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Klamath Environmental Law Center
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Law Offices of Fredric Evenson
3 424 First Street
Eureka, CA 95501
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ENDORSED
FILED
San Francisco County Superior Court

MAR 28 2006

5 DAVID H. WILLIAMS, CSB #144479
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370 Grand Avenue, Suite 5
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WILLIAM BARK-LI, Clerk
PHILOMENA DIAS
Deputy Clerk

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,

CASE NO. 440130

17 Plaintiff,

[proposed] ORDER APPROVING
SETTLEMENT BETWEEN PLAINTIFF
AND RADIO FLYER, INC.

18 vs.

19 HUFFY CORPORATION, RADIO FLYER
20 INC., et al.,

Date: March 28, 2006
Time: 9:30 a.m.
Dept. No.: 302

21 Defendants. /

22
23 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on
24 noticed motion on March 28, 2006. The court finds that:

- 25 1. The reformulation requirements of the Consent Judgment comply with the
26 requirements of Proposition 65;
27 2. The payments in lieu of civil penalty specified in the Consent Judgment are
28 reasonable based on the criteria in Cal Health & Safety Code §25249.7(b)(2); and

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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: MAR 28 2006

RONALD E. QUIDACHAY

Judge of the Superior Court

1 WILLIAM VERICK (No. 140972)
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2 FREDRIC EVENSON (No. 198059)
424 First Street
3 Eureka, CA 95501
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4 Facsimile: 707/268-8901

ENDORSED
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San Francisco County Superior Court

MAR 23 2006

PHILIP M. ... Clerk
PHILIP ... Deputy Clerk

5 Attorneys for Plaintiff
MATEEL ENVIRONMENTAL JUSTICE
6 FOUNDATION

7 RICHARD C. JACOBS (No. 49538)
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11 Telephone: 415/434-1600
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12 Attorneys for Defendant
13 RADIO FLYER, INC.

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO
16 UNLIMITED CIVIL JURISDICTION

17 MATEEL ENVIRONMENTAL JUSTICE
18 FOUNDATION,
19 Plaintiff,
20 v.
21 HUFFY CORPORATION; RADIO
22 FLYER, INC., and DOES 1 through 100
23 inclusive,
24 Defendants.

No. 05-440130
Action Filed: April 6, 2005
STIPULATION AND [PROPOSED]
25 CONSENT JUDGMENT

1 1. INTRODUCTION

2 1.1. On or about June 4, 2004, plaintiff Mateel Environmental Justice Foundation
3 (“MEJF”), provided a 60-day Notice of Violation (“Notice”) to the California Attorney
4 General, the District Attorneys of each county in California, the City Attorneys of every
5 California city with a population greater than 750,000, and defendant Radio Flyer, Inc.,
6 (“Radio Flyer”), alleging that Radio Flyer, through its sales in California of bicycles and
7 tricycles with handlebar grips containing lead, was in violation of certain provisions of the
8 Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code §
9 25249.5, et seq. (“Proposition 65”), by knowingly and intentionally exposing persons to
10 lead, a product known to the State of California to cause cancer and/or birth defects or other
11 reproductive harm, without first providing a clear and reasonable warning.

12 1.2. On or about April 6, 2005, MEJF, acting in the public interest pursuant to
13 Health and Safety Code § 25249.7(d), filed a Complaint for Civil Penalties and Injunctive
14 Relief in San Francisco County Superior Court, Case No. 05-440130 (“Complaint”) against
15 Radio Flyer, and other Defendants, based on the allegations contained in the Notice. This
16 Complaint alleged that MEJF was acting in the public interest pursuant to Health and Safety
17 Code Section 25249.7(d).

18 1.3. MEJF alleges in its Complaint that Radio Flyer is a business that employs
19 more than ten persons and manufactures, distributes and/or markets within the State of
20 California tricycles and/or bicycles with handlebar grips that are made from lead-
21 containing polyvinyl chloride, neoprene and/or other plastic materials (“PVC Materials”).
22 Pursuant to Proposition 65, lead and lead compounds are chemicals known to the State of
23 California to cause cancer and reproductive toxicity. Products containing lead and/or lead
24 compounds that are sold or distributed in the State of California may be, under specified
25 circumstances, subject to the Proposition 65 warning requirement set forth in Health and
26 Safety Code section 25249.6. MEJF further alleges that such handlebar grips made with
27 lead-containing PVC Materials (“PVC Handlebar Grips,”) that are manufactured,
28 distributed, sold and/or marketed by Radio Flyer for use in California, require a warning

