

ORIGINAL

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5 Attorneys for Defendant
CIRCUIT CITY STORES, INC.
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7
8 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN FRANCISCO
10

11
12 MATEEL ENVIRONMENTAL JUSTICE)
FOUNDATION,)

13 Plaintiff,)

14 vs.)

15)
16 CIRCUIT CITY STORES, INC., *et al.*,)

17 Defendants.)
18)

Case No. CGC-04-433181

**STIPULATION OF SETTLEMENT AND
ORDER THEREON**

19
20 Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Plaintiff"), on the
21 one hand, and Defendant CIRCUIT CITY STORES, INC. ("Circuit City"), on the other hand,
22 enter into, and request the Court approve, the following Stipulation of Settlement and Order
23 Thereon.
24

25 **RECITALS**

26 A. On or about April 6, 2004, Plaintiff sent to the Office of the Attorney General of
27 the State of California, the District Attorneys of all California counties with populations
28 exceeding 750,000, the City Attorneys of all California cities with populations exceeding

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1 750,000, and served Circuit City with a 60-day Notice Letter alleging that Circuit City was in
2 violation of Proposition 65, in connection with Circuit City's alleged manufacture, distribution
3 and/or sale of wires and cables (including products containing wires and cables), which are
4 coated with PVC. Specifically, Plaintiff alleged that persons handling the PVC-coated wires
5 and cables were exposed to certain chemicals listed under Proposition 65, including lead.

6 B. On July 20, 2004, Plaintiff filed in the San Francisco Superior Court a complaint
7 (the "Complaint") against Circuit City and others, commencing the action entitled *Mareel*
8 *Environmental Justice Foundation v. Circuit City, Inc., et al.*, Case No. CGC 04-433181. The
9 Complaint alleged, *inter alia*, that Circuit City violated Proposition 65 and California Business
10 and Professions Code Section 17200 *et seq.* by (i) manufacturing, marketing and/or distributing
11 to California residents products consisting of or containing wires and cables that contain PVC or
12 similar thermoplastic coating, and (ii) failing to provide clear and reasonable warnings to
13 California residents where the handling and use of such products, in the normally intended
14 manner, will result in exposure to Proposition 65 chemicals.

15 D. On November, 23, 2004, Plaintiff filed its First Amended Complaint (the
16 "Amended Complaint"), which alleged claims against Circuit City and others for violation of
17 Proposition 65 and withdrew the prior claim for alleged violation of California Business and
18 Professions Code Section 17200 *et seq.*

19 E. On March 18, 2005, Plaintiff requested that the Amended Complaint be
20 dismissed, without prejudice, as to CompUSA.

21 F. In order to avoid the costs and expenses of litigation, and without admitting
22 liability or wrongdoing, the Parties hereto have elected to resolve this matter by settlement and
23 on the terms set forth below.
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25 BASED ON THE FOREGOING AND THE MUTUAL PROMISES AND
26 COVENANTS SET FORTH BELOW, THE PARTIES STIPULATE AND AGREE AS
27 FOLLOWS:
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STIPULATION AND AGREEMENT

1. Remedial Obligations.

1.1 Identified Products

1.1.1 Within 30 days after the Court’s entry of this Stipulation for Settlement and Order Thereon, Circuit City will, to the extent it continues to offer for sale in California any of the products identified on Exhibit A hereto (the “Identified Products”), contact the manufacturer or distributor of each of the Identified Products and request that the manufacturer or distributor:

1.1.1.1 Within 120 days certify in writing that the surface contact layer of the wires and cables on the Identified Products thereafter shipped to Circuit City for sale in California, has: (i) a lead content by weight of no more than 0.03% (“300 parts per million” or “300 ppm”) and (ii) no lead as an intentionally added constituent; or

1.1.1.2 Provide one of the Proposition 65 warnings described below or any other Proposition 65 warning that has been reviewed and approved in writing by the California Attorney General for use on thermoplastic-coated wires and/or cables (any one of such warnings shall be referred to herein as a “Specified Proposition 65 Warning”):

