEP 9 - 2005 9:00AM

DEPARTMENT 212

CASE NO. **05-440130**

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

TOXIC TORT/ENVIRONMENTAL

21 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:
22

23 INTRODUCTION

24 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
25 failure of defendants HUFFY CORPORATION; RADIO FLYER, INC., and DOES 1 through
26 100 inclusive (hereinafter "Defendants"), to give clear and reasonable warnings to those residents
27 of California, who handle and use bicycles and tricycles, the handles of which are coated with
28 thermoset/thermoplastic that contains lead (hereinafter referred to as "Leaded Handlebars"), that

1 handling and use of these products causes those residents to be exposed to lead and lead
2 compounds, lead acetate, lead phosphate, and lead subacetate (hereinafter, collectively, "lead").
3 Lead is known to the State of California to cause cancer, birth defects and male and female
4 reproductive toxicity. Defendants manufacture, distribute, and/or market bicycles and tricycles
5 that have Leaded Handlebars. These products cause exposures to lead and lead compounds,
6 which are chemicals known to the State of California to cause cancer, birth defects and other
7 reproductive harm.

8 2. Defendants are businesses that manufacture, market, and/or distribute bicycles and
9 tricycles that have Leaded Handlebars. Defendants intend that residents of California handle and
10 use bicycles and tricycles that have Leaded Handlebars that Defendants manufacture, market,
11 and/or distribute. When these products are handled and used in their normally intended manner,
12 they expose people to lead. In spite of knowing that residents of California were and are being
13 exposed to these chemicals when they handle and use bicycles and tricycles that have Leaded
14 Handlebars, Defendants did not and do not provide clear and reasonable warnings that these
15 products cause exposure to chemicals known to cause cancer, birth defects and other
16 reproductive harm.

17 3. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7
18 to compel Defendants to bring their business practices into compliance with section 25249.5 et
19 seq. by providing a clear and reasonable warning to each individual who has been and who in the
20 future may be exposed to the above mentioned toxic chemicals from the use of Defendants'
21 products.

22 4. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the failure
23 of Defendants to provide clear and reasonable warnings regarding exposure to chemicals known
24 to cause cancer, birth defects and other reproductive harm. Plaintiff also seeks an order that
25 defendants identify and locate each individual person who in the past has purchased bicycles and
26 tricycles that have Leaded Handlebars and to provide to each such purchaser a clear and
27 reasonable warning that the bicycles and tricycles that have Leaded Handlebars will cause
28 exposures to chemicals known to cause birth defects.

PARTIES

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2 5. Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel")
3 is a non-profit organization dedicated to, among other causes, the protection of the environment,
4 promotion of human health, environmental education, and consumer rights. Mateel is based in
5 Eureka, California, and is incorporated under the laws of the State of California. Mateel is a
6 "person" pursuant to Health & Safety Code Section 25118. Mateel brings this enforcement
7 action in the public interest pursuant to Health & Safety Code §25249.7(d). Residents of
8 California are regularly exposed to lead and lead compounds from bicycles and tricycles that
9 have Leaded Handlebars manufactured, distributed or marketed by Defendants and are so
10 exposed without a clear and reasonable Proposition 65 warning.

11 6. Defendants are each a person doing business within the meaning of Health &
12 Safety Code Section 25249.11. Defendants are businesses that manufacture, distribute, and/or
13 market bicycles and tricycles that have Leaded Handlebars in California, including the City and
14 County of San Francisco. Manufacture, distribution and/or marketing of these products in the
15 City and County of San Francisco and/or to people who live in San Francisco, causes people to
16 be exposed to lead and lead compounds while they are physically present in the City and County
17 of San Francisco.

18 7. Mateel is unaware of the true names or capacities of the Defendants sued herein
19 under the fictitious names DOES 1 through 100, inclusive. Defendants DOES 1 through 100
20 inclusive are therefore sued herein pursuant to Cal. Code Civ. Proc. §474. When Mateel learns
21 their identities, it will amend the complaint.

22 8. Plaintiff brings this enforcement action against Defendants pursuant to Health &
23 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a
24 60-day Notice letter dated June 4, 2004 which Mateel sent to California's Attorney General.
25 Substantially identical letters were sent to every District Attorney in the state, and to the City
26 Attorneys of every California city with a population greater than 750,000. On those same dates,
27 Mateel sent identical 60-Day Notice letters to each defendant. Attached to the 60-Day Notice
28 Letters sent to each defendant was a summary of Proposition 65 that was prepared by

1 California's Office of Environmental Health Hazard Assessment. In addition, each 60-Day
2 Notice Letter plaintiff sent was accompanied by a Certificate of Service attesting to the service of
3 the 60-Day Notice Letter on each entity which received it. Pursuant to California Health & Safety
4 Code Section 25249.7(d), a Certificate of Merit attesting to the reasonable and meritorious basis
5 for the action was also sent with each 60-Day Notice Letter. Factual information sufficient to
6 establish the basis of the Certificate of Merit was enclosed with the 60-Day Notice letter Mateel
7 sent to the Attorney General.

