

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
)	
MAXFIELD AND OBERTON HOLDINGS, LLC)	
)	
and)	CPSC DOCKET NO. 12-1
)	
CRAIG ZUCKER, individually, and as an officer)	DEAN C. METRY
of MAXFIELD AND OBERTON HOLDINGS, LLC)	Administrative Law Judge
)	
Respondents.)	
)	
)	

CONSENT AGREEMENT
IN CAMERA

This Consent Agreement (Consent Agreement) is made to settle the above-captioned administrative action. The parties agree as follows:

Parties

1. The Commission staff is the staff of the United States Consumer Product Safety Commission (CPSC or the Commission), an independent regulatory agency of the United States, established by Congress pursuant to Section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2053.

2. Maxfield and Oberton Holdings, LLC (Maxfield and Oberton) is a Delaware limited liability company with its former principal place of business located at 180 Varick Street, Suite 212, New York, NY 10014. Maxfield and Oberton LLC filed a Certificate of Dissolution on December 27, 2012.

3. Craig Zucker (Respondent) is an individual and former Chief Executive Officer and co-managing member of Maxfield and Oberton.

4. Julie Beth Teicher, in her capacity as the Trustee of the MOH Liquidating Trust (Liquidating Trustee) is a non-party executing this Consent Agreement on behalf of the MOH Liquidating Trust (Liquidating Trust). The Liquidating Trust was established in Delaware on December 21, 2012, by Maxfield and Oberton Holdings, LLC and authorizes the Liquidating Trustee to perform acts reasonably necessary, appropriate or desirable to effectuate the purposes of the Liquidating Trust, including the settlement of claims of existing and future creditors against the Liquidating Trust. The Liquidating Trustee executes this Consent Agreement for the sole purpose of settling the claim made by the Commission against the Liquidating Trust and makes no admissions thereby.

Subject Matter

5. The Subject Products are small, individual magnets with a flux index greater than 50 sold under the brand name Buckyballs® and Buckycubes®. From March 2009 to December 27, 2012, Maxfield and Oberton was a manufacturer and importer, as those terms are defined in Sections 3(a)(5), (7), (11) and (13) of the CPSA, of approximately 2.5 million sets of Buckyballs® and Buckycubes® (collectively, the Subject Products). The Subject Products were offered for sale to consumers for their personal use in or around a permanent or temporary household or residence, in recreation or otherwise.

6. On July 25, 2012, the Commission staff filed an Administrative Complaint against Maxfield and Oberton seeking, *inter alia*, a recall of the Subject Products pursuant to Section 15 of the CPSA, as amended, 15 U.S.C. § 2064. On February 11, 2013, the Commission staff filed a Motion for Leave to File a Second Amended Complaint (Complaint) against Maxfield and

Oberton Holdings, LLC, and Respondent Zucker, individually and as an officer of Maxfield and Oberton seeking, *inter alia*, a recall of the Subject Products pursuant to Section 15 of the CPSA, as amended, 15 U.S.C. § 2064. The Complaint alleges that the Subject Products present a “substantial product hazard” within the meaning of Section 15(a) of the CPSA, 15 U.S.C. § 2064(a). The Complaint alleges that the Subject Products are defective under 15 U.S.C. § 2064(a)(2) because their instructions, packaging and warnings are inadequate, and because a substantial risk of injury arises as a result of the Subject Product’s operation and use and the failure of the Subject Products to operate as intended. The Complaint further alleges that the Subject Products are defective under 15 U.S.C. § 2064(a)(1) because the Subject Products are toys that contain a loose as received hazardous magnet with a flux index greater than 50 in violation of ASTM 963-08 section 3.1.72 and its most recent version, ASTM 963-11 section 3.1.81 (the Toy Standard). On May 3, 2013, the Court entered an Order granting Complaint Counsel’s Motion for Leave to File the Second Amended Complaint.

7. The Complaint alleges that from 2009 to the present, the Commission staff has received numerous incident reports involving the Subject Products, including several that required surgery.