“WARNING: This product contains chemicals, including lead, known to the State of California to cause [cancer, and] birth defects or other reproductive harm. *Wash hands after handling.*”
or

“WARNING: Handling the cord on this product will expose you to lead, a chemical known to the State of California to cause [cancer, and] birth defects or other reproductive harm. *Wash hands after handling*
or

“WARNING: The power cord on this product contains lead, a chemical known to the State of California to cause [cancer, and] birth defects or other reproductive harm. *Wash hands after handling*

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1 The warning shall be given by having it affixed to the Covered Product itself or to the unit
2 package of such Covered Product or, displayed on an internet site for those units of Covered
3 Products sold on the internet. The warning shall be contained in the same section of the label
4 that contains other safety warnings, if any, concerning the use of the Covered Product or near its
5 displayed price and/or UPC code. Such warning shall be prominently affixed to or printed on
6 each such Covered Product, its label or package or invoice, and displayed with such
7 conspicuousness as to render it likely to be read and understood by an ordinary individual under
8 customary conditions of purchase or use.

9 1.1.2 Circuit City agrees that it will not sell the Identified Products in
10 California after the date that is 120 days after the Court's entry of this Stipulation for Settlement
11 and Order Thereon, unless it complies with 1.1.2.1 below, or the manufacturer or distributor has
12 certified in writing to Circuit City that it has complied with Paragraph 1.1.1 above. Upon
13 receipt of such written certification from the manufacturer or distributor, Circuit City may
14 continue to sell the Identified Products and shall have no liability for such sale so long as
15 Circuit City has relied, in good faith, upon the certification of the manufacturer or distributor.
16 Notwithstanding the foregoing, nothing in this Paragraph shall preclude Circuit City from
17 selling any Identified Products that Circuit City had ordered, purchased, or had in inventory
18 prior to the Court's entry of this Stipulation for Settlement and Order Thereon; provided that
19 Circuit City shall take reasonable steps to identify by product name and SKU number of any
20 Identified Product that Circuit City had ordered, purchased, or had in inventory prior to the
21 Court's entry of this Stipulation for Settlement and Order Thereon and to retain in documentary
22 form a record of that identification for a period of at least three years from date of entry of this
23 Stipulation for Settlement and Order Thereon.
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25 1.1.2.1. Alternatively, if, after the date that is 120 days after the Court's entry of
26 this Stipulation for Settlement and Order thereon, no certification has been obtained from the
27 manufacturer, for a period of not more than 180 days, Circuit City may offer for sale in
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1 California any "Identified Product" for which Circuit City has posted a shelf warning. The shelf
2 warning must be at least 8-inch by 10-inch in size, bear one of the warnings provided above,
3 and be displayed with such conspicuousness and in such proximity to the Identified Product as
4 to render it likely to be read and understood by an ordinary individual under customary
5 conditions prior to purchase.

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2. Payment of Money

2.1. Within 10 days after the Court's entry of this Stipulation for
Settlement and Order Thereon, Circuit City shall each pay SIXTY THOUSAND DOLLARS
(\$60,000.00) to Klamath Environmental Law Center ("Klamath") to be distributed as follows:
(1) FORTY FIVE THOUSAND (\$45,000) shall be paid to Klamath for attorneys' fees and costs
incurred by Klamath on behalf of Plaintiff in investigating this matter and negotiating this
Stipulation for Settlement and Order Thereon on behalf of Plaintiff and the General Public, (2)
FIFTEEN THOUSAND DOLLARS fifty percent shall be distributed by Klamath at the
direction of Plaintiff to one or more of the following non-profit organizations: Californians for
Alternatives to Toxics; The Center for Ethics and Toxics, a project of the Tides Foundation; The
Center on Race, Poverty and the Environment; The Ecological Rights Foundation; The
Environmental Protection Information Center, The Golden Gate University School of Law
Environmental Litigation Clinic; KPFA Radio; and Pacifica Reporters Against Censorship.
Plaintiff and Klamath represent and warrant that each of the organizations identified in this
paragraph is a tax exempt, Section 501(c)(3) non-profit corporation and that funds distributed to
these organizations pursuant to this Stipulation for Settlement and Order Thereon may only be
spent to reduce harm from toxic chemicals, or to increase consumer, worker and community
awareness of health hazards posed by lead and other toxic chemicals.

