

ENDORSED
FILED
San Francisco County Superior Court

MAY 03 2006

GORDON PARK-LI, Clerk
BY: JUN P. PANELO
Deputy Clerk

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

CASE MANAGEMENT CONFERENCE SET

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

OCT 06 2006 - 9 AM

DEPARTMENT 212

8 Attorneys for Plaintiff,
9 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO
12 (Unlimited Jurisdiction)

13 MATEEL ENVIRONMENTAL
14 JUSTICE FOUNDATION,

CASE NO. ~~006~~ 06451880

15 Plaintiff,

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

16 v.

17 TOYS "R" US, INC.; KMART
18 CORPORATION; and DOES 1 through 100,

TOXIC TORT/ENVIRONMENTAL

19 Defendants.
20 _____/

21 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

22 INTRODUCTION

23 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
24 failure of defendants TOYS "R" US, KMART CORPORATION; and DOES 1 through 100
25 (hereinafter "Defendants"), to give clear and reasonable warnings to those residents of California,
26 who handle and use Huffy Brand bicycles that utilize derailleur and brake cables, the external
27 housing of which is made from plastic containing the toxic heavy metal lead, and handlebar
28 grips that themselves are made from lead-containing plastic (hereinafter "leaded cables and

1 handlebar grips”), that handling and use of these bicycles products causes those residents to be
2 exposed to lead and lead compounds, lead acetate, lead phosphate, and lead subacetate
3 (hereinafter, collectively, “lead”). The types of products to which this Complaint pertains are
4 those types listed in the Product List appended to the Proposition 65 60-Day Notice Letter that is
5 attached to and incorporated by reference into this Complaint. Defendants market Huffy brand
6 bicycles that incorporate leaded cables and handlebar grips. These bicycles cause exposures to
7 lead and lead compounds, which are chemicals known to the State of California to cause cancer,
8 birth defects and other reproductive harm.

9 2. Defendants are businesses that market Huffy brand bicycles that incorporate
10 leaded cables and handlebar grips. Defendants intend that residents of California handle and use
11 these bicycles. When these bicycles 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 Huffy brand bicycles, Defendants did not
14 and do not provide clear and reasonable warnings that these products cause exposure to
15 chemicals known to cause cancer, birth defects and other reproductive harm.

16 3. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7
17 to compel Defendants to bring their business practices into compliance with section 25249.5 et
18 seq. by providing a clear and reasonable warning to each individual who has been and who in the
19 future may be exposed to the above mentioned toxic chemicals from the use of the Huffy brand
20 bicycles defendants market. Plaintiff seeks an order that defendants identify and locate each
21 individual person who in the past has purchased Huffy brand bicycles that utilize leaded cables
22 and/or leaded handlebar grips to provide to each such purchaser a clear and reasonable warning
23 that the Huffy brand bicycles will cause exposures to chemicals known to cause birth defects and
24 other reproductive harm.

25 4. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the failure
26 of Defendants to provide clear and reasonable warnings regarding exposure to chemicals known
27 to cause cancer, birth defects and other reproductive harm.

1 PARTIES

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 Huffly brand bicycles
9 defendants make and are so exposed without a clear and reasonable Proposition 65 warning.

10 6. Defendants are each a person doing business within the meaning of Health &
11 Safety Code Section 25249.11. Defendants are businesses that market Huffly brand bicycles that
12 utilize leaded cables and/or leaded handlebar grips in California, including the City and County
13 of San Francisco. Marketing of these products in the City and County of San Francisco and/or to
14 people who live in San Francisco, causes people to be exposed to lead and lead compounds while
15 they are physically present in the City and County of San Francisco.

