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10 Attorneys for Plaintiff
11 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

12
13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

15
16 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

17 Plaintiff,

18 vs.

19 WEAR ME APPAREL CORP.; TRIPP
20 NYC, INC.;

21 Defendants.

Case No. 476326

~~[PROPOSED]~~ CONSENT JUDGMENT AS
TO TRIPP NYC, INC.

22 **1. INTRODUCTION**

23 1.0 The MATEEL ENVIRONMENTAL JUSTICE FOUNDATION (“Plaintiff” or
24 “MEJF”) acting on behalf of itself and the general public, filed a Complaint for civil penalties and
25 injunctive relief (“Complaint”) in San Francisco Superior Court, Case No. 476326, against
26 defendant, Tripp NYC, Inc. (“Defendant” or “TRIPP NYC”), simultaneously with the filing of
27
28

ENDORSED
FILED
San Francisco County Superior Court

APR 07 2009

GORDON PARK-LI, Clerk
BY: _____ Deputy Clerk

1 this [Proposed] Consent Judgment. MEJF and TRIPP NYC are collectively referred to as “the
2 Parties” and individually as a “Party” to this [Proposed] Consent Judgment.

3 1.1 The Complaint alleges that TRIPP NYC violated provisions of the Safe Drinking
4 Water and Toxic Enforcement Act of 1986, Health and Safety Code sections 25249.5, et seq.
5 (Proposition 65), by knowingly and intentionally exposing persons to products containing lead
6 and/or lead compounds, which are chemicals known to the State of California to cause cancer
7 and/or birth defects or other reproductive harm, without first providing a clear and reasonable
8 warning to such individuals. The Complaint was based upon a 60-Day Notice letter, dated
9 December 20, 2007, sent by MEJF to TRIPP NYC, the California Attorney General, all District
10 Attorneys, and all City Attorneys with populations exceeding 750,000. A copy of the 60-Day
11 Notice letter is attached as Exhibit A to the Complaint in this action.

12 1.2 TRIPP NYC denies the claims and allegations of the Complaint and the 60-Day
13 Notice letter.

14 1.3 TRIPP NYC is a business that employs more than ten persons and, itself or
15 through its manufacturers, customers, licensees and business partners, manufactures, distributes
16 and/or markets within the State of California clothing products made with polyvinyl chloride
17 and/or other plastic materials (“PVC Materials”).

18 1.4 For purposes of this Consent Judgment, the term “Covered Products” shall be
19 defined as clothing products containing PVC Materials that: (i) are distributed, sold or used
20 within the State of California, and (ii) bear the Tripp NYC trademark or other related trademarks,
21 and are manufactured, distributed or sold by or on behalf of TRIPP NYC.

22 1.5 MEJF alleges that PVC Materials in such Covered Products contain lead and lead
23 compounds. Pursuant to Proposition 65, lead and lead compounds are chemicals known to the
24 State of California to cause cancer and reproductive toxicity. Products containing lead and/or
25 lead compounds that are sold or distributed in the State of California may be, under specified
26 circumstances, subject to the Proposition 65 warning requirement set forth in Health and Safety
27 Code section 25249.6. MEJF alleges that Covered Products made with lead-containing PVC
28

1 Materials that are manufactured, distributed, sold and/or marketed by TRIPP NYC for use in
2 California, require a warning under Proposition 65.

3 1.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court
4 has subject matter jurisdiction over the allegations of violations contained in the Complaint and
5 personal jurisdiction over TRIPP NYC as to the acts alleged in the Complaint, that venue is
6 proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent
7 Judgment as a full settlement and resolution of the claims and allegations contained in the
8 Complaint, and of all claims which were or could have been raised by any person or entity based
9 in whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or
10 related to.

11 1.7 TRIPP NYC disputes that it has violated Proposition 65 as described in the 60-Day
12 Notice Letter, the Complaint, or otherwise. This Consent Judgment shall not constitute an
13 admission with respect to any claim or material allegation of the Complaint, each and every claim
14 and allegation of which TRIPP NYC denies, nor may this Consent Judgment or compliance with
15 it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
16 TRIPP NYC.

17 **2. SETTLEMENT PAYMENT**

18 2.0 In settlement of all of the claims that are alleged or could have been alleged in the
19 Complaint, TRIPP NYC shall pay \$20,000 to the Klamath Environmental Law Center ("KELC")
20 to cover Plaintiff's attorneys' fees. Additionally, TRIPP NYC shall pay \$7,500 to the Ecological
21 Rights Foundation for use toward reducing exposures to toxic chemicals and other pollutants, and
22 toward increasing consumer, worker and community awareness of health hazards posed by lead
23 and other toxic chemicals. TRIPP NYC shall not be required to pay a civil penalty pursuant to
24 Health and Safety Code section 25249.7(b).