8. Respondents filed separate Answers to the Complaint in which they denied that the Subject Products present a substantial product hazard or contain a defect within the meaning of Section 15(a) of the CPSA, 15 U.S.C. § 2064(a) or Section 15(a)(1) of the CPSA, 15 U.S.C. § 2064(a). Respondent Zucker’s Answer further denied that the Subject products are a toy, an object designed, manufactured, and/or marketed as a plaything for children under 14 years of age, are subject to, or violate, the Toy Standard, and denied that he controlled the acts, practices, and policies of Maxfield and Oberton.

Agreement

9. It is the express purpose of the parties in entering into this Consent Agreement to protect the public safety by implementing a voluntary corrective action involving the Subject Products.

10. The parties intend for this Consent Agreement, the Establishment of Recall Trust Document (Attachment A), and the attached Order (the Order), which are hereby incorporated by reference, to resolve staff's charges and requests for relief against Respondent set forth in the Complaint in this proceeding, and to resolve the Complaint and this proceeding without an adjudication by the Presiding Officer.

11. For purposes of settlement only, Respondent admits that the Commission has jurisdiction over the Subject Products as "consumer products" under Section 3 of the CPSA, 15 U.S.C. § 2064(a), and over Respondent.

12. Within 60 days of signing this Consent Agreement, the Commission staff shall establish the Recall Trust described in Attachment A. The Recall Trust will set forth a voluntary Corrective Action Plan agreed to by the Parties regarding the Subject Products (the CAP).

13. The Recall Trust shall execute the terms of the CAP.

14. Respondent will have no rights or interest in, or authority over, the Recall Trust and will have no ability to control or alter its terms or the administration thereof, but will receive a copy of reports of recall completion and the accounting of funds prepared by the Recall Trust pursuant to paragraph 9 of Attachment A.

15. The CAP, as set forth in Attachment A, shall include the following elements:

a. The Commission shall issue a press release announcing a voluntary recall of the Subject Products. The content of the press release shall be determined by Commission staff and shall comport with the terms of this Agreement and any prior press releases regarding the Subject Products or public information regarding magnet safety.

b. Subject to advance written approval by Commission staff and in accordance with the provisions of paragraph 15(a) of this Agreement, the Recall Trust shall publicize the recall to consumers and retailers.

c. The Recall Trust shall provide refunds to consumers pursuant to the provisions of Attachment A. The Recall Trust shall not pay or transfer any funds to Respondents.

d. The Recall Trust shall fund a Commission-accepted website to publicize and implement the recall. The website shall be operational for five years following the date of this Consent Agreement. All content of the website and payments concerning the website shall be approved by Commission staff and shall comport with the provisions of paragraph 15(a) of this Agreement and Sections 15(c) and (d) of the CPSA. All payments necessary to maintain the website for a period of five years shall be paid by the Recall Trust within six months of the establishment of the Recall Trust.

16. An escrow account shall be created and maintained at a financial institution by Respondent Zucker within five business days of the signing of this Agreement by Complaint Counsel, Respondent and the Liquidating Trustee, and shall be in settlement of the allegations in the Complaint for the purpose of funding the Recall Trust (Escrow Account). Funds deposited into the Escrow Account may only be withdrawn or transferred out of the Escrow Account under the conditions specified in subparagraphs (c) and (d) of this section. No Commission funds shall be used to fund the Escrow Account.

a. No later than five business days after signing this Consent Agreement, Respondent shall deposit \$375,000 into the Escrow Account. Such payment is not a fine or penalty, but is an ordinary and necessary business expense.

b. Upon the signing of this Agreement by Complaint Counsel, Respondent and the Liquidating Trustee, Commission staff and Respondent shall transmit this Consent Agreement to the Presiding Officer pursuant to 16 C.F.R. § 1025.26, with a request that the Presiding Officer transmit it to the Commission.

c. If the Commission accepts this Consent Agreement pursuant to 16 C.F.R. § 1025.26(f), \$100,000 (the Initial Transfer Amount) of funds held in the Escrow Account shall be transferred irrevocably to the Recall Trust within five days of the establishment of the Recall Trust.

