

1 WILLIAM VERICK CSB#140972
FREDRIC EVENSON CSB#198059
2 KLAMATH ENVIRONMENTAL LAW CENTER
424 First Street
3 Eureka, California 95501
(707) 268-8900

4 DAVID H. WILLIAMS CSB#144479
5 BRIAN ACREE CSB#202505
370 Grand Avenue, Suite 5
6 Oakland, CA 94610
(510) 271-0826

7 Attorneys for Plaintiff

8 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

ENDORSED
FILED
San Francisco County Superior Court

FEB 13 2007

GORDON PARK-LI, Clerk
BY: JOCELYN C. ROQUE
Deputy Clerk

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SAN FRANCISCO

12
13 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

14 Plaintiff,

15 vs.

16 TOYS R US, INC.,

17 et al.

18 Defendants.
19

) No. 451880

) [PROPOSED] CONSENT JUDGMENT

20
21 1. INTRODUCTION

22 1.1 On or about June 4, 2004, the Mateel Environmental Justice Foundation ("MEJF")
23 and its attorneys, Klamath Environmental Law Center ("KELC") sent 60-day notice letters to the
24 Office of the California Attorney General of the State of California ("California Attorney
25 General"), all California counties' District Attorneys and all City Attorneys of California cities with
26 populations exceeding 750,000, ("June Notice Letter"), alleging that defendant Huffy Corporation
27 ("Huffy") was violating the Safe Drinking Water and Toxic Enforcement Act of 1986, California
28

CONSENT JUDGMENT

1 Health and Safety Code Section 25249.5 et seq. ("Proposition 65"), in its manufacture, distribution
2 and/or sale of bicycles and tricycles (collectively with scooters, ride-on toys, wagons and other
3 wheeled products hereinafter referred to as "Bicycles"). MEJF charged, *inter alia*, that persons
4 handling plastic handlebar grips ("Grips") and/or brake or derailleur cables that are housed in
5 thermoplastic (collectively, "Cables") on Bicycles were exposed to lead and lead compounds,
6 which are chemicals listed under Proposition 65.

7 On or about December 15, 2005, MEJF and KELC sent additional 60 day notice letters to
8 the California Attorney General, all California counties' District Attorneys and all City Attorneys of
9 California cities with populations exceeding 750,000 (the "December '05 Notice Letter") alleging
10 that K Mart Corporation and Toys R Us, Inc.¹ (collectively with Huffy hereinafter referred to as the
11 "Defendants") were then violating Proposition 65 in connection with their distribution and/or sale
12 within the State of California of Huffy Corporation products with Grips and/or Cables.

13 On or about December 11, 2006, MEJF and KELC sent additional 60 day notice letters to
14 the California Attorney General, all California counties' District Attorneys and all City Attorneys of
15 California cities with populations exceeding 750,000 (the "December '06 Notice Letter", and
16 together with the June Notice Letter and the December '05 Notice Letter, collectively the "Notice
17 Letters") further alleging that persons handling Covered Products (as defined in Paragraph 1.3
18 below) were allegedly exposed to acrylonitrile, antimony trioxide, arsenic, 1,3 butadiene, carbon
19 tetrachloride, carbon black extracts, chlorinated paraffins, chloroform, ethyl acrylate, ethylene
20 thiourea, nickel, toluene, cadmium, hexavalent compounds of chromium, vinyl chloride, lead
21 acetate, lead phosphate, lead subacetate, di(2ethylhexyl) phthalate, butyl benzyl phthalate, di-n-
22 butyl phthalate, and di-n-hexyl phthalate in addition to lead and lead compounds (collectively, all of
23 the chemicals which are the subject of the Notice Letters are hereinafter referred to as "the
24 Proposition 65 Chemicals").

25

26

27 1 The Toys R Us entity that operates all stores in the United States and sells products therein is Toys "R" Us-
28 Delaware, Inc., not Toys "R" Us, Inc. All references to Toys R Us or Defendants hereinafter thus refers to or includes
Toys "R" Us-Delaware, Inc.