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1 under Proposition 65. For purposes of this Consent Judgment, the term "Covered
2 Products" shall be defined as bicycles and/or tricycles with PVC Handlebar Grips, and
3 PVC Handlebar Grips themselves, that are: (i) distributed, sold or used within the State of
4 California, and (ii) manufactured by Radio Flyer or any other entity acting on its behalf,
5 and distributed, marketed and/or sold by Radio Flyer or by any other entity that distributes,
6 markets or sells Radio Flyer's bicycles and/or tricycles with PVC Handlebar Grips, or PVC
7 Handlebar Grips themselves, or manufactured by any other entity for Radio Flyer, whether
8 or not the products bear Radio Flyer's name or labels.

9 1.4. For purposes of this Consent Judgment only, the parties stipulate that this
10 Court has jurisdiction over the allegations of violations contained in the Notice and
11 Complaint and personal jurisdiction over Radio Flyer as to the acts alleged in the
12 Complaint, that venue is proper in the County of San Francisco and that this Court has
13 jurisdiction to enter this Consent Judgment as a full and final settlement and resolution of
14 the allegations contained in the Complaint and of all claims which were or could have been
15 raised based on the facts alleged therein or arising therefrom.

16 1.5. The parties enter into this Consent Judgment pursuant to a full and final
17 settlement of disputed claims between the parties for the purpose of avoiding prolonged
18 litigation. This Consent Judgment and compliance with it shall not constitute an admission
19 with respect to any allegation made in the Notice or the Complaint, each and every
20 allegation of which Radio Flyer denies, nor may this Consent Judgment or compliance
21 with it be used as an admission or evidence of any fact, wrongdoing, misconduct,
22 culpability or liability on the part of Radio Flyer.

23
24 2. REFORMULATION OF HANDLEBAR GRIPS BY RADIO FLYER

25 2.1. At the earliest date that is commercially feasible, but no later than July 1, 2006,
26 the handle bar grips on all bicycles and tricycles manufactured, distributed or sold by Radio
27 Flyer shall meet the following criteria:
28

1 (a) The handle bar grips shall have no lead as an intentionally added
2 constituent;

3 (b) A representative sample of the bulk materials used to manufacture the
4 handle bar grips shall have been tested for lead, and must have shown lead content by
5 weight of less than 0.003% (30 parts per million "30 ppm"), using a test method of
6 sufficient sensitivity to establish a limit of quantification (as distinguished from detection)
7 of less than 30 ppm. Provided that the limit of quantification requirement set forth in the
8 preceding sentence is met, the test protocols and methods described in Exhibit A hereto
9 may be relied on.

10 (c) Radio Flyer may comply with the reformulation requirements of this
11 Paragraph by relying on information obtained from its manufacturers and/or suppliers of
12 such handle bar grips, and/or the materials utilized in their manufacture, so long as such
13 reliance is in good faith.

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21 3. ADVERTISING COMMITMENT AND FREE REPLACEMENT OF
22 HANDLE BAR GRIPS BY RADIO FLYER

23 3.1. In order to provide past purchasers of bicycles and tricycles manufactured,
24 distributed or sold by Radio Flyer with an opportunity to exchange the handle bar grips
25 thereon that may contain lead with the reformulated handle bar grips specified in Paragraph
26 2 of this Consent Judgment, Radio Flyer shall place advertising in publications targeted to
27 California residents that is likely to be read by parents of children eight years and under.
28 This advertising shall indicate that some of the handle bar grips on its bicycles and
tricycles it previously sold may have contained lead, and that Radio Flyer will exchange
the handle bar grips on such bicycles and tricycles with the reformulated handle bar grips
specified in Paragraph 2 of this Consent Judgment at no cost. Radio Flyer shall spend at
least \$10,000 in placing such advertising, shall ensure that the advertising is reasonably
likely to be seen and understood by its intended readers, clearly identifies the handle bar
grips at issue, and provides clear instructions for the return of such handle bar grips for free

1 replacements. For any such handle bar grips returned to Radio Flyer, Radio Flyer shall
2 replace them at no cost with the reformulated handle bar grips specified in Paragraph 2 of
3 this Consent Judgment. Radio Flyer shall undertake this advertising commitment at such
4 time as it reformulates handle bar grips pursuant to Paragraph 2 of this Consent Judgment.
5 Before implementation, Radio Flyer shall create and provide to Mateel for its approval the
6 advertising required by this Paragraph. Mateel shall approve this plan if it meets the
7 requirements of this Paragraph.