1. The Recall Trust shall allocate \$75,000 of the Initial Transfer Amount to publicize the recall to consumers and retailers and undertake a notice campaign pursuant to CPSA Sections 15(c) and (d).

2. The Recall Trust shall allocate the remaining \$25,000 of the Initial Transfer Amount to issue refunds to consumers and pay administrative costs and costs incurred by the trustee administering the Recall Trust (Recall Funds) as specified in Attachment A. If at any time the balance of funds in the Recall Trust's Recall Funds falls below \$25,000, the parties agree that an additional \$25,000 immediately and irrevocably shall be transferred from the Escrow Account to the Recall Trust's Recall Funds. Such fund transfers shall continue as needed until the funds in the Escrow Account are fully depleted, less any interest earned by the Escrow Account, which shall remain in the Escrow Account.

3. Twelve months after the establishment of the Recall Trust, any funds remaining in the Escrow Account shall be returned to Respondent and the Escrow

Account shall be closed. No additional funds shall be transferred from the Escrow Account to the Recall Trust, but funds in the Recall Trust's Recall Funds shall remain in the Recall Trust and may be used by the Recall Trust to publicize the recall to consumers and retailers.

d. If the Commission rejects this Consent Agreement pursuant to 16 C.F.R. § 1025.26(g), all funds held in the Escrow Account shall be returned immediately to Respondent.

17. Upon Commission acceptance of this Consent Agreement and issuance of the Order pursuant to 16 C.F.R. § 1025.26(f), (i) all pending claims of the Commission against the Liquidating Trust are deemed withdrawn without further action; and (ii) the Liquidating Trust waives any claims under the Equal Access to Justice Act (5 U.S.C. §504) and it shall bear its own costs and expenses, including, without limitation, attorneys' fees incurred in connection with this proceeding, CPSC Docket No. 12-1, the Consent Agreement and the transactions contemplated hereby.

18. If the Commission accepts this Consent Agreement pursuant to 16 C.F.R. § 1025.26(f), then this proceeding, CPSC Docket No. 12-1, shall be dismissed with prejudice.

19. If the Commission rejects this Consent Agreement pursuant to 16 C.F.R. § 1025.26(g), then this Consent Agreement shall be null and void.

20. The Recall Trust shall fulfill all requirements of the Agreement and Order.

21. Pursuant to 16 C.F.R. §1115.20(b)(1)(v), Respondent acknowledges that the Commission reserves the right to seek sanctions against Maxfield and Oberton for any violation of the reporting obligations of Section 15(b) of the CPSA and its right to take appropriate legal action. Respondent further acknowledges that pursuant to 16 C.F.R. § 1115.20(b)(1)(x), any interested person may bring an action pursuant to section 24 of the CPSA in any U.S. District Court in the district for which the Consenting Party is found or transacts business to enforce the order and to obtain appropriate injunctive relief.

22. In consideration of the actions set forth in this Consent Agreement in settlement of the allegations in the Complaint, including actions taken pursuant to paragraph 26 herein, the Commission fully releases, acquits and forever discharges Respondent Zucker, in his individual capacity and in any capacity as a member, manager, officer or employee of Maxfield and Oberton Holdings, LLC, from all claims, demands, liabilities, actions, or causes of action in connection with any violations of any of the acts or regulations enforced by the Commission arising out of or in any way concerning the manufacturing, importation, distribution, and sale of the Subject Products occurring prior to the date of this Consent Agreement.

23. Upon acceptance of the Agreement and issuance of the Order by the Commission, the Commission and Respondent may disclose the terms of this Consent Agreement and Order to the public.