1 1.2 On July 28, 2006, MEJF (“Plaintiff”), acting on behalf of itself, the public interest,
2 and the general public for the matters described in the Notice Letters, filed an Amended Complaint
3 for civil penalties and injunctive relief (“Amended Complaint”) in the San Francisco Superior Court
4 fashioned *Mateel v. Toys R Us, Inc., et al.*, Case No. 451880, based on the Notice Letters. This
5 Amended Complaint added Huffy Corporation as a defendant to an already existing case. The
6 Complaint alleged, among other things, that Huffy violated Proposition 65 by manufacturing,
7 marketing and/or distributing to California residents Covered Products (as defined in Paragraph 1.3
8 below) and failing to provide clear and reasonable warnings to California residents who handle and
9 use such products that the handling and use of those products in their normally intended manner
10 will cause those persons to be exposed to Proposition 65 Chemicals.

11 Upon the running of the 60-day notice period associated with the latest date set forth on any
12 of the Notice Letters served on Defendants and the entry of this Consent Judgment, provided that
13 no Public Enforcer has filed a Proposition 65 enforcement action against them with respect to
14 Covered Products (as defined in Paragraph 1.3 below) in the interim, the Amended Complaint shall
15 be deemed to have been amended again to add allegations pertaining to all of the Proposition 65
16 Chemicals.

17 1.3 For purposes of this Consent Judgment, unless otherwise set forth herein, the terms
18 described in this Paragraph 1.3 shall have the following meanings. Plaintiff and Huffy are
19 collectively referred to as the “Parties,” with each of them a “Party.” The term “Covered Products”
20 means Bicycles manufactured, distributed, marketed or sold by Huffy. The term “Covered
21 Products” includes products which are manufactured, distributed, marketed and/or sold by Huffy
22 either under its own name or brand or under the name or brand of another (e.g., privately labeled
23 products). The term “PVC Components” refers to Grips and Cables that are composed of or housed
24 in thermoplastic and that are (i) on the Bicycle at the time it is sold to consumers or (ii) sold
25 separately as replacement parts for those components. MEJF has alleged that (a) Defendants are
26 businesses that employ more than ten persons and manufactures, distributes and/or sells or makes
27 available for sale Covered Products into the State of California, and (b) the Covered Products
28

1 offered for sale in California by Defendants contain one or more Proposition 65 Chemicals.
2 Defendants deny these and all of MEJF's other allegations.

3 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
4 jurisdiction over the allegations of violations contained in the Amended Complaint and personal
5 jurisdiction over Huffy as to the acts alleged in the Amended Complaint, that venue is proper in the
6 County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full
7 settlement and final resolution of the allegations contained in the Amended Complaint and Notice
8 Letters and of all claims which were or could have been raised by any person or entity based in
9 whole or in part, directly or indirectly, on the facts alleged therein, arising therefrom or related
10 thereto.

11 1.5 The Parties enter into this Consent Judgment pursuant to a full and final settlement
12 of any and all claims between the Parties for the purpose of avoiding prolonged litigation. This
13 Consent Judgment shall not constitute an admission with respect to any material allegation in the
14 Amended Complaint, each and every allegation of which Defendant denies; nor may this Consent
15 Judgment or compliance with it be used as evidence of any wrongdoing, misconduct, culpability or
16 liability on the part of any Defendant.

17 1.6 Following entry of this Consent Judgment by the court, Plaintiff shall file a dismissal
18 without prejudice as to Defendants K-Mart Corporation and Toys R Us-Delaware, Inc. (improperly
19 plead as Toys R Us, Inc.).

20 2. **SETTLEMENT PAYMENT**

21 In settlement of all of the claims that are alleged, or could have been alleged, in the
22 Amended Complaint concerning Defendants, within 10 days following the Court's entry of a final
23 judgment, Huffy shall pay \$62,500 to the Klamath Environmental Law Center ("KELC") to cover
24 Plaintiff's attorneys' fees. Additionally, within 10 days following the Court's entry of a final
25 judgment, including any third-party appeals to the entry of the judgment, Huffy shall pay \$18,500
26 to Californians for Alternatives to Toxics; and \$18,500 to the Ecological Rights Foundation for use
27 toward reducing exposures to toxic chemicals and other pollutants, and toward increasing
28 consumer, worker and community awareness of health hazards posed by lead and other toxic

1 chemicals. No Defendant shall be required to pay a civil penalty pursuant to Health and Safety
2 Code section 25249.7(b).