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

20 8. Plaintiff brings this enforcement action against Defendants pursuant to Health &
21 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a
22 60-day Notice letter dated December 15, 2005, which Mateel sent to California's Attorney
23 General. Substantially identical letters were sent to every District Attorney in the state, and to the
24 City Attorneys of every California city with a population greater than 750,000. On that same
25 day, Mateel sent identical 60-Day Notice letters to each defendant. Attached to the 60-Day
26 Notice Letters sent to each defendant was a summary of Proposition 65 that was prepared by
27 California's Office of Environmental Health Hazard Assessment. In addition, each 60-Day
28 Notice Letter plaintiff sent was accompanied by a Certificate of Service attesting to the service of

1 the 60-Day Notice Letter on each entity which received it. Pursuant to California Health & Safety
2 Code Section 25249.7(d), a Certificate of Merit attesting to the reasonable and meritorious basis
3 for the action was also sent with each 60-Day Notice Letter. Factual information sufficient to
4 establish the basis of the Certificate of Merit was enclosed with the 60-Day Notice letter Mateel
5 sent to the Attorney General.

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

7 JURISDICTION

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

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

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

23 FIRST CAUSE OF ACTION 24 (Claim for Injunctive Relief)

25 13. Plaintiff realleges and incorporates by reference into this First Cause of Action, as
26 if specifically set forth herein, paragraphs 1 through 12, inclusive.

27 14. The People of the State of California have declared by referendum under
28 Proposition 65 (California Health & Safety Code § 25249.5 et seq.) their right "[t]o be informed

1 about exposures to chemicals that cause cancer, birth defects, and reproductive harm."

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

6 16. Since at least December 15, 2002, Defendants have engaged in conduct that
7 violates Health and Safety Code Section 25249.6 *et seq.* This conduct includes knowingly and
8 intentionally exposing to the above mentioned toxic chemicals, those California residents who
9 handle and use Huffly brand bicycles that incorporate leaded cable housings and/or leaded
10 handlebar grips. The normally intended use of Huffly brand bicycles causes exposure to lead and
11 lead compounds, which are chemicals known to the State of California to cause cancer, birth
12 defects and other reproductive harm. Defendants have not provided clear and reasonable
13 warnings, within the meaning of Health & Safety Code Sections 25249.6 and 25249.11.

14 17. At all times relevant to this action, Defendants knew that the Huffly brand bicycles
15 they marketed were causing exposures to lead and lead compounds. Defendants intended that
16 residents of California handle and use Huffly brand bicycles in such ways as would lead to
17 significant exposures to these chemicals.

18 18. By the above described acts, Defendants have violated Cal. Health & Safety Code
19 § 25249.6 and are therefore subject to an injunction ordering them to stop violating Proposition
20 65 and requiring them to provide warnings to their past customers who purchased defendants'
21 products without receiving a clear and reasonable warning.

22 SECOND CAUSE OF ACTION
23 (Claim for Civil Penalties)

24 19. Plaintiff realleges and incorporates by reference into this Second Cause of Action,
25 as if specifically set forth herein, paragraphs 1 through 18, inclusive.

26 20. By the above described acts, Defendants are liable and should be liable pursuant
27 to Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each
28

1 individual exposed without proper warning to lead and lead compounds from the handling or use
2 of the Huffly brand bicycles defendants market.

3 PRAYER FOR RELIEF

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

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

8 2. Pursuant to the Second Cause of Action, that Defendants be assessed a civil
9 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section
10 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of
11 Defendants' marketing of Huffly brand bicycles that utilize leaded cable housings and/or leaded
12 handlebar grips;

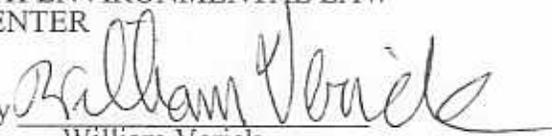
13 3. That Defendants be ordered to identify and locate each individual who purchased
14 Leaded Wire or Cable Products and provide a warning to each such person that the Huffly brand
15 bicycles that utilize leaded cable housings and/or leaded handlebar grips the person purchased
16 will expose that person to chemicals known to cause birth defects.

17 4. That Defendants be ordered to pay Plaintiff's reasonable attorney's fees and costs
18 expended in the enforcement action.