24. This Consent Agreement shall take effect upon final acceptance by the Commission and issuance of the Order.

25. Upon acceptance by the Commission of this Consent Agreement and entry of the Order, Respondent knowingly, voluntarily, and completely waives and relinquishes any past, present, and future right or rights in this matter or any other matter related to the Subject Products: (1) to an administrative or judicial hearing and to all further procedural steps, including findings of fact, conclusions of law, or further determination of whether the Subject Products contain a defect which creates a substantial product hazard within the meaning of Section 15 of the CPSA; (2) to seek judicial review or otherwise contest the validity of this Consent Agreement or Order as issued and entered; (3) to seek judicial review of this or any past order, finding or determination of the Commission or the Presiding Officer in this matter or any other matter related to the Subject Products; and (4) to seek administrative or judicial review of

any action by the Commission, Commissioners, and Commission staff relating to the Subject Products.

26. Within five business days of the acceptance of the Agreement and issuance of an Order by the Commission, Respondent Zucker agrees to voluntarily dismiss with prejudice all pending actions against the Commission arising out of or in any way concerning the manufacturing, importation, distribution, and sale of the Subject Products, including but not limited to the following actions and petitions: *Craig Zucker v. U.S. Consumer Product Safety Commission, and Robert Adler, in his official capacity as Acting Chairman of the U.S. Consumer Product Safety Commission*, Civil No. 8:13-cv-03355-DKC. (D. Md.); and *Petition for Disclosure and Correction in Connection with the Information Quality Act filed with the Office of the Secretary of the Commission on November 12, 2013, and related appeal dated April 14, 2014*; and voluntarily withdraw all pending petitions or other requests filed with the Commission arising out of or in any way concerning the manufacturing, importation, distribution, and sale of the Subject Products.

27. It shall be unlawful to sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States the Subject Products pursuant to Section 19(a)(2) of the Consumer Product Safety Act, 15 U.S.C. § 2068(a)(2).

28. For all purposes, this Consent Agreement and Order shall constitute an enforceable judgment obtained in an action or proceeding by a governmental unit to enforce its police or regulatory power. Respondent acknowledges and agrees that this Consent Agreement and Order are pursuant to the Commission's police power or regulatory power to remedy the risk created by and protect the public from and risk of injury to children, and that this Consent Agreement and Order are not subject to an automatic stay if Respondent becomes the subject of

a bankruptcy proceeding. All payments made pursuant to Paragraph 16 are non-dischargeable under the Bankruptcy Code. If any claim in a bankruptcy proceeding is made upon Respondent within 91 days of the establishment of the Recall Trust for the repayment or return of the payment made pursuant to this Agreement, and any repayment or returns of all or substantially all of said money or property is made by reason of (a) any judgment, decree or order of any bankruptcy court having jurisdiction over Respondent or (b) any settlement or compromise of any such bankruptcy claim between the Respondent and such claimant, then in such event the provisions of this Agreement and the Order shall be automatically null and void and the parties shall be returned to their pre-Consent Agreement positions.

29. The signing of this Consent Agreement by Respondent Zucker does not constitute an admission by Respondent of the existence of a defect in the Subject Products, a substantial product hazard or reportable information pursuant to Section 15(b) of the CPSA, 15 U.S.C. § 2064(b), that the Subject Products are a toy, a children's product, or are subject to, or violate, the Toy Standard, or that the Commission has jurisdiction over Respondent Zucker except for purposes of this Consent Agreement. Respondent Zucker is entering into this Consent Agreement in settlement of the allegations of the Complaint against him as a responsible corporate officer of Maxfield and Oberton, and not in settlement of any obligations of Maxfield and Oberton.

30. If, after the effective date hereof, any provision of this Consent Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of this Consent Agreement and Order, such provision shall be fully severable. The rest of this Consent Agreement and Order shall remain in full effect, unless the

Commission determines that severing the provision materially impacts the voluntary Corrective Action Plan set forth in this Consent Agreement and Order.

31. The provisions of this Consent Agreement and Order shall not be interpreted or construed against any person or entity because that person or entity or any of its attorneys or representatives drafted or participated in drafting this Consent Agreement. No representations other than those contained in this Consent Agreement, the Establishment of Trust Document (Attachment A), and the attached Order, have been made or relied upon by either party in negotiating or executing this agreement.