3 **3. ENTRY OF CONSENT JUDGMENT**

4 The Parties request that the Court promptly enter this Consent Judgment and waive their
5 respective rights to a hearing or trial on the allegations of the Amended Complaint.

6 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

7 4.1 For purposes of Section 4 of this Consent Judgment, the term Defendant shall
8 include Huffy, Toys R Us-Delaware, Inc. and K Mart Corporation and their respective past, present
9 and future parents, divisions, subdivisions, brands, subsidiaries and affiliates and the predecessors,
10 successors and assigns of any of them, as well as their past, present and future officers, directors,
11 employees, agents, attorneys, representatives, shareholders and assigns. For purposes of this
12 Section 4, the term Defendant shall also be deemed to include Huffy's direct and indirect suppliers
13 of Covered Products, but only with respect to those Covered Products that such direct or indirect
14 supplier manufactures for Huffy. In addition, for purposes of this Section 4, the term Defendant
15 also includes, with respect to Huffy's Covered Products only, Huffy's chain of distribution,
16 including, but not limited to, customers, wholesale or retail sellers or distributors (including but not
17 limited to Toys R Us-Delaware, Inc. and K Mart Corporation) and any other person in the course of
18 doing business.

19 4.2 As to all matters addressed in the Notice Letters and/or the Amended Complaint, this
20 Consent Judgment constitutes a final and binding resolution and release of liability between
21 Plaintiff acting on behalf of itself and in the public interest pursuant to Health and Safety Code
22 Section 25249.7(d) and Defendants of any violation of Proposition 65 with respect to exposures to
23 the Proposition 65 Chemicals associated with the use or handling of Covered Products.

24 4.3 This Consent Judgment also constitutes a final and binding resolution and release of
25 liability between Plaintiff and Defendants with respect to any other statutory or common law claim
26 that could have been asserted against Defendants, or any of them, based on its or their exposure of
27 persons to chemicals contained in or otherwise associated with the use of Covered Products
28

1 manufactured, sold or distributed by, for or on behalf of Huffy and/or its alleged failure to provide a
2 clear and reasonable warning of such exposure to such individuals.

3 4.4 As to all matters addressed in the Notice Letters, Amended Complaint and/or this
4 Consent Judgment, any claims, violations (except violations of this Consent Judgment), actions,
5 damages, costs, penalties, or causes of action which may arise or have arisen after the original date
6 of entry of this Consent Judgment, compliance by Huffy with the terms of this Consent Judgment
7 shall be deemed to constitute its full and complete compliance with Proposition 65 and shall bar
8 such claims or the re-litigation of issues underlying such claims under the doctrines of res judicata
9 and collateral estoppel.

10 4.5 Nothing in this Consent Judgment shall be deemed to release, from past liability
11 under Proposition 65, any entity which incorporates PVC Components obtained from Huffy into a
12 Covered Product.

13 4.6 Huffy waives all rights to institute any form of legal action against Plaintiff, its
14 officers, directors, attorneys, consultants and representatives for all actions undertaken or
15 statements made in the course of this Action as of the Effective Date of this Consent Judgment.

16 5. **ENFORCEMENT OF JUDGMENT**

17 5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
18 hereto by means of noticed motion or order to show cause before the Superior Court of San
19 Francisco County.

20 5.2 In the event Plaintiff identifies Covered Products not in timely compliance with the
21 requirements of Section 7 ("Default"), Plaintiff shall promptly notify Huffy of the facts giving rise
22 to such failure to warn ("Notice of Default").