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

20 Dated: April 4, 2006

21 KLAMATH ENVIRONMENTAL LAW
22 CENTER

23 By 

24 William Verick
25 Attorney for Plaintiff
26 Mateel Environmental Justice Foundation
27
28



Klamath

ENVIRONMENTAL
LAW CENTER

December 15, 2005

EDWARD G. WEIL
DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 70550
OAKLAND CA 94612-0550

Greetings:

This office and the Mateel Environmental Justice Foundation ("Mateel") give you notice that the private businesses on the attached service list are in violation of Cal. Health & Safety Code § 25249.6. Both this office and Mateel are private enforcers of Proposition 65, both may be contacted at the below listed address and telephone number, and I am a responsible individual for both Mateel and this office. The above referenced violations occur when California residents, including children, come into contact with bicycles and tricycles that have brake cables and/or derailleur cables (hereinafter "cables") and when they come into contact with plastic handlebar grips on these bicycles and tricycles. Some examples of the products that are or that incorporate cables and/or handlebar grips are those listed in the attached Product List. Though a specific model or SKU or product number is given as an example, this notice pertains to all variations of the specific type of product of which the named model is an example. The housing of these cables, and the handlebar grips themselves, is made from thermoplastic that contains lead and lead compounds ("lead") which are chemicals known to cause cancer, birth defects, and other reproductive harm. These businesses market these bicycles and tricycles. Children and adults are exposed to lead when they ride, walk, or work on these bicycles and tricycles and/or cables and handlebar grips and their skin comes into contact with the plastic on the cable housings or the handlebar grips. Lead is transferred from the cable housings and handlebar grips to the hands of those using these products. The lead then enters their bodies when it is absorbed directly through the skin, through mucous membranes, or through cuts and/or abrasions, or when they touch their hands to their mouths and other mucous membranes, or when they touch cigarettes or food and then smoke the cigarettes (inhaling the burned lead compounds) or ingest the food. These exposures thus occur via the dermal absorption, mucous membrane, subcutaneous, inhalation and ingestion routes. These businesses did not and do not provide people with clear and reasonable warnings before they expose them to lead. The above referenced violations have occurred every day since at least December 15, 2002 and will continue every day until the lead is taken out of these brake cable housings and handlebar grips, or until warnings are given. These violations are alleged for occupational exposures as well as for consumer and environmental exposures. We do not, however, allege occupational exposure violations as to any of these products the listed businesses make outside of California, except as to workplaces the business itself maintains in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off the property of these private businesses and in each of California's 58 counties.