8 9. Defendants are all businesses that employ more than ten people.

9 JURISDICTION

10 10. The Court has jurisdiction over this action pursuant to California Health & Safety
11 Code Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court
12 "original jurisdiction in all causes except those given by statute to other trial courts." Chapter 6.6
13 of the Health & Safety Code, which contains the statutes under which this action is brought, does
14 not grant jurisdiction to any other trial court.

15 11. This Court also has jurisdiction over Defendants because they are businesses that
16 have sufficient minimum contacts in California and within the City and County of San Francisco.
17 Defendants intentionally availed themselves of the California and San Francisco County markets
18 for bicycles and tricycles that have Leaded Handlebars. It is thus consistent with traditional
19 notions of fair play and substantial justice for the San Francisco Superior Court to exercise
20 jurisdiction over them.

21 12. Venue is proper in this Court because Defendants market their products in and
22 around San Francisco and thus cause people to be exposed to lead and lead compounds while
23 those people are physically present in San Francisco. Liability for Plaintiff's causes of action, or
24 some parts thereof, has accordingly arisen in San Francisco during the times relevant to this
25 Complaint and Plaintiff seeks civil penalties and forfeitures imposed by statutes.

26 FIRST CAUSE OF ACTION
27 (Claim for Injunctive Relief)

28 13. Plaintiff realleges and incorporates by reference into this First Claim for Relief, as

1 if specifically set forth herein, paragraphs 1 through 12, inclusive.

2 14. The People of the State of California have declared by referendum under
3 Proposition 65 (California Health & Safety Code § 25249.5 et seq.) their right "[t]o be informed
4 about exposures to chemicals that cause cancer, birth defects, and reproductive harm."

5 15. To effectuate this goal, Section 25249.6 of the Health and Safety Code mandates
6 that persons who, in the course of doing business, knowingly and intentionally expose any
7 individual to a chemical known to the State of California to cause cancer or birth defects must
8 first provide a clear and reasonable warning to such individual prior to the exposure.

9 16. Since at least June 4, 2001, Defendants have engaged in conduct that violates
10 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and
11 intentionally exposing to the above mentioned toxic chemicals, those California residents who
12 handle and use bicycles and tricycles that have Leaded Handlebars. The normally intended use
13 of bicycles and tricycles that have Leaded Handlebars causes exposure to lead and lead
14 compounds, which are chemicals known to the State of California to cause cancer, birth defects
15 and other reproductive harm. Defendants have not provided clear and reasonable warnings,
16 within the meaning of Health & Safety Code Sections 25249.6 and 25249.11.

17 17. At all times relevant to this action, Defendants knew that the bicycles and tricycles
18 that have Leaded Handlebars they manufactured, distributed or marketed were causing exposures
19 to lead and lead compounds. Defendants intended that residents of California handle and use
20 bicycles and tricycles that have Leaded Handlebars in such ways as would lead to significant
21 exposures to these chemicals.

22 18. By the above described acts, Defendants have violated Cal. Health & Safety Code
23 § 25249.6 and are therefore subject to an injunction ordering them to stop violating Proposition
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1 65 and requiring them to provide warnings to their past customers who purchased defendants'
2 products without receiving a clear and reasonable warning.

3 SECOND CAUSE OF ACTION
4 (Claim for Civil Penalties)

5 19. Plaintiff realleges and incorporates by reference into this First Claim for Relief, as
6 if specifically set forth herein, paragraphs 1 through 18, inclusive.

7 20. By the above described acts, Defendants are liable and should be liable pursuant
8 to Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each
9 individual exposed to lead and lead compounds from the handling or use of Defendants' bicycles
10 and tricycles that have Leaded Handlebars .

11 PRAYER FOR RELIEF

12 Wherefore, plaintiff prays for judgment against DEFENDANTS, as follows:

13 1. Pursuant to the First Cause of Action, that all Defendants be enjoined, restrained,
14 and ordered to comply with the provisions of Section 25249.6 of the California Health & Safety
15 Code;

16 2. Pursuant to the Second Cause of Action, that Defendants be assessed a civil
17 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section
18 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of
19 Defendants' manufacturing, distributing or marketing of bicycles and tricycles that have Leaded
20 Handlebars;

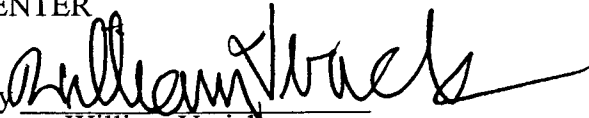
21 3. That Defendants be ordered to identify and locate each individual who purchased
22 bicycles and tricycles that have Leaded Handlebars and provide a warning to each such person
23 that the bicycles and tricycles that have Leaded Handlebars the person purchased will expose that
24 person to chemicals known to cause birth defects.

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4. For such other relief as this court deems just and proper.

Dated: March 25, 2005

KLAMATH ENVIRONMENTAL LAW
CENTER

By 
William Verick
Attorney for Plaintiff
Mateel Environmental Justice Foundation