23 (a) In the event that Huffy, after receiving a Notice of Default, notifies the Plaintiff
24 within thirty (30) days that it will implement such measures as are necessary to correct the alleged
25 Default ("Notice of a Cure") (for purposes of this Paragraph 5.2(a), "Cure" shall mean achieving
26 the Reformulation Levels set forth in Section 7 hereof for all units of the Covered Product at issue
27 shipped for sale by Huffy beginning within sixty (60) days thereof, Plaintiff shall take no further
28 enforcement action with respect to such violation, and Huffy shall pay a penalty in the amount of

1 \$10,000 (ten thousand dollars) for each Covered Product category/type (as opposed to individual
2 products or model numbers) which was the subject of a Notice of Default. This \$10,000 shall be
3 paid to Klamath Environmental Law Center. KELC shall divide the payment as follows: A
4 portion shall be paid to cover the attorney's fees and costs MEJF incurred in prosecuting the
5 default and a portion shall be paid as a civil penalty. The amount paid in attorneys fees shall be
6 determined by the attorney time and costs MEJF incurred in prosecuting the default. In no event
7 shall the amount paid in attorneys fees exceed \$6,000. The balance of the \$10,000 shall be paid as
8 a civil penalty to be further divided by MEJF as provided in California Health and Safety Code
9 Section 25192. The amount of the civil penalty to be paid to the State shall be paid to the Office of
10 the Attorney General. At the time KELC forwards the State's share of the civil penalty to the
11 Office of the Attorney General, KELC shall provide the Attorney General with a statement of the
12 hours and costs that were the basis for the attorney's fees portion of the \$10,000 penalty that
13 KELC retained.

14 (b) In the event Huffy wishes to contest an alleged Default in whole or in part, it
15 shall, within thirty (30) days of receipt of a Notice of Default, mail (by certified mail or overnight
16 delivery) and fax (or email) a notice to Plaintiff, setting forth its position. Plaintiff and Huffy shall
17 then meet and confer in good faith within thirty (30) days to determine whether the dispute may be
18 resolved without resort to litigation.

19 (c) If a Notice of Default is not addressed pursuant to the preceding paragraphs (a)
20 or (b), Plaintiff may move the Court for such further action and/or remedies (including potential
21 civil penalties) as appropriate. In the event that Huffy chooses to contest such a motion and
22 prevails, the Court's determination shall be final and there shall be no appeal; if Plaintiff prevails,
23 Plaintiff's counsel may elect to file a motion within thirty (30) days of receipt of written notice of
24 the Court's decision, to attempt to recover attorney's fees and costs incurred in association with the
25 motion as provided for by California Civil Procedure Code Section 1021.5.

26 5.3 Section 5.2(a) shall not apply to allegations for failure to comply with Section 7 with
27 respect to a category of Covered Products manufactured or sold by Huffy which have already been
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1 subject to a Notice of Default and which are shipped for sale by Huffly more than ninety (90) days
2 after the date of a Notice of a Curc.

3 6. **MODIFICATION OF JUDGMENT**

4 This Consent Judgment may be modified only upon written agreement of the Parties and
5 upon entry of a modified amended Consent Judgment by the Court, or upon motion of any Party as
6 provided by law and upon entry of a modified amended Consent Judgment by the Court; any such
7 stipulation shall be served on the California Attorney General no less than 15 days prior to its filing
8 with the Court and any such motion shall be served on the California Attorney General when it is
9 filed with the Court.

10 7. **INJUNCTIVE RELIEF**

11 7.1 Covered Products sold by Huffly for resale or use in California shall be deemed to
12 comply with Proposition 65 and be exempt from any Proposition 65 warning requirement arising
13 from exposures to any of the Proposition 65 Chemicals if they meet the following criteria:

14 (a) the Surface Contact Layers of PVC Components shall have no lead as an
15 intentionally added constituent; and

16 (b) the Surface Contact Layer of PVC Components shall have lead content by
17 weight as follows:

18 (i) for Grips:

19 (A) no more than 0.03% (300 parts per million) for Grips on Bicycles
20 having wheels that measure over 20 inches in diameter;

21 (B) no more than 0.003% (30 parts per million) for Grips on Bicycles
22 having wheels that measure 20 inches or less in diameter.