25 2.1 The above described payments shall be forwarded by Defendant so that they are
26 received at least five (5) days prior to the hearing date scheduled for approval of this Consent
27 Judgment. If the Consent Judgment is not approved within 120 days of the date scheduled for
28

1 approval, the above-described payments shall be returned and the provisions of this Consent
2 Judgment shall become null and void.

3 **3. ENTRY OF CONSENT JUDGMENT**

4 3.0 The Parties hereby request that the Court enter this Consent Judgment forty-five
5 (45) days after the Consent Judgment is served on the Attorney General in accordance with Title
6 11, California Code of Regulations, section 3003(a). Upon the Court's entry of a final judgment,
7 including any third-party appeals to the entry of the judgment, MEJF and TRIPP NYC waive
8 their respective rights to a hearing or trial on the allegations in the Complaint.

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

10 4.0 With respect to Covered Products, this Consent Judgment, once entered by the
11 Court, is a final and binding resolution between MEJF, acting on behalf of itself and (as to those
12 matters raised in the Notice Letter) the general public, and TRIPP NYC of: (i) any violation of
13 Proposition 65 (including but not limited to the claims made in the Complaint); and (ii) any other
14 statutory or common law claim to the fullest extent that any of the foregoing described in (i) or
15 (ii) were or could have been asserted by any person or entity against TRIPP NYC or its parents,
16 subsidiaries or affiliates, and all of their customers, distributors, wholesalers, retailers, licensors,
17 licensees, and Hot Topic, Inc., or any other person in the course of doing business, and the
18 successors and assigns of any of them, who may use, maintain, manufacture, distribute, advertise,
19 market or sell Covered Products, and the officers, directors, managers, employees, members,
20 shareholders, agents, insurers and representatives of each of them (collectively, the "Released
21 Entities"), based on its or their exposure of persons to Covered Products or their failure to provide
22 a clear and reasonable warning of exposure to such individuals; and (iii) as to alleged exposures
23 to Covered Products, any other claim based in whole or in part on the facts alleged in the
24 Complaint, whether based on actions or omissions by the Released Entities. Notwithstanding any
25 other provision of this Consent Judgment, any and all releases on behalf of the general public, are
26 limited to the claims made and the chemicals identified in the 60-Day Notice Letter.

27 4.1 As to alleged exposures to Covered Products and other claims in the Complaint,
28 MEJF, by and on behalf of itself, and its respective agents, successors, attorneys and assigns,

1 waives any and all rights to institute any form of legal action, and releases all claims against
2 TRIPP NYC and the Released Entities, or any other person in the course of doing business, and
3 the successors and assigns of any of them, who may use, maintain, manufacture, distribute,
4 advertise, market or sell the Covered Products, whether, under Proposition 65, the Unfair
5 Competition Act or any other statute, provision of common law or any theory or issue, arising out
6 of or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
7 including but not limited to any exposure to, or failure to warn with respect to, the Covered
8 Products (referred to collectively in this paragraph as the "Claims"). In furtherance of the
9 foregoing, as to alleged exposures to Covered Products, MEJF hereby waives any and all rights
10 and benefits which it now has, or in the future may have, conferred upon it with respect to the
11 Claims by virtue of the provisions of section 1542 of the California Civil Code, which provides as
12 follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
14 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
15 EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
16 RELEASE, WHICH IF KNOWN BY HIM, MUST HAVE
MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
DEBTOR.

17 MEJF understands and acknowledges that the significance and consequence of this waiver of
18 California Civil Code section 1542 is that even if it suffers future damages arising out of or
19 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
20 including but not limited to any exposure to, or failure to warn with respect to exposure to, the
21 Covered Products, MEJF will not be able to make any claim for those damages against TRIPP
22 NYC or the Released Entities. Furthermore, MEJF acknowledges that it intends these
23 consequences for any such Claims as may exist as of the date of this release but which MEJF
24 does not know exist, and which, if known, would materially affect their decision to enter into this
25 Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance,
26 oversight, error, negligence, or any other cause.

1 **5. ENFORCEMENT AND PRECLUSIVE EFFECT OF JUDGMENT**

2 5.0 The terms of this Consent Judgment shall be enforced exclusively by the Parties
3 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
4 San Francisco County, giving the notice required by law, enforce the terms and conditions
5 contained herein. In any proceeding brought by either party to enforce this Consent Judgment,
6 such Party may seek whatever fines, costs, penalties or remedies as may be provided by law for
7 any violation of Proposition 65 or this Consent Judgment. Additionally, if in such a proceeding
8 the Court finds that TRIPP NYC failed to comply with the reformulation requirements as
9 specified in Section 7 of this Consent Judgment, and notwithstanding any other provision of this
10 Consent Judgment, then as to such Covered Products, TRIPP NYC shall not benefit from any
11 release from liability specified in any provision of this Consent Judgment.