8
9 4. MONETARY RELIEF

10 4.1 Radio Flyer shall pay a total of \$210,000 pursuant to this Consent Judgment, in
11 the following manner: (a) \$10,000 for the advertising and free replacement of handle bar
12 grip program specified in Paragraph 3 of this Consent Judgment; (b) the sum of \$100,000 as
13 a charitable contribution to the Ecological Rights Foundation, a 501(c)(3) organization,
14 within thirty (30) days after notice of this Consent Judgment is filed and served on Radio
15 Flyer. This payment shall be used for reducing exposures to toxic chemicals and other
16 pollutants, and toward increasing consumer, worker and community awareness of health
17 hazards posed by lead and other toxic chemicals. This payment shall be mailed to the
18 attention of William Verick, Klamath Environmental Law Center, 424 First Street, Eureka,
19 California 95501; and (c) the attorney's fees and costs specified in Paragraph 5 of this
20 Consent Judgment.

21
22 5. ATTORNEYS' FEES

23 5.1 Within thirty (30) days after notice of entry of this Consent Judgment is filed
24 and served on Radio Flyer, Radio Flyer shall pay the sum of \$100,000 to the "Klamath
25 Environmental Law Center" as reimbursement for costs and attorney's fees incurred by
26 MEJF. The attorney's fees payment shall be mailed to the attention of William Verick,
27 Klamath Environmental Law Center, 424 First Street, Eureka, California 95501.

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Attorneys at Law

1 6. MATTERS COVERED BY THIS CONSENT JUDGMENT

2 6.1. As to Covered Products, this Consent Judgment is a full, final and binding
3 resolution between the Plaintiff and, as to those matters referenced in the Notice, acting on
4 behalf of the public interest pursuant to Health and Safety Code § 25249.7(d), on the one
5 hand, and Radio Flyer, on the other hand, of any violation of Proposition 65, of all claims
6 made or which could have been made in the Notice and/or the Complaint, and of any other
7 statutory, regulatory or common law claim that could have been asserted against Radio Flyer
8 and/or its affiliates, subsidiaries, divisions, successors, assigns, distributors, retailers, and/or
9 customers for failure to provide clear, reasonable, and lawful warnings of exposure to lead
10 contained in or otherwise associated with Covered Products manufactured, sold or
11 distributed by, for, or on behalf of Radio Flyer. As to Covered Products, compliance with
12 the terms of this Consent Judgment resolves any issue, now and in the future, concerning
13 compliance by Radio Flyer and/or its affiliates, subsidiaries, divisions, successors, and
14 assigns with the requirements of Proposition 65 with respect to the Covered Products.

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16 7. COMPREHENSIVE AND GLOBAL RELEASE

17 7.1 As to Covered Products, MEJF, for itself and, and as to matters referenced in the
18 Notice acting on behalf of the public interest pursuant to Health and Safety Code §
19 25249.7(d), releases and forever discharges any and all claims against Radio Flyer, its
20 subsidiaries, divisions, affiliates, successors, assigns and predecessors, and all entities to
21 whom it distributes or sells Covered Products, including but not limited to distributors,
22 wholesalers, customers and retailers, arising from any violation of Proposition 65 or the
23 Business and Professions Code, or any other statutory, common law or other claim, that was
24 or could have been asserted against such Defendant based on the facts alleged in the
25 Complaint, or facts similar to those alleged.

26 7.2. In furtherance of the parties' intention that this Consent Judgment shall be
27 effective as a full and final accord, satisfaction and release as to Radio Flyer, its subsidiaries,
28 divisions, affiliates, successors, assigns and predecessors, and all entities to whom it

1 distributes or sells Covered Products, including but not limited to distributors, wholesalers,
2 customers and retailers, of and from any and all matters released hereunder, MEJF, on its
3 own and on behalf of the public interest pursuant to Health and Safety Code Section
4 25249.7(d), acknowledges familiarity and understanding of California Civil Code § 1542,
5 which provides as follows:

6 A general release does not extend to claims which the creditor does not
7 know or suspect to exist in his favor at the time of executing the release,
8 which if known by him must have materially affected his settlement with
9 the debtor.