23 (ii) for all other PVC Components, no more than 0.03% (300 parts per million).

24 (c) the outer Surface Contact Layer of any area of the Bicycle that is painted or
25 carries a printed decal ("Painted Components") shall have a lead content by weight of no more than
26 0.06% (600 parts per million), and a cadmium content by weight of no more than 0.48% (4,800
27 parts per million).

28 7.2 Huffly may comply with the criteria set forth in Paragraph 7.1 above ("Reformulation
Levels") by relying on information obtained from its suppliers regarding the content of the Surface

1 Contact Layer of the PVC Components and Painted Components, provided such reliance is in good
2 faith. Obtaining test results showing that the lead, and where applicable, cadmium, content does
3 not exceed the Reformulation Levels using a method of sufficient sensitivity to establish a limit of
4 quantification (as distinguished from detection) of less than the Reformulation Level required for
5 each Covered Product, shall be deemed to establish good faith reliance. Nothing in the preceding
6 two sentences shall preclude Huffly from establishing good faith reliance by an alternative means.

7 7.3 The following are deemed to be exempt from any requirements with respect to the
8 Proposition 65 Chemicals: Covered Products that are: (a) manufactured before the Effective Date;
9 or; (b) distributed or shipped for sale outside the State of California. Covered Products
10 manufactured and shipped for distribution by Huffly on or after the Effective Date that do not meet
11 the Reformulations Levels set forth in Paragraph 7.1 of this Consent Judgment and are not exempt
12 pursuant to the preceding sentence shall not be made available for sale in the State of California. For
13 purposes of this Section, the "Effective Date" shall be one hundred eighty (180) days after the entry
14 of this Consent Judgment with respect to Grips; the "Effective Date" as to other Covered Products
15 shall be one year after the entry of this Consent Judgment.

16 8. **APPLICATION OF JUDGMENT**

17 As to all matters addressed in the Notice Letters and/or the Amended Complaint, the
18 obligations of this Consent Judgment shall apply to and be binding upon all plaintiffs acting in the
19 public interest pursuant to Health and Safety Code section 25249.7(d), and Huffly and its successors
20 or assigns.

21 9. **AUTHORITY TO STIPULATE**

22 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
23 Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the
24 Party represented and legally to bind that Party.

25 10. **NOTICES**

26 Any notices under this Consent Judgment shall be by personal delivery of First Class Mail.
27
28

1 If to MEJF: William Verick, Esq.
2 Klamath Environmental Law Center
3 424 First Street
4 Eureka, CA 95501
5 If to Huff Corporation.: General Counsel
6 Huff Corporation
7 225 Byers Road
8 Miambsburg, OH 45342

9 With copy to:

10 Warren A. Koshofer, Esq.
11 Christensen Glaser, et al.
12 10250 Constellation Blvd., 19th Floor
13 Los Angeles, CA 90067

14 11. **RETENTION OF JURISDICTION**

15 This Court shall retain jurisdiction of this matter to implement the terms of injunctive relief
16 provided for in this Consent Judgment and hear any motion or application properly made by a Party
17 hereto.

18 12. **ENTIRE AGREEMENT**

19 This Consent Judgment contains the sole and entire agreement and understanding of the
20 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
21 negotiations, commitments and understandings related hereto. No representations, oral or
22 otherwise, express or implied, other than those contained herein have been made by any Party
23 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
24 to exist or to bind any of the Parties.

25 13. **TERMINATION**

26 13.1 Huffy may elect (but shall not be required) to seek to terminate its obligations under
27 Section 7 of this Consent Judgment on any date following the fifth anniversary of the Effective Date
28 by filing a notice of termination with the Court and serving notice thereof on KELC and the Office
of the Attorney General for the State of California at least thirty (30) days prior to its proposed
effective date so as to afford a potential opportunity for the submission of objections to this Court.