2.2. Except as otherwise provided in Paragraph 2.1, each party to this
Stipulation for Settlement and Order Thereon shall bear its own costs and attorneys' fees
incurred in connection with the Action and this Stipulation for Settlement.

1 **3. Releases**

2 3.1 Except as to obligations created by this Stipulation for Settlement,
3 Plaintiff, on behalf of itself, its parents, subsidiaries, affiliates, successors and predecessors in
4 interest, and each of their respective members, officers, directors, employees, agents,
5 representatives and attorneys, and the citizens of the State of California (the "Mateel
6 Releasers") hereby forever waive and release all rights to institute or participate in, directly or
7 indirectly, any form of legal action against Circuit City or its suppliers, and their parents,
8 subsidiaries, affiliates, successors and predecessors in interest, and each of their respective
9 members, officers, directors, employees, agents, representatives and attorneys (collectively, the
10 "Releasees"), based upon or otherwise related to the claims relating to Identified Products
11 which were brought or could have been brought in this action, and release all claims, liabilities,
12 obligations, losses, costs, expenses, fines and damages against the Releasees, whether under
13 Proposition 65 or Business and Professions Code Section 17200 *et seq* arising out of or relating
14 to the allegations asserted in the 60-Day Notices, the Complaint, the First Amended Complaint,
15 and the Second Amended Complaint, relating to Identified Products including without
16 limitation the allegation that Circuit City failed to provide Proposition 65 warnings regarding
17 exposure to lead in the Identified Products; provided, however, that the release of suppliers set
18 forth herein shall expressly exclude any release of any claims that Plaintiff or Circuit City may
19 have against Enity Technology, Ltd, its suppliers, parents, subsidiaries, affiliates, successors
20 and predecessors in interest, and each of their respective members, officers, directors,
21 employees, agents, representatives and attorneys (hereinafter "Enity") and which relate to any
22 of the Identified Products Notwithstanding the above, the release of the suppliers of Circuit
23 City is limited to claims related to Identified Products sold by or through Circuit City or its
24 affiliated entities.
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26 3.2 Circuit City waives its rights to institute legal action against Plaintiff, its
27 officers, directors, attorneys, consultants and representatives for claims which were made or
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1 could have been made in this action, including claims based upon actions undertaken or
2 statements made by Plaintiff in connection with its prosecution of the Action and its filing
3 and/or service of the 60-Day Notices, the Complaint, and the Amended Complaint.

4 3.3 As to Circuit City, Plaintiff hereby waives any and all rights and benefits
5 which it now has, or in the future may have, conferred upon it by virtue of the provisions of
6 Section 1542 of the California Civil Code, which provides as follows:
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8 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
9 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
10 EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
11 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
12 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
13 DEBTOR.**

14 Plaintiff understands and acknowledges the significance and consequence of its waiver of
15 California Civil Code Section 1542 and that it intends that all of the releases contained herein
16 shall be final and binding, even as to those claims which may exist as of the date of this release
17 but which Plaintiff does not know exist, and which, if known, would materially affect its
18 decision to enter into this Stipulation for Settlement, regardless of whether its lack of
19 knowledge is the result of ignorance, oversight, error, negligence, or any other cause, no matter
20 how justifiable such cause may be.

21 **4. Modification of Stipulation for Settlement and Order Thereon**

22 4.1 This Stipulation for Settlement and Order Thereon may be modified only
23 upon written stipulation of the Parties and approved by the Court, or upon motion of any Party.
24 Notwithstanding the foregoing, in the event (i) Plaintiff or any affiliated entity, or the California
25 Attorney General enters into or agrees to in writing, or is otherwise bound by injunctive relief
26 terms relating to the provision of Proposition 65 warnings for Identified Products, which are
27 more favorable to the defendant(s) than the terms or provisions that this Stipulation for
28 Settlement and Order Thereon or provides for an Identified Product of like kind and
characteristics with respect to its thermoset/thermoplastic-coated electrical cord and use, or (ii)