10 To the extent that Section 1542 or any similar law or statute may otherwise apply to this
11 Consent Judgment, MEJF hereby waives and relinquishes as to all matters released
12 hereunder all rights and benefits it has, or may have, under Section 1542 or under the laws
13 of any other jurisdiction to the same or similar effect. MEJF further acknowledges that,
14 subsequent to the execution of this Consent Judgment, it may discover claims that were
15 unsuspected at the time this Consent Judgment was executed, and which might have
16 materially affected its decision to execute this Consent Judgment, but nevertheless MEJF
17 releases Radio Flyer and its past, present, and future parents, subsidiaries, divisions,
18 affiliates, successors and predecessors of any from any and all such claims whether known
19 or unknown, suspected or unsuspected, at the time of the execution of this Consent
20 Judgment.

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22 8. APPLICATION OF JUDGMENT

23 8.1 The obligations of this Consent Judgment shall apply to and be binding upon
24 all plaintiffs acting in the public interest pursuant to Health and Safety Code § 25249.7,
25 and Radio Flyer, and its successors or assigns. The terms contained in this Consent
26 Judgment were submitted to and discussed with the California Attorney General's office
27 prior to the entry of this Consent Judgment by the Court.
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9. MODIFICATION OF JUDGMENT

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

10. NOTICES

10.1. When any Party is entitled to receive any notice under this Consent Judgment, the notice or report shall be sent by U.S. mail or overnight courier service to the persons listed on Exhibit A to this Consent Judgment.

10.2. Any Party may modify the person and address to whom notice is to be sent by sending each other Party notice in accordance with this Paragraph.

11. AUTHORITY TO STIPULATE

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

12. RETENTION OF JURISDICTION

12.1. This Court shall retain jurisdiction of this matter to implement this Consent Judgment.

13. ENTIRE AGREEMENT

13.1. This Consent Judgment contains the sole and entire, agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein

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1 have been made by any party hereto. No other agreements not specifically referred to
2 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

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14. GOVERNING LAW

14.1. The laws of the State of California shall govern the validity, construction and performance of this Consent Judgment.

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15. EXECUTION IN COUNTERPARTS

15.1. This Consent Judgment may be executed in counterparts and/or by facsimile, which taken together shall be deemed to constitute one original document.

16. COURT APPROVAL

16.1. If the Court does not approve this Consent Judgment, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

IT IS SO STIPULATED:

DATED: Feb 2, 2006

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

By: 
WILLIAM VERICK

DIRECTOR, MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

DATED:

RADIO FLYER, INC.

January 26, 2006

By: 
TERRY UDDENBERG

VICE PRESIDENT FINANCE

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: MAR 28 2006

RONALD E. GUIDACHAY
JUDGE OF THE SUPERIOR COURT

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EXHIBIT A

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Step 1: Cut 3-inch section of plastic from a handlebar grip that has not previously been used or wiped.

Step 2. Place the 3-inch section of plastic into a lead free receptacle (such as a pre-labeled re-sealable plastic food storage bag).

Step 3. Repeat steps 1 and 2 above for two additional handlebar grips such that a total of three samples are produced for laboratory analysis.

Step 4. Prepare samples for laboratory analysis according to EPA Method 160.4 or 3050, ensuring that each sample has been completely digested.

Step 5. Analyze samples for total lead by EPA Method 7420 (AA Flame).

Step 6. Compute the arithmetic mean from the three samples.

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EXHIBIT B

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Any Notices provided pursuant to this Consent Judgment shall be sent to the following:

FOR MATEEL ENVIRONMENTAL JUSTICE FOUNDATION:

William Verick
Klamath Environmental Law Center
424 First Street
Eureka, CA 95001

FOR RADIO FLYER , INC:

Thomas Schlegel
Vice President, Product Development
Radio Flyer, Inc.
6515 West Grand Avenue
Chicago, Illinois 60707-3495

with a copy to:

Richard C. Jacobs
Howard Rice Nemerovski Canady Falk & Rabkin
3 Embarcadero Center, 7th Floor
San Francisco, CA 94111

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