1 Sections 4 and 5 of this Consent Judgment shall not apply to Huffly after any such termination is
2 effectuated.

3 13.2 Notwithstanding Paragraph 13.1 above, Huffly's obligations under this Consent
4 Judgment shall automatically terminate in the event that Proposition 65 is repealed.

5 14. GOVERNING LAW

6 The validity, construction and performance of this Consent Judgment shall be governed by
7 the laws of the State of California, without reference to any conflicts of law provisions of California
8 law.

9 15. COURT APPROVAL

10 If this Consent Judgment is not approved and entered by the Court, or if the entry of this
11 Consent Judgment is successfully challenged, this Consent Judgment shall be of no force or effect,
12 and cannot be used in any proceeding for any purpose.

13 16. COUNTERPARTS

14 This Consent Judgment may be executed in any number of counterparts, each of which shall
15 be deemed to be an original and all of which taken together shall be deemed to be one and the same
16 instrument.

17 **AGREED AS TO FORM:**

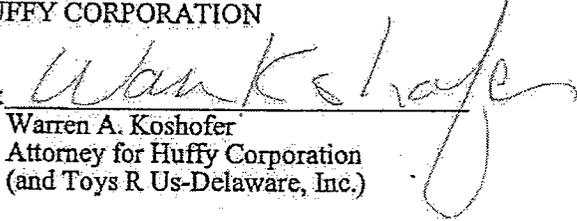
18 DATED: December 15, 2006

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

By: 
Frederic Evenson
Attorney for Plaintiff

22 DATED: December 19, 2006

HUFFY CORPORATION

By: 
Warren A. Koshof
Attorney for Huffly Corporation
(and Toys R Us-Delaware, Inc.)

1 IT IS SO STIPULATED:
2 DATED: December 26, 2006

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

Signature: *William Verick*

Name (Printed): William Verick

Title: _____

8 DATED: December ____, 2006

HUFFY CORPORATION

Signature: *Nancy A. Michaud*

Name (Printed): Nancy A. Michaud

Title: Sr V.P. General Counsel

14 IT IS SO ORDERED, ADJUDGED AND DECREED:

FEB 13 2007

16 DATED: _____

PATRICK J. MAHONEY,

JUDGE OF THE SUPERIOR COURT

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1 WILLIAM VERICK, CSB #140972
Klamath Environmental Law Center
2 FREDRIC EVENSON, CSB #198059
Law Offices of Fredric Evenson
3 424 First Street
Eureka, CA 95501
4 Telephone: (707) 268-8900
Facsimile: (707) 268-8901

5 DAVID H. WILLIAMS, CSB #144479
6 BRIAN ACREE, CSB #202505
370 Grand Avenue, Suite 5
7 Oakland, CA 94610
Telephone: (510) 271-0826
8 Facsimile: (510) 271-0829

9 Attorneys for Plaintiff
10 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO

14
15 MATEEL ENVIRONMENTAL JUSTICE
16 FOUNDATION,

17 Plaintiff,

18 vs.

19 TOYS "R" US, INC., KMART
CORPORATION, HUFFY
20 CORPORATION, et al.,

21 Defendants.

CASE NO. 451880

[proposed] ORDER APPROVING
SETTLEMENT

Date: February 13, 2007
Time: 9:30 a.m.
Dept. No.: 302

22
23 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on
24 noticed motion on February 13, 2007. The court finds that:

- 25 1. The reformulation requirements of the Consent Judgment comply with the
26 requirements of Proposition 65;

ENDORSED
FILED
San Fran
for Court
FEB 13 2007
GORDON PARK-LI, Clerk
BY: JOCELYN C. ROQUE
Deputy Clerk

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2. The payments in lieu of civil penalty specified in the Consent Judgment are reasonable based on the criteria in Cal Health & Safety Code §25249.7(b)(2); and
3. The attorneys' rates and fees awarded under the Consent Judgment are reasonable under California law.

Based upon these findings, the settlement and Consent Judgment are approved.

IT IS SO ORDERED.

Dated: FEB 13 2007

PATRICK J. MAHONEY

Judge of the Superior Court