Gordially,

William Verick

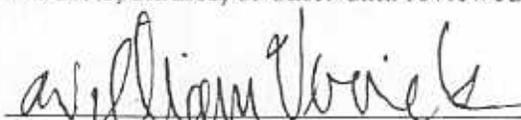
SERVICE LIST

EDWARD G. WEIL DEPUTY ATTORNEY GENERAL OFFICE OF THE ATTORNEY GENERAL P.O. BOX 70550 OAKLAND CA 94612-0550	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF GLENN P.O. BOX 430 WILLOWS, CA 95988	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MONTEREY 240 CHURCH ST. P.O. BOX 180 SALINAS, CA 93902	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SISKIYOU P.O. BOX 986 YREKA, CA 96097
OFFICE OF THE CITY ATTORNEY CITY OF OAKLAND 505 14TH ST 12TH FLOOR OAKLAND, CA 94612	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF HUMBOLDT 825 5TH ST. EUREKA, CA 95501	COUNTY OF NAPA 931 PARKWAY MALL P.O. BOX 720 NAPA, CA 94559-0720	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SOLANO 600 UNION AVE FAIRFIELD, CA 94533
OFFICE OF THE CITY ATTORNEY CITY OF SAN FRANCISCO CITY HALL ROOM 206 400 VAN NESS SAN FRANCISCO, CA 94102	COUNTY OF IMPERIAL COURTHOUSE, FLOOR 2 939 W. MAIN ST EL CENTRO, CA 92243	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF NEVADA COURTHOUSE ANNEX NEVADA CITY, CA 95959	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SONOMA 600 ADMINISTRATION DR. #212J SANTA ROSA, CA 95403
OFFICE OF THE CITY ATTORNEY CITY OF SACRAMENTO 990 9 th Street, 10 th Floor SACRAMENTO, CA 95814	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF INYO P.O. DRAWER D INDEPENDENCE, CA 95326	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ORANGE 400 CIVIC CENTER DR WEST SANTA ANA, CA 92701	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF STANISLAUS 1100 I ST. #200 MODESTO, CA 95354
OFFICE OF THE CITY ATTORNEY CITY OF SAN JOSE 151 W. MISSION ST. SAN JOSE, CA 95110	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF KERN 1215 TRUXTUN AVE. FLOOR 4 BAKERSFIELD, CA 93301	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF PLACER 11562 B AVE AUBURN, CA 95603-2657	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SUTTER 1160 CIVIC CENTER BLVD. #A YUBA CITY, CA 95993
OFFICE OF THE CITY ATTORNEY CITY OF LOS ANGELES 200 N. MAIN ST. LOS ANGELES, CA 90012	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF KINGS 1400 W. LACEY BLVD. HANFORD, CA 93230	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF PLUMAS P.O. BOX 10716 QUINCY, CA 95971	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TEHAMA P.O. BOX 519 REDBLUFF, CA 96080
OFFICE OF THE CITY ATTORNEY CITY OF SAN DIEGO 202 C ST. FLOOR 3 SAN DIEGO, CA 92101	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LASSEN COUNTY ADMINISTRATION BUILDING 707 NEVADA ST. SUSANVILLE, CA 96130	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF RIVERSIDE 4075 MAIN ST. RIVERSIDE, CA 92501	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TULARE COURTHOUSE #274 VISALIA, CA 93291
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ALAMEDA 225 FALLON ST. #9 OAKLAND, CA 94612	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LAKE 255 N. FORBES ST # 424 LAKEPORT, CA 95453	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SACRAMENTO P.O. BOX 749 SACRAMENTO, CA 95804	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TUOLUMNE 2 S. GREEN ST. SONORA, CA 95370
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ALPINE P.O. BOX 248 MARKLEEVILLE, CA 96120	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LOS ANGELES 18000 CRIMINAL COURTS BUILDING 210 W. TEMPLE ST. LOS ANGELES, CA 90012	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN BENITO 419 4TH ST HOLLISTER, CA 95021	VENTURA COUNTY DISTRICT ATTORNEY'S OFFICE c/o GREGORY BROSE D.D.A. 4245 MARKET ST. #205 VENTURA, CA 93001
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF AMADOR 108 COURT ST. SUITE 202 JACKSON, CA 95642	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MADERA 209 W. YOSEMITE AVE. MADERA, CA 95337	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN BERNARDINO 316 MT. VIEW AVE. SAN BERNARDINO, CA 92415-0004	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TUOLUMNE 2 S. GREEN ST. SONORA, CA 95370
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF BUTTE 25 COUNTY CENTER DR. OROVILLE, CA 95965	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CALAYERAS GOVERNMENT CENTER 891 MOUNTAIN RANCH ROAD SAN ANDREAS, CA 95249	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN DIEGO 101 W. BROADWAY #1300 SAN DIEGO, CA 92101	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YOLO 204 4TH ST P.O. BOX 1247 WOODLAND, CA 95695
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF COLUSA 547 MARKET ST. COLUSA, CA 95932	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIPOSA P.O. BOX 748 MARIPOSA, CA 95338	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN FRANCISCO 850 BRYANT ST #322 SAN FRANCISCO, CA 94103	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YUBA 215 5TH ST. MARYSVILLE, CA 95901
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CONTRA COSTA P.O. BOX 670 MARTINEZ, CA 94553	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MENDOCINO 301 S. STATE ST. UKIAH, CA 95482	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN JOAQUIN 222 E. WEBER AVE #202 STOCKTON, CA 95202	Aylwin B. Lewis, President Kmart Corporation 3100 W. Big Beaver Rd. Troy, MI 48084
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF DEL NORTE 450 H ST #171 CRESCENT CITY, CA 95531	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MERCED 2222 M ST. MERCED, CA 95340	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN LUIS OBISPO COUNTY GOVERNMENT CENTER #450 SAN LUIS OBISPO, CA 93408	Bob Ulrich, CEO Target Corporation 1090 Nicollet Mall Minneapolis, MN 55403
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF EL DORADO 515 MAIN ST. PLACERVILLE, CA 95667	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MODOC P.O. BOX 1171 ALTURAS, CA 9610	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA BARBARA 1112 SANTA BARBARA ST. SANTA BARBARA, CA 93101-2008	Richard L. Markee, CEO Toys "R" Us, Inc. One Geoffrey Way Wayne, NJ 07470-2030
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF FRESNO 2220 TULARE ST #1000 FRESNO, CA 93721	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MONO P.O. BOX 617 BRIDGEPORT, CA 93517	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA CLARA 70 W. HEDDING ST. SAN JOSE, CA 95110	
	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA CRUZ 701 OCEAN ST. #200 SANTA CRUZ, CA 95060	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SHASTA 1525 COURT ST. REDDING, CA 96001	
	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SIERRA P.O. BOX 457 DOWNEVILLE, CA 95936		