32. The provisions of this Consent Agreement and Order shall be interpreted in a reasonable manner to effect its purpose to remedy the hazard that the Complaint alleges that the Subject Products pose. In the event of a dispute between the Parties arising under this Consent Agreement and Order, the Parties agree to submit the issue for initial determination by the Commission, without waiver of the jurisdiction of the United States District Courts to preside over the dispute thereafter.

33. The existence of a dispute shall not excuse, toll, or suspend any obligation or deadline established under this Consent Agreement or Order.

34. Respondent hereby waives any claims under the Equal Access to Justice Act (5 U.S.C. § 504), and Complaint Counsel and Respondent agree that they shall each bear their own costs and expenses, including, without limitation, attorneys' fees incurred in connection with this proceeding, CPSC Docket No. 12-1, the Consent Agreement and the transactions contemplated hereby.

35. This Consent Agreement and Order shall not be waived, changed, amended,

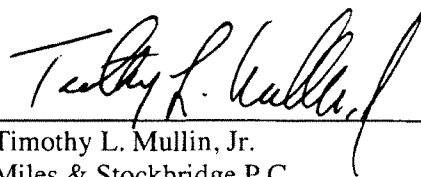
modified or otherwise altered, except in writing executed by the Party against which such amendment, modification, alteration or waiver is sought to be enforced, and approved by the Commission.

36. This Consent Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement. Signature pages transmitted electronically (by facsimile or scanning and emailing) shall be considered to be an original.

DATED: APRIL 30, 2014



Craig Zucker
Respondent



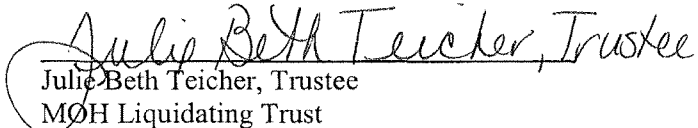
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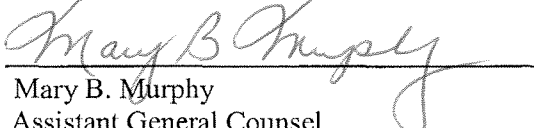
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Complaint Counsel for
U.S. Consumer Product Safety Commission

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
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MAXFIELD AND OBERTON HOLDINGS, LLC)	
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and)	CPSC DOCKET NO. 12-1
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CRAIG ZUCKER, individually, and as an officer)	DEAN C. METRY
of MAXFIELD AND OBERTON HOLDINGS, LLC)	Administrative Law Judge
)	
Respondents.)	
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ORDER
IN CAMERA

UPON CONSIDERATION of the Complaint against Respondents issued on or about May 3, 2013, as amended (the Complaint), and the Consent Agreement appended hereto and all attachments;

UPON CONSIDERATION of Respondent Zucker's admission for purposes of this Agreement that the Commission has jurisdiction over him and the Subject Products, and that Buckyballs® and Buckycubes® constitute "consumer products" under the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2052; and Pursuant to Sections 15(c) and (d) of the CPSA, 15 U.S.C. § 2064(c) and (d), IT IS HEREBY ORDERED THAT:

1. The Consent Agreement between Respondent Zucker and the Commission staff is accepted and incorporated by reference herein, and Respondent shall comply with all of his obligations hereunder.
2. All allegations of the Complaint against Respondents are resolved by this Consent Agreement, Order and Attachments. Based on the Consent Agreement, the Commission finds that the Consent Agreement and this Order are necessary to protect the public from the hazard that the Complaint has alleged are presented by Buckyballs® and Buckycubes® (the Subject Products).
3. To remedy the substantial product hazard and the substantial risk of injury to children as alleged in the Complaint, the Recall Trust shall implement a voluntary Corrective Action Plan, pursuant to, and in accordance with, the terms of the Consent Agreement incorporated by reference herein and the Establishment of Recall Trust attached to the Consent Agreement as Attachment A.
4. All actions undertaken by the Recall Trust to implement the Corrective Action Plan shall be approved in advance by Commission staff.
5. The above-captioned proceeding is dismissed with prejudice.
6. Any sale, offer for sale, manufacture for sale, distribution in commerce or importation into the United States of the Subject Products shall be a prohibited act under Section 19(a)(2) of the CPSA, 15 U.S.C. § 2068(a)(2).
7. This Order is issued under Section 15 of the CPSA, 15 U.S.C. § 2064. Any violation of this Order is a prohibited act within the meaning of Section 19(a)(5) of the CPSA, 15 U.S.C. § 2068(a)(5), and may subject a violator to civil and/or criminal penalties under Sections 20 and 21 of the CPSA, 15 U.S.C. §§ 2069 and 2070.

