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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SIERRA CLUB and
IMPROVING KIDS ENVIRONMENT,)

Plaintiffs,)

v.)

STEPHEN L. JOHNSON, in his official
capacity as Administrator of the United
States Environmental Protection Agency,)

Defendant.)

Case No.: C 06-5641 PJH

SETTLEMENT AGREEMENT

WHEREAS, the Parties to this Settlement Agreement are Plaintiffs Sierra Club and Improving Kids' Environment; Defendant Stephen L. Johnson in his official capacity as Administrator of the United States Environmental Protection Agency ("EPA" or the "Agency"); and Intervenor Association of Battery Recyclers, Inc. ("ABR");

WHEREAS, this lawsuit arises from EPA's denial in July 2006 of a portion of Sierra Club's April 2006 Petition for administrative actions under the Toxic Substances Control Act ("TSCA");

WHEREAS, Sierra Club's Petition requested, among other things, that EPA (1) require TSCA Section 8(d) health and safety data reporting for lead and lead salts, and (2) issue TSCA Section 6(b) quality control orders regarding the production of toy jewelry;

WHEREAS, Sierra Club's Petition also requested that the Consumer Product Safety Commission ("CPSC") take certain administrative actions concerning lead in children's toy jewelry;

WHEREAS, in December 2006, CPSC voted to grant (with modifications) Sierra Club's request in its Petition to classify toy jewelry containing lead as a banned hazardous substance under the Federal Hazardous Substances Act ("FHSA"), and on January 9, 2007, CPSC published an Advance Notice of Proposed Rulemaking ("ANPR") initiating that rulemaking proceeding;

WHEREAS, EPA, Plaintiffs and ABR have participated in mediation of this matter and have agreed, subject to the limitations and conditions set forth herein, to settle this case without protracted

1 litigation and without any adjudication or admission of fact or law;

2 WHEREAS on February 22, 2007, upon being apprised by the parties that they had
3 tentatively agreed on the terms of a settlement, the Court entered an order effectively staying this
4 litigation until July 5, 2007; and

5 WHEREAS, settlement of all issues raised in this case is in the public interest:

6 NOW THEREFORE, the parties hereto agree as follows:

7 1. Within seven (7) days after the effective date of this Settlement Agreement, as
8 provided in Paragraph 19, the Parties shall file a joint status report and stay motion with the Court
9 notifying it of this Settlement Agreement and requesting that this case be further stayed in all
10 respects pending implementation of the terms of this Settlement Agreement. In said joint stay
11 motion, the parties agree to request that the Court retain jurisdiction over this case until June 26,
12 2008, or until parties have filed a joint stipulation of dismissal of this case, whichever is earlier. As
13 described in Paragraphs 2-6, dismissal may occur as early as June 2007.

14 2. On or about April 30, 2007, EPA will send a letter from the Director of the National
15 Program Chemicals Division to an appropriate CPSC official. The letter will contain substantially
16 the following:

17 (a) A statement that the questions about the adequacy of quality control measures
18 described in Paragraph 2(b) have been raised by Plaintiffs.

19 (b) A statement that information EPA has reviewed raises questions about the
20 adequacy of quality control measures by companies importing and/or distributing
21 children's jewelry.

22 3. On or about April 30, 2007, EPA will send letters from the Director of the Chemical
23 Control Division to no more than 120 companies. Plaintiffs will have the opportunity to provide to
24 EPA for its consideration, by April 16, 2007, the names and addresses of potential recipients of said
25 letters. The parties agree that appropriate recipients may include companies that have been subject to
26 a recall by CPSC relating to lead in consumer products and/or that entered into the jewelry settlement
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1 in Case No. RG04-162075 with the State of California on or about February 21, 2006. The letters to
2 be sent by EPA will contain substantially the following:

- 3 (a) A reference to potential lead risks from consumer products with a link to
4 www.epa.gov/lead.
- 5 (b) The sentence: "In addition to possible obligations under the Consumer Product Safety
6 Act and the Federal Hazardous Substances Act, persons who manufacture, process or
7 distribute lead in products may also have obligations under the Toxic Substances
8 Control Act."
- 9 (c) The text of the questions and answers numbered 25 and 26 in EPA's TSCA Section
10 8(e) guidance found at
11 www.epa.gov/oppt/tsca8e/pubs/frequentlyaskedquestionsfaq.htm#health2.