CERTIFICATE OF MERIT

I, William Verick, hereby declare: This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings. I am the attorney for the noticing party. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the person(s) consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: December 15, 2005


William Verick

This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliances in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

CERTIFICATE OF SERVICE

I, Nicole Frank, declare:

If called, I could and would testify as follows: I am over eighteen. My business address is 424 First Street, Eureka, California, 95501. On December 15, 2005, I caused the attached 60-DAY NOTICE LETTER, or a letter identical in substance, to be served by U.S. Mail on those public enforcement agencies listed on the attached SERVICE LIST; in addition on the same date and by U.S. Mail I caused the attached 60-DAY NOTICE LETTER and PROPOSITION 65: A SUMMARY to be sent by Certified U.S. Mail to the private business entities also listed on the attached SERVICE LIST. I deposited copies of these documents in envelopes, postage pre-paid, with the U.S. Postal Service on the day on which the mail is collected. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on December 15, 2005, at Eureka, California.


Nicole Frank

PRODUCT LIST

TARGET CORPORATION

RADIO FLYER CLASSIC RED TRICYCLE MODEL NO. 33; RADIO FLYER CLASSIC RED 10" BICYCLE

This product description pertains not only to the specific model of the product listed, but also for all units of all models of bicycles or tricycles that have brake or derailerur cables or handlebar grips.

KMART CORPORATION

RADIO FLYER CLASSIC RED TRICYCLE MODEL NO. 33; RADIO FLYER CLASSIC RED 10" BICYCLE;

HUFFY DAISY DIVA MODEL #22274 This product description pertains not only to the specific model of the product listed, but also for all units of all models of bicycles or tricycles that have brake or derailerur cables or handlebar grips.

TOYS "R" US, INC.

RADIO FLYER CLASSIC RED TRICYCLE MODEL NO. 33; RADIO FLYER CLASSIC RED 10" BICYCLE;

HUFFY DAISY DIVA MODEL #22274 This product description pertains not only to the specific model of the product listed, but also for all units of all models of bicycles or tricycles that have brake or derailerur cables or handlebar grips.

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

TOYS "R" US, INC.; KMART CORPORATION; and DOES 1 through 100

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

San Francisco Superior Court
400 McAllister Street
San Francisco, CA 94102-4514

CASE NUMBER:
(Número del Caso) **06451880**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
William Verick, 424 First Street, Eureka, CA 95501-0404

DATE:

(Fecha) **MAY 03 2006**

GORDON PARK-I

Clerk, by _____
(Secretario)

Jun Panelo

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):