1 Proposition 65 is repealed or amended such that it imposes obligations upon Circuit City which
2 are more favorable to Circuit City than the terms or provisions that this Stipulation for
3 Settlement and Order Thereon provides for an Identified Product of like kind and characteristics
4 with respect to its thermoset/thermoplastic-coated electrical cord and use, then the terms of
5 provided for in Section 1 herein shall be deemed to have been modified to add such more
6 favorable terms, provisions or obligations, which Circuit City may elect, at its sole option, for
7 compliance.

8 **5. Retention of Jurisdiction**

9 7.1 This Court shall retain jurisdiction of this matter to implement the Stipulation of
10 Settlement pursuant to Code of Civil Procedure §664.6.

11 **6. Notices**

12 6.1 Whenever a notice is called for by this Stipulation for Settlement and Order
13 Thereon, it shall be provided by U.S. Mail and facsimile to the Parties at the addresses and
14 facsimile numbers identified on Exhibit B hereto. If any Party desires to change the individual,
15 address or facsimile number designated on Exhibit B, such Party shall provide notice to of the
16 change to all other Parties pursuant to the terms of this Section 8.1.

17 **7. Entire Agreement**

18 7.1 This Stipulation for Settlement and Order Thereon contains the sole and entire
19 agreement and understanding of the Parties hereto with respect to the subject matter thereof, and
20 any and all prior discussions, negotiations, commitments and understandings related hereto. No
21 representation, oral or otherwise, express or implied, other than those contained herein, have
22 been made by any Party hereto. No other agreements not specifically referred to herein, oral or
23 otherwise, shall be deemed to exist or to bind any of the Parties.

24 **8. Governing Law**

25 8.1 The validity, construction and performance of this Stipulation for Settlement and
26 Order Thereon shall be governed by the laws of the State of California, without reference to any
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1 conflicts of law provisions under California law.

2 **9. Judicial Approval**

3 9.1 The Parties acknowledge that, pursuant to Health & Safety Code Section
4 25249.7, a noticed motion is required to obtain judicial approval of this Settlement. If this
5 Stipulation for Settlement and Order Thereon is not approved and entered by the Court, or if the
6 entry of this Stipulation for Settlement and Order Thereon is successfully challenged, this
7 Stipulation of Settlement and Order Thereon shall be of no force or effect, and cannot be used in
8 any proceeding for any purpose.

9 **10. Compliance With Reporting Requirements**

10 10.1 In accordance with the reporting form requirements referenced in Health &
11 Safety Code Section 25249.7(f), counsel for Plaintiff shall submit to the California Attorney
12 General's Office, a completed copy of form JUS 1501 as well as a completed copy of form JUS
13 1502. In accordance with the regulations promulgated with respect to Proposition 65, counsel
14 for Plaintiff represents that it will send a copy of this Agreement to the California Attorney
15 General's Office (a) within five (5) days of its execution and no later than forty five (45) days
16 prior to the hearing on the Motion for Approval with respect to this Stipulation for Settlement
17 and Order Thereon.
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19 **11. Authorization**

20 11.1 The undersigned represent and warrant the he or she is authorized to execute this
21 Stipulation on behalf of the respective parties for which they are signing and have read,
22 understood and agree to all of the terms and conditions of this Agreement.
23

24 **12. No Admissions**

25 12.1 Neither this Agreement, nor the entry by the Court of Stipulation for Settlement
26 and Order Thereon shall be construed as an admission by Circuit City of any fact, finding, issue
27 of law or violation of law. Circuit City's compliance with this Stipulation for Settlement and
28 Order Thereon shall not constitute or be construed as an admission by Circuit of any fact,

1 finding, conclusion, issue of law or violation of law.

2 **13. Severability**

3 13.1 In the event that any of the provisions of this Agreement are held by a court to be
4 unenforceable, the validity of the enforceable provisions shall not be adversely affected.