12 **6. MODIFICATION OF JUDGMENT**

13 6.0 This Consent Judgment may be modified only upon written agreement of the
14 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
15 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

16 **7. INJUNCTIVE RELIEF**

17 7.0 On and after January 1, 2009, the PVC Materials in all Covered Products
18 manufactured or distributed by TRIPP NYC, itself or through its manufacturers, licensees and
19 business partners, for distribution or use in California, shall meet the following criteria:

- 20 (a) The PVC Materials shall have no lead as an intentionally added
21 constituent;
- 22 (b) A representative sample of the bulk PVC Materials used to manufacture the
23 Covered Products shall have been tested for lead, and must have shown
24 lead content by weight of less than 0.003% (30 parts per million “30
25 ppm”), using a test method of sufficient sensitivity to establish a limit of
26 quantification (as distinguished from detection) of less than 30 ppm.

27 7.1 TRIPP NYC and the Released Entities may comply with the above requirements
28 by relying on information obtained from its suppliers of the Covered Products, and the PVC

1 Materials utilized in their manufacture, so long as such reliance is in good faith. Demonstration
2 of good faith reliance may include, but is not limited to e-mails or other written correspondence
3 from suppliers attesting to compliance with the provisions of this Section.

4 7.2 In the event that MEJF settles another actual or potential claim concerning the
5 alleged failure of a business to provide adequate Proposition 65 warnings concerning its
6 manufacture, distribution or sale of clothing in California, and agrees to a standard for
7 reformulation that allows for lead content by weight of greater than 30 ppm in polyvinyl chloride,
8 neoprene and/or other plastic materials used in making such clothing, TRIPP NYC's compliance
9 with the less stringent standard will be deemed to meet the requirements of Sections 7.0(b) above.
10 MEJF shall notify TRIPP NYC of any and each such settlement by written notice pursuant to
11 Section 14 below, within 10 days of execution of such settlement or consent judgment.

12 **8. AUTHORITY TO STIPULATE**

13 8.0 Each signatory to this Consent Judgment certifies that he or she is fully authorized
14 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
15 the party represented and legally to bind that party.

16 **9. RETENTION OF JURISDICTION**

17 9.0 This Court shall retain jurisdiction of this matter to implement the Consent
18 Judgment.

19 **10. SERVICE ON THE ATTORNEY GENERAL**

20 10.0 MEJF shall serve a copy of this Consent Judgment, signed by both parties, on the
21 California Attorney General on behalf of the parties so that the Attorney General may review this
22 Consent Judgment. MEJF, in compliance with Title 11, California Code of Regulations,
23 section 3003(a), also shall file and serve notice of the motion for approval of this Consent
24 Judgment.

25 **11. ENTIRE AGREEMENT**

26 11.0 This Consent Judgment contains the sole and entire agreement and understanding
27 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
28 negotiations, commitments and understandings related hereto. No representations, oral or

1 otherwise, express or implied, other than those contained herein have been made by either Party
2 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
3 deemed to exist or to bind any of the Parties.

4 **12. GOVERNING LAW**

5 12.0 The validity, construction and performance of this Consent Judgment shall be
6 governed by the laws of the State of California, without reference to any conflicts of law
7 provisions of California law.

8 **13. COURT APPROVAL**

9 13.0 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of
10 no force or effect, and cannot be used in any proceeding for any purpose.

11 **14. NOTICES**

12 14.0 Any non-default notice under this Consent Judgment shall be by First Class Mail
13 and any default notice shall be by overnight mail delivery and email to:

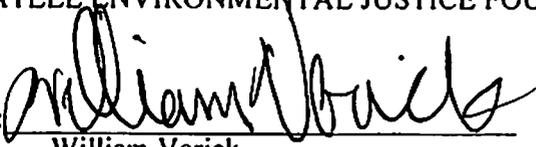
14 If to MEJF: William Verick, Esq.
15 Klamath Environmental Law Center
16 424 First Street
Eureka, CA 95501

17 If to TRIPP NYC: Robert A. Schachter, Esq.
18 Robinson Brog Leinwand Greene Genoves & Gluck P.C.
19 1345 Avenue of the Americas
New York, NY 10105-0143
20 ras@robinsonbrog.com

1 IT IS SO STIPULATED:

2 Dated: 2/17/09

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

3
4 By: 
5 William Verick

6 Dated:

TRIPP NYC, INC.

7
8 By: 
9 Ray Goodman,
Vice President

10
11 IT IS SO ORDERED, ADJUDGED AND DECREED:

12
13 Dated: APR 07 2009

CHARLOTTE WALTER WOOLARD
14 JUDGE OF THE SUPERIOR COURT