

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

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| In the Matter of: |) | |
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| Meijer, Inc. |) | CPSC Docket No.: 14- <u>C0004</u> |
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SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act (“CPSA”), 15 U.S.C. §§ 2051–2089 and 16 C.F.R. § 1118.20, Meijer, Inc. (“Meijer”), and the U.S. Consumer Product Safety Commission (“Commission”), through its staff (“staff”), hereby enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order (“Order”) resolve staff’s charges set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Meijer is a corporation organized and existing under the laws of the state of Michigan. Its principal corporate offices are located at 2929 Walker Avenue, N.W., Grand Rapids, Michigan 49544. Meijer operates more than 200 stores in Michigan, Ohio, Indiana, Illinois and Kentucky.

STAFF CHARGES

4. CPSC staff charges that on multiple occasions between April 2010 and April 2011, Meijer knowingly sold, offered for sale, and distributed recalled consumer products in commerce, in violation of section 19(a)(2)(B) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2068(a)(2)(B). Meijer distributed at least twelve separate recalled consumer products, totaling approximately 1,692 individual units of recalled products (the “Recalled Products”), through the reverse logistics system it operated with a third party contractor.

5. Each of the Recalled Products was recalled by its manufacturer pursuant to section 15 of the CPSA, and each was subject to a voluntary corrective action plan taken by the manufacturer, in consultation with the Commission. Each of the recalls was also publicized by each respective manufacturer and by the Commission.

6. The Recalled Products are “consumer products,” and at all relevant times Meijer was a “retailer” and/or manufacturer of these consumer products, which were “distributed in commerce,” as those terms are defined or used in sections 3(a)(5), (7) (11) and (13), of the CPSA, 15 U.S.C. § 2052(a)(5), (7) and (11) (13).

7. Under CPSA section 19(a)(2)(B), it is unlawful for any person to sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States any consumer product that is subject to voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public, or if the seller, distributor, or manufacturer knew, or should have known, of such voluntary corrective action.

8. Pursuant to section 20(a)(1) of the CPSA, 15 U.S.C. § 2069(a)(1), any person who “knowingly” violates CPSA section 19 is subject to civil penalties. Under section 20(d) of the CPSA, 15 U.S.C. §2069(d), the term “knowingly” means: “(1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts

in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations."

9. CPSC staff charges that beginning in or about April 2010, and including until at least in or about April 2011, Meijer received information from the third party contractor regarding the sale of all products handled by its third party contractor but failed to prevent the distribution of the Recalled Products.

10. CPSC staff charges that the Recalled Products that were resold include:

- 1,173 Touch Point Oscillating Ceramic Heaters manufactured by Ningbo Dongji Electronic Tech Co. LTC and imported by Meijer (CPSC Release No. 11-053, Nov. 23, 2010);
- 136 Bathtub Subs imported by Munchkin, Inc. (CPSC Release No. 11-012, Oct. 18, 2010);
- 114 Fisher-Price Trikes and Tough Trikes toddler tricycles manufactured by Fisher-Price (CPSC Release No. 10-359, Sept. 30, 2010);
- 93 Hoover WindTunnel T-Series Bagless Upright Vacuum Cleaners with Cord Rewind Feature imported by Hoover Inc. CPSC Release No. 10-248, May 27, 2010);
- 69 Little People Wheelies Stand 'n Play Rampways imported by Fisher Price (CPSC Release No. 10-360, Sept. 30, 2010);
- 50 Discovery Kids Animated Marine and Safari Lamps imported by Innovage LLC (CPSC Release No. 10-135, Feb. 9, 2010);
- 27 Ocean Wonders Kick & Crawl Aquariums imported by Fisher-Price (CPSC Release No. 10-362, Sept. 30, 2010);
- 17 Refreshing Rings Infant Teethers/Rattles imported by Sassy (CPSC Release No. 11-114, Jan. 31, 2011);
- 6 SlingRider Baby Slings manufactured by Infantino (CPSC Release No. 10-177, Mar. 24, 2010);
- 5 Box Fans manufactured by Lasko (CPSC Release No. 11-183, Mar. 24, 2011);

- 1 Harmony High Chair manufactured by Graco Children's Products (CPSC Release No. 10-171, Mar. 18, 2010, revised Mar. 21, 2011); and
- 1 Random Orbit Sander manufactured by Black & Decker (CPSC Release No. 10-339, Sept. 9, 2010).

11. Staff charges that Meijer's sale and distribution of these Recalled Products was knowing, as that term is defined in Section 20(d) of the CPSA, 15 U.S.C. §2069(d).

12. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Meijer is subject to a civil penalty for its knowing resale of the Recalled Products, which was in violation of section 19(a)(2)(B) of the CPSA, 15 U.S.C. § 2068(a)(2)(B).

MEIJER'S RESPONSE

13. Meijer neither admits nor denies the charges set forth in paragraphs 4 through 12 including, but not limited to, the charge that Meijer knowingly sold, offered for sale, and distributed recalled consumer products in commerce, in violation of section 19(a)(2)(B) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2068(a)(2)(B).

14. Meijer reasonably relied upon the reverse logistics system operated through an independent third party it hired to handle its disposition of the Recalled Products. Meijer believed that adequate safeguards were in place to prevent Recalled Products from being distributed into commerce and states that any distribution of the Recalled Products was inadvertent and occurred without Meijer's knowledge.

15. In March 2011, Meijer, in conjunction with CPSC, voluntarily re-announced a recall of the Recalled Products that had been inadvertently distributed through the reverse logistics system operated through an independent third party.