5 **14. Counterparts and Facsimile**

6 14.1 This Stipulation for Settlement and Order Thereon may be executed in
7 counterparts and facsimile, each of which shall be deemed an original, and all of which, when
8 taken together, shall constitute one and the same document.

9 **15. No Other Products Known To Violate Proposition 65**

10 15.1 Plaintiff represents and warrants that it has no current knowledge or information
11 based upon any investigation or otherwise that Releasees are currently manufacturing,
12 distributing, or selling for retail sale in California products, other than the Identified Products,
13 which Plaintiff believes are causing a violation of Proposition 65.

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Dated: _____

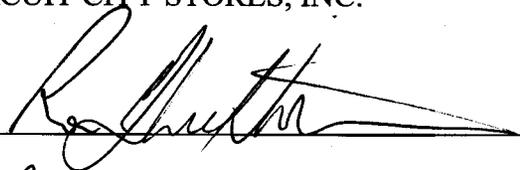
MATEEL ENVIRONMENTAL LAW
FOUNDATION, INC.

By: _____

Its: _____

Dated: Aug 24th 2005

CIRCUIT CITY STORES, INC.

By: 

Ron G. CUTHBERTSON
SENIOR VICE PRESIDENT
INVENTORY AND SUPPLY CHAIN .

Its: _____

APPROVED AS TO FORM:

PETER E. GLICK
ATTORNEY AT LAW

Dated: 8-25-05

By: 

Peter E. Glick
Attorneys for Defendant
CIRCUIT CITY, INC..

APPROVED AS TO FORM:

KLAMATH ENVIRONMENTAL LAW
CENTER
WILLIAM VERICK, ESQ.
DAVID H. WILLIAMS, ESQ.

Dated: 8-29-05

By: 

David H. Williams
Attorneys for Plaintiff Mateel
Environmental Justice Foundation

1 Dated: Aug. 24, 2005

MATEEL ENVIRONMENTAL LAW
FOUNDATION, INC.

2
3 By: *Richard Verick*

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5 CEO

6 Its: _____

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9 Dated: Aug 24th 2005

CIRCUIT CITY STORES, INC.

10
11 By: *Robert G. Cathbertson*

12 *Robert G. CATHBERTSON*
13 *SENIOR VICE PRESIDENT*
14 *INVENTORY and SUPPLY CHAIN*

15 Its: _____

16 APPROVED AS TO FORM:

PETER E. GLICK
ATTORNEY AT LAW

17
18 Dated: _____

19 By: _____

Peter E. Glick
Attorneys for Defendant
CIRCUIT CITY, INC..

20
21 APPROVED AS TO FORM:

KIAMATH ENVIRONMENTAL LAW
CENTER
WILLIAM VERICK, ESQ.
DAVID H. WILLIAMS, ESQ.

22
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25 Dated: _____

26 By: _____

David H. Williams
Attorneys for Plaintiff Mateel
Environmental Justice Foundation

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ORDER

Based on the Stipulation of the parties set forth in this Stipulation for Settlement and Order Thereon, and for good cause appearing,

IT IS ORDERED THAT the Stipulation for Settlement and Order Thereon shall be and hereby is approved and shall be entered forthwith.

Dated: _____

JUDGE OF THE SUPERIOR COURT

LIST OF IDENTIFIED PRODUCTS
(EXHIBIT A)

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- Audiobahn Earclip Style Stereo Headphone, model ABN-150
- Audiobahn Swiveling DG Dynamic Headphones, model ABN-PRO7
- Audiobahn Wraparound Stereo Headphones, model ABN-11
- Classic Personal CD Player, CL 157
- Disney CD Jewelry Box with Mirror and CD Storage DJN4000-P
- Liquid Video RFU Adapter for Playstation 2 Gamecube Xbox #GA-333
- Liquid Video RFU Adapter for Playstation 2 Gamecube, Xbox #GA-332
- Liquid Video Starter Kit or Gamecube
- Liquid Video Starter Kit for Playstation 2
- Liquid Video Starter Kit for Xbox GA-328
- Nexxtech Travel Hair Dryer 6318358
- Nexxtech Rechargeable Hot/Cold Massager 6318367