12 Additionally, EPA will add a link on EPA's website to the letter described in this Paragraph.

13 4. The Sixtieth Report of the TSCA Interagency Testing Committee ("ITC") is expected
14 in May 2007. EPA will recommend a listing for inclusion in the Report to support a TSCA Section
15 8(d) Rule regarding lead and lead compounds in consumer products intended for use by children.
16 EPA's recommendation will specify, in substance, that the required information will be limited to
17 unpublished health and safety studies that relate to the lead content of consumer products that are
18 "intended for use by children" (as that term is defined at 40 CFR 710.43) excluding children's metal
19 jewelry; and/or studies that assess children's exposure to lead from such products (including studies
20 of bioavailability). With regard to grade or purity requirements, studies showing any measurable
21 lead content in such products would be required. The parties recognize that TSCA Section 8(d) rules
22 arising from ITC listings do not require submissions from processors.

23 5. EPA expects to be in the position to make the recommendation described in Paragraph 4, and
24 the parties expect that the Sixtieth ITC Report will list a substantially similar chemical category to
25 that described in Paragraph 4.

26 6. If the actions described in Paragraphs 2, 3 and 4 of this Settlement Agreement
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1 substantially occur, Plaintiffs, EPA and ABR shall, within ten (10) days of being notified that the
2 Sixtieth ITC Report has been delivered to the Administrator and that said report lists a substantially
3 similar chemical category to that described in Paragraph 4, file a joint stipulation of dismissal of this
4 case, with prejudice, in accordance with Federal Rule of Civil Procedure 41(a)(1). The joint
5 stipulation of dismissal shall state that each party bears it own attorneys' fees and costs, except as
6 otherwise specifically provided herein in Paragraph 12.

7 7. If the ITC's Sixtieth Report does not list a substantially similar chemical category to
8 that described in Paragraph 4, then EPA may recommend the listing described in Paragraph 4 to the
9 ITC for its Sixty-first Report, expected in November 2007. Thereafter, in the event that the ITC's
10 Sixty-first Report lists a substantially similar chemical category to that described above in Paragraph
11 4, Plaintiffs agree to dismiss this case, with prejudice, in accordance with Federal Rule of Civil
12 Procedure 41(a)(1), within ten (10) days of being notified that such Report has been delivered to the
13 Administrator, provided that EPA has also satisfied its commitments under Paragraphs 2 and 3 of
14 this Settlement Agreement. The joint stipulation of dismissal shall state that each party bears it own
15 attorneys' fees and costs, except as otherwise specifically provided herein in Paragraph 12.

16 8. In the event that neither the ITC's Sixtieth Report nor the ITC's Sixty-first Report
17 lists a substantially similar chemical category to that described in Paragraph 4, EPA agrees to
18 propose, by June 2, 2008, a TSCA Section 8(d) rule to obtain use and exposure information
19 substantially similar to that described in Paragraph 4. The parties recognize that minor changes to
20 the substance of the proposed rule may occur as a result of the rulemaking process.

21 9. In the event that Paragraph 8 becomes operative, Plaintiffs agree to dismiss this case,
22 with prejudice, in accordance with Federal Rule of Civil Procedure 41(a)(1), within ten (10) days of
23 EPA's issuance of a proposed rule, provided that EPA has also satisfied its commitments under
24 Paragraphs 2 and 3 of this Settlement Agreement. The joint stipulation of dismissal shall state that
25 each party bears it own attorneys' fees and costs, except as otherwise specifically provided herein in
26 Paragraph 12.

1 10. If EPA does not take the actions substantially as set forth in Paragraphs 2, 3, and 4 (or
2 7 or 8, if either of said Paragraphs becomes operative) of this Settlement Agreement, then Plaintiffs'
3 sole remedy under this Settlement Agreement shall be to ask the Court to lift the stay of proceedings
4 then in effect. Plaintiffs agree to provide EPA ten (10) days notice prior to seeking to lift any such
5 stay of proceedings. EPA reserves its right to oppose any such motion to lift a stay of proceedings,
6 but EPA agrees that the grounds for any such opposition will be limited to the issues of whether EPA
7 in fact met its commitments under Paragraphs 2, 3, and 4 (or 8, if said Paragraph becomes operative)
8 of this Settlement Agreement and whether any motion to reactivate the litigation has been reasonably
9 and timely filed. The parties agree that there are no other remedies available under this Settlement
10 Agreement and specifically agree that contempt of court is not an available remedy under this
11 Settlement Agreement.

12 11. Should Sierra Club file a second TSCA Section 21 petition requesting TSCA Section
13 6(b) orders related to lead in toy jewelry, EPA agrees not to deny such a petition on the basis that it is
14 repetitive. EPA reserves the right to deny such a petition, however, on any other appropriate basis,
15 including for the same reasons that the request for TSCA Section 6(b) orders in Sierra Club's April
16 2006 petition was denied.

17 12. EPA agrees to pay to Plaintiffs as full settlement of all claims for attorneys' fees and
18 costs of litigation (including but not limited to any fees and costs incurred by Plaintiffs prior to the
19 filing of this action) the sum of Twenty-Five Thousand Dollars (\$25,000) within a reasonable time
20 after a joint stipulation of dismissal of this case, with prejudice, is filed with the Court, and the case
21 is dismissed pursuant thereto.

22 13. Nothing in this Settlement Agreement shall be construed to limit or modify the
23 discretion accorded to EPA by TSCA or by general principles of administrative law.

24 14. Nothing in this Settlement Agreement shall be construed to limit or modify EPA's
25 discretion to alter, amend or revise any regulations, guidance, or interpretation EPA may issue in
26 accordance with or on matters related to this Settlement Agreement from time to time or to
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1 promulgate or issue superseding regulations, guidance, or interpretations, or to limit any right that
2 Plaintiffs may have to seek judicial review in a subsequent case of any such action by EPA.

3 15. The Parties may agree to extend any dates in this Settlement Agreement or to
4 otherwise modify this Settlement Agreement by written agreement (including counterparts) executed
5 by counsel for the parties.

6 16. The commitments by EPA in this Settlement Agreement are subject to the
7 availability of appropriated funds. No provision of this Settlement Agreement shall be interpreted as
8 or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the
9 Anti-Deficiency Act, 31 U.S.C. § 1341. In the event that sufficient appropriated funding is not
10 available, the parties may modify the Settlement Agreement, pursuant to Paragraph 15, to adjust any
11 commitments herein.

12 17. Any notice required or made with respect to this Settlement Agreement shall be in
13 writing, shall be served by overnight mail or electronic mail, and shall be effective upon receipt. For
14 any matter relating to this Settlement Agreement, the contact persons are the signatories listed below
15 and the EPA contact person as listed below, unless a different contact person is designated by a
16 party.

17 18. It is expressly understood and agreed that this Settlement Agreement was jointly
18 drafted by the parties. Accordingly, the parties agree that any and all rules of construction to the
19 effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute
20 concerning the terms, meaning, or interpretation of this Settlement Agreement.

21 19. The undersigned representative of each party certifies that he/she is fully authorized
22 by the party he/she represents to bind the representative party to the terms of this Settlement
23 Agreement. This Settlement Agreement will be deemed to be executed and shall be effective on the
24 date when it has been fully signed by representatives of all of the parties set forth below. This
25 Settlement Agreement may be executed in any number of counterpart originals, each of which shall
26 be deemed to constitute an original Settlement Agreement, and all of which shall constitute one

1 Settlement Agreement. The execution of one counterpart by any party shall have the same force and
2 effect as if that party had signed all other counterparts.

3
4 Dated: April 13, 2007



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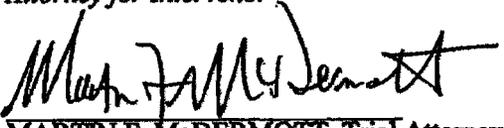
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10 Dated: April 13, 2007



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16 Dated: April 13, 2007



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21
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