8. Any violation of Paragraph 6 of this Order shall be considered a separate prohibited act within the meaning of Section 19(a)(2) of the CPSA, 15 U.S.C. § 2068(a)(2), and may subject a violator to civil and/or criminal penalties under Sections 20 and 21 of the CPSA, 15 U.S.C. §§ 2069 and 2070.

BY ORDER OF THE CONSUMER PRODUCT SAFETY COMMISSION



Todd Stevenson, Office of the Secretariat

DATED: May 5, 2014

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)
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MAXFIELD AND OBERTON HOLDINGS, LLC)
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and) CPSC DOCKET NO. 12-1
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CRAIG ZUCKER, individually, and as an officer) DEAN C. METRY
of MAXFIELD AND OBERTON HOLDINGS, LLC) Administrative Law Judge
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Respondents.)
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ATTACHMENT A
IN CAMERA

ESTABLISHMENT OF RECALL TRUST

This trust (Recall Trust) is created by or at the direction of the Commission staff for purposes of implementing a Corrective Action Plan set forth in the attached Consent Agreement, through which the parties intend to settle the above captioned litigation.

Responsibilities of the Recall Trust

The Recall Trust shall implement a voluntary Corrective Action Plan regarding the Subject Products (the CAP), the terms of which shall be in accordance with the following:

1. The Recall Trust shall be administered by an individual approved by the Commission staff, who shall act at the direction of the Commission staff at all times.

Respondent shall be advised of the individual administering the Recall Trust.

2. No later than five business days after the establishment of the Recall Trust, \$100,000 of funds (the Initial Transfer Amount) in the Escrow Account established pursuant to the Consent Agreement shall be irrevocably transferred from the Escrow Account into

the Recall Trust. Those funds shall be used solely for purposes of carrying out the Corrective Action Plan agreed to by the parties, as set forth more fully herein. All expenditures and notices required by this paragraph shall be approved in advance by Commission staff.

3. The Recall Trust shall allocate \$75,000 of the Initial Transfer Amount to publicize the recall to consumers and retailers consistent with Sections 15 (c) and (d) of the CPSA. The Recall Trust shall allocate the remaining \$25,000 of the Initial Transfer Amount to issue refunds to consumers and pay administrative costs (Recall Funds).

4. Any time the balance of Recall Funds remaining in the Recall Trust falls below \$25,000, the parties agree that an additional \$25,000 immediately and irrevocably shall be transferred from the Escrow Account to the Recall Trust's Recall Funds. Such fund transfers shall continue as needed unless the funds in the Escrow Account are fully depleted, less any interest earned by the Escrow Account, which shall remain in the Escrow Account.

5. Twelve months after the establishment of the Recall Trust, any funds remaining in the Escrow Account shall be returned to Respondent and the Escrow Account shall be closed. No additional funds shall be transferred from the Escrow Account to the Recall Trust, but funds in the Recall Trust's Recall Funds shall remain in the Recall Trust and may be used by the Trust to publicize the recall.

6. a. The Recall Trust shall spend \$75,000 of the Initial Transfer Amount to publicize the recall and provide notice as set forth in CPSA Section 15(c) and (d). The Recall Trust shall send the press release to retailers of the Subject Products, and shall send notification to consumers of the Corrective Action Plan described herein, including information on how consumers may obtain a refund.

b. The Recall Trust shall fund a Commission-accepted website to publicize and implement the recall. The website shall be operational for five years following the date of this Consent Agreement. All content of the website and payments concerning the website shall be approved by Commission staff. All payments necessary to maintain the website for a period of five years shall be paid by the Recall Trust within six months of the establishment of the Recall Trust.

c. Notwithstanding the Protective Order entered by the Presiding Officer in CPSC Docket 12-1 on January 8, 2014 (Protective Order), the Recall Trust shall be permitted to review confidential documents provided to Complaint Counsel in CPSC Docket 12-1 for the sole purpose of retrieving contact information for consumers who purchased Subject Products and retailers who sold the Subject Products and contacting such consumers and retailers to notify them about the recall. Any persons reviewing confidential documents as provided for in this paragraph shall sign the Acknowledgment and Agreement to Be Bound By Protective Order as provided for in the Protective Order, and shall not disclose the contents of any confidential documents except as provided for in this paragraph.

7. The Recall Trust shall spend Recall Funds as follows:

a. Within four weeks of the establishment of the Recall Trust, the Recall Trust shall fully establish a procedure for processing consumer claims which shall be communicated to Respondent. The procedure shall include a process designed to avoid fraud and ensure that only claims by eligible consumers are paid.

b. For six months after the publication of a press release announcing the establishment of the Recall Trust and voluntary corrective action, the Recall Trust shall

accept claims from United States consumers who purchased Buckyballs® or Buckycubes® imported and distributed by Maxfield and Oberton.

c. The Recall Trust shall require that all claims be in writing and accompanied by proof of purchase which shall consist of a receipt showing a purchase in the United States or an affidavit executed under 18 U.S.C. §1001, which acknowledges purchase of the Subject Products in the United States, the place of purchase and the purchase price. Consumers who provide proof of purchase and return the Subject Products to the Recall Trust at the address provided on the Recall Trust website shall receive a full refund of the purchase price in accordance with the schedule below (less a reasonable allowance for use if such product has been in the possession of a consumer for one year or more as of the time of the public notice issued pursuant to paragraph (b) above), plus a reasonable allowance for shipping by standard U.S. First Class Mail, as determined by the Recall Trust. The Recall Trust shall provide refunds to consumers as follows: Consumers who return at least 76 Buckyballs® or Buckycubes® from a set of 125 shall receive a full refund; consumers who return fewer than 76 but more than 50 Buckyballs® or Buckycubes® from a set of 125 shall receive fifty percent of the purchase price; consumers who return at least 152 Buckyballs® or Buckycubes® from a set of 216 shall receive a full refund; consumers who return fewer than 152 but more than 100 Buckyballs® or Buckycubes® from a set of 216 shall receive fifty percent of the purchase price. Consumers who return quantities lower than those listed above for the sets identified shall not be entitled to a refund.

d. The Recall Trust shall pay refunds to eligible consumers in accordance with paragraph 7(c) of this Agreement as claims are received, so long as funds are available in the Recall Trust.

8. No funds from the Recall Trust shall be returned to the Escrow Account or paid to any individual or entity not approved by Commission staff as appropriate and necessary to carry out the terms of the Corrective Action Plan.

9. The Recall Trust shall provide to the Commission quarterly progress reports and such other updates concerning the implementation of the corrective action as directed by Commission staff, along with an accounting of funds thirty days after the issuance of the press release announcing the establishment of the Recall Trust and voluntary recall and quarterly thereafter, copies of which shall be provided to Respondent.

10. The Recall Trust shall be accountable to the Commission for all actions taken by the Trust to fulfill the terms of the corrective action described herein and in the Consent Agreement and Order.

11. The Recall Trust shall fulfill all requirements necessary to effectuate the Corrective Action Plan agreed to by the parties.

12. This Establishment of Trust shall not be waived, changed, amended, modified or otherwise altered, except as approved by the Commission if necessary to fulfill the terms of the CAP.