16. Meijer has informed the Commission that it is not aware of any reported incidents or injuries associated with the Recalled Products.

AGREEMENT OF THE PARTIES

17. Under the CPSA, the Commission has jurisdiction over the matter involving the Recalled Products described herein and over Meijer.

18. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Meijer shall pay a civil penalty in the amount of two million dollars (\$2,000,000.00 U.S. dollars), which shall be due and payable within twenty (20) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via: <http://www.pay.gov>.

19. The parties agree that this settlement figure is predicated, among other things, upon the accuracy of oral and written representations of, and statements by, Meijer and Meijer's representatives (including representations set forth in the Agreement).

20. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute any legal or factual admission by Meijer or a determination by the Commission that Meijer violated the CPSA.

21. Following staff's receipt of the Agreement executed on behalf of Meijer, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If, within fifteen (15) calendar days, the Commission does not receive any written request not to accept the Agreement, the Agreement

shall be deemed finally accepted on the sixteenth (16th) calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

22. The Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Meijer, and (ii) the date of issuance of the final Order, the Agreement shall be in full force and effect and shall be binding upon the parties.

23. Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Meijer, and (ii) the date of issuance of the final Order, for good and valuable consideration, Meijer hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following actions or remedies in connection with the matters described in the Agreement: (a) an administrative or judicial hearing; (b) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (c) a determination by the Commission of whether Meijer failed to comply with the CPSA and the underlying regulations; (d) a statement of findings of fact and conclusions of law; and (e) any claims under the Equal Access to Justice Act.

24. Meijer represents and agrees that it will maintain a reverse logistics compliance program designed to avoid violations by Meijer of CPSA § 19(a)(2)(B) by introducing recalled consumer products into the stream of commerce. Meijer represents that its ongoing reverse logistics program will contain (i) written standards, policies, and procedures for the appropriate disposition of recalled goods; (ii) mechanisms to communicate to all applicable Meijer employees through training programs or otherwise, company policies and procedures to prevent violations of CPSA § 19(a)(2)(B); (iii) management oversight of a reverse logistics program,

including a mechanism for Meijer employees' confidential reporting to a Meijer official with the authority to act as necessary; (iv) a policy to retain Meijer reverse logistics records related to the recalled product collection and disposition, for at least five (5) years from the date of the recall; and (v) availability of such records to Commission staff, upon reasonable request.

25. The parties acknowledge and agree that the Commission may make public disclosure of the terms of the Agreement and the Order.

26. Meijer represents that the Agreement: (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of Meijer, and each of its successors and/or assigns, enforceable against Meijer in accordance with the Agreement's terms. The individuals signing the Agreement on behalf of Meijer represent and warrant that they are duly authorized by Meijer to execute the Agreement.

27. The Commission signatories represent that they are signing the Agreement in their official capacities and that they are authorized to execute the Agreement.

28. The Agreement is governed by the laws of the United States.

29. The Agreement and the Order shall apply to, and be binding upon, Meijer and each of its companies, subsidiaries, successors, transferees, and assigns, and a violation of the Agreement or Order may subject Meijer and each of its companies, subsidiaries, successors, transferees, and assigns to appropriate legal action.

30. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained herein and therein.

31. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and

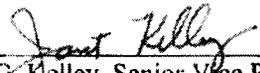
the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties, and shall not be construed against any party for that reason in any subsequent dispute.

32. The Agreement shall not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

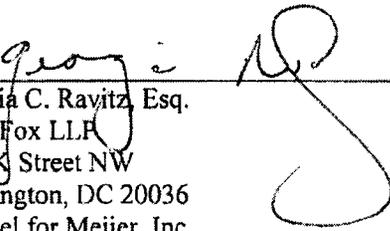
33. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Meijer agree that severing the provision materially affects the purpose of the Agreement and Order.

MEIJER, INC.

Dated: 9/3/14

By: 
Janet G. Kelley, Senior Vice President,
General Counsel and Secretary
Meijer, Inc.
2929 Walker Avenue, N.W.,
Grand Rapids, Michigan 49544

Dated: 9/3/14

By: 
Georgia C. Ravitz, Esq.
Arent Fox LLP
1717 K Street NW
Washington, DC 20036
Counsel for Meijer, Inc.

Mary T. Boyle
Deputy General Counsel

Mary B. Murphy
Assistant General Counsel

Dated: 9/3/2014

By: 

Ray M. Aragon
General Attorney

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CONSUMER PRODUCT SAFETY COMMISSION**

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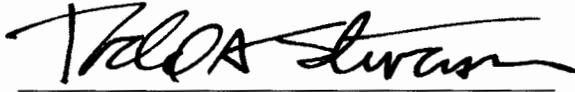
ORDER

Upon consideration of the Settlement Agreement entered into between Meijer, Inc. (“Meijer”), and the U.S. Consumer Product Safety Commission (“Commission”), and the Commission having jurisdiction over the subject matter and over Meijer, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is **FURTHER ORDERED**, that Meijer shall comply with the terms of the Settlement Agreement and shall pay a civil penalty of two million dollars (\$2,000,000.00 U.S. dollars), within twenty (20) calendar days after receiving service of the Commission’s final Order accepting the Settlement Agreement. Upon failure of Meijer to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Meijer at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b). If Meijer fails to make such a payment or to comply in full with any other provision as set forth in the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the 16th day of September, 2014.

BY ORDER OF THE COMMISSION:



Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

Finally accepted and final Order issued on the _____ day of _____, 2014.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission