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ENDORSED
FILED
San Francisco County Superior Court

JUN 17 2005

GORDON PARK-LI, Clerk
BY: GARTH SAYERS
Deputy Clerk

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
(Unlimited Jurisdiction)

12 ECOLOGICAL RIGHTS FOUNDATION,

CASE NO. CGC-04-433515

13 Plaintiff,

~~[PROPOSED]~~ CONSENT JUDGMENT

14 v.

15
16 WARREN HILE STUDIO, and DOES
17 1 through 100 inclusive,

18 Defendants.
/

19
20 **1. INTRODUCTION**

21 1.1 Plaintiff: Plaintiff Ecological Rights Foundation (“ERF” or “Plaintiff”), is a
22 nonprofit foundation dedicated to, among other causes, the protection of the environment,
23 promotion of human health, environmental education and consumer rights.

24 1.2 The Action: On August 3, 2004, Plaintiff filed a complaint in the Superior Court
25 for the City and County of San Francisco (hereafter referred to as the “Action”) charging
26 Defendant Warren Hile Studio (hereinafter “Hile Studio, Inc.”) and Does 1 through 100 with
27 having violated The Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition
28 65”), Health and Safety Code Section 25249.5 *et. seq.*, and Business & Professions Code Section

1 17200 *et. seq.* by exposing individuals to lead, a chemical known to the State of California to
2 cause cancer and birth defects and other reproductive harm, without providing clear and
3 reasonable warnings to such individuals. The alleged violations addressed in the Action were
4 described in Plaintiff's Notice of Intent to Sue dated May 10, 2004 ("Plaintiff's Notice"), which
5 Plaintiff had sent to the Defendant and to public enforcers as required by Health & Safety Code
6 Section 25249.7. Defendant filed an answer in the Action on or about September 27, 2004
7 denying all material allegations and asserting numerous affirmative defenses. The alleged
8 violations at issue in the Action relate to exposure to lead from china closets manufactured,
9 imported, distributed, marketed and/or sold by Hile Studio, Inc. which contain leaded glass
10 inserts, leaded mullions, leaded coming or lead solder.

11 1.3 Jurisdiction: For purposes of this Consent Judgment, the Parties stipulate that the
12 San Francisco Superior Court has jurisdiction over the allegations in the Action and personal
13 jurisdiction over Defendant as to the acts alleged in the Action, that venue is proper in the City
14 and County of San Francisco, that this Court has jurisdiction to enter this Consent Judgment as a
15 resolution of all claims which were alleged in the Action, and that the Court shall retain
16 jurisdiction to implement the Consent Judgment.

17 1.4 No Admissions: For the purpose of avoiding prolonged litigation, the Parties enter
18 into this Consent Judgment as a compromise and full settlement of all claims raised in the
19 Complaint based on the facts alleged. By executing this Consent Judgment, Defendant does not
20 admit any violation of Proposition 65 or the Unfair Competition Act or any other law and
21 specifically denies that they have committed any such violations. Nothing in this Consent
22 Judgment shall be construed as a decision by the court on any issue of law or fact or as an
23 admission by any party of any fact, issue of law or violation of law, nor shall compliance with the
24 Consent Judgment constitute or be construed as an admission by any party of any fact, issue of
25 law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive, or impair any
26 right, remedy, or defense that Plaintiff and Defendant may have in any other or in future legal
27 proceedings unrelated to these proceedings. However, this paragraph shall not diminish or
28 otherwise affect the obligations, responsibilities, and duties of the parties under this Consent

1 Judgment.

2 **2. INJUNCTIVE RELIEF**

3 2.1 Definition Of "Covered Products": For purposes of this Consent Judgment, the
4 term "Covered Products" are china cabinets manufactured, sold, marketed, imported and/or
5 distributed by Hile Studio, Inc. that contain leaded glass inserts, leaded mullions, leaded coming
6 and/or lead solder, regardless of product nomenclature, model design, model designation or
7 brand name - *i.e.*, both those marketed, sold or distributed directly by Defendant as well as
8 private labeled products supplied to others by Defendant, where lead is exposed and accessible
9 to contact in normal use by consumers.

10 2.2 Reformulation of Covered Products: As of the Effective Date of this Consent
11 Judgment Defendant shall not manufacture or ship for sale, by themselves or through others, in
12 the State of California, any Covered Products manufactured with (a) solder that is specified to
13 have a lead content exceeding 0.05 percent (0.05%) lead by weight, and/or (b) mullions or
14 coming material that is specified to have a lead content exceeding 0.01 percent (0.01%) lead by
15 weight.

16 2.3 Reliance On Specifications: Defendant may comply with the requirement in
17 Paragraph 2.2 by relying on the specifications provided by the supplier(s) of solder, mullions, or
18 coming material, provided such reliance is in good faith.

19 2.4 Warnings to Past California Customers

20 Defendant will identify all of its distributors and customers who purchased Covered
21 Products directly from Defendant ("direct customers") in California. Within 60 days of the
22 Effective Date of this Consent Judgment, Defendant will mail the following warning on
23 Defendant's letterhead to each such identified distributor and direct customer's last known
24 address.

25 Warning: Our records indicate that you purchased china closet(s) manufactured,
26 imported, distributed, marketed and/or sold by Hile Studio, Inc. The solder, coming
27 and/or mullions in these china closets contain lead, a chemical known to the State of
California to cause cancer, birth defects, and other reproductive harm. Avoid contact.
Wash your hands immediately after handling.

28 Within 120 days of the Effective Date of this Consent Judgment, Defendant will notify Plaintiff,

1 through counsel, of its efforts to identify and provide warnings by mail to such identified
2 distributors and direct customers. Defendant is not required, however, to disclose the identities
3 of its distributor or direct customers.

4 2.5 Removal from Inventory and Display by Retailers, Dealers and Distributors

5 Defendant will contact each of its retailers, dealers and distributors (“dealers”) in
6 California who have purchased Covered Products in order to confirm that such dealers do not
7 have any Covered Products in their possession or control. If such a dealer has any Covered
8 Products in inventory or display, the dealer will be instructed to return all Covered Products to
9 Defendant for a refund of the purchase price and shipping costs. In that instance, Defendant will
10 notify Plaintiff, within 60 days of the Effective Date of this Consent Decree, that each of
11 Defendant’s dealers in California has returned all Covered Products in their possession or control
12 to Defendant.

13 **3. WAIVER AND RELEASE OF ALL CLAIMS**

14 3.1 Waiver And Release of Claims Against Defendant: Plaintiff, on its own behalf
15 and on behalf of its members, subsidiaries, successors, and assigns and its directors, officers,
16 agents, attorneys, representatives, and employees, hereby releases Defendant and its directors,
17 officers, agents, attorneys, representatives, employees, licensors, heirs, subsidiaries, affiliates,
18 customers, distributors, independent dealers, suppliers, authorized dealers, wholesalers, retailers,
19 predecessors, successors, and assigns, and waives all claims for injunctive relief or damages,
20 penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others),
21 costs, expenses or any other sum incurred or claimed, for the alleged failure of Defendant or its
22 subsidiaries, affiliates, customers, distributors, independent dealers, suppliers, authorized dealers,
23 predecessors, successors, and assigns to provide clear and reasonable warning about exposure to
24 lead from the sale or use of all Covered Products manufactured, imported, distributed, marketed
25 and/or sold by Defendant in accordance with and including, but not limited to, Proposition 65
26 and Business and Professions Code § 17200, *et. seq.*

27 Plaintiff, on behalf of all other private persons or entities potentially having standing
28 under Business and Professions Code § 17204 and/or Health and Safety Code § 25249.7(d) and

1 on behalf of its respective members, subsidiaries, successors, and assigns and its directors,
2 officers, agents, attorneys, representatives, and employees, further hereby releases Defendant and
3 its directors, officers, agents, attorneys, representatives, employees, licensors, heirs, subsidiaries,
4 affiliates, customers, distributors, independent dealers, suppliers, authorized dealers, wholesalers,
5 retailers, successors, and assigns, and waives all claims for injunctive relief or damages,
6 penalties, fines, sanctions, mitigation, fees (including fees for attorneys, experts and others),
7 costs, expenses, or any other sum incurred or claimed for violations of Proposition 65 and
8 Business & Professions Code § 17200, *et. seq.*, as set forth in Plaintiff's Notice, for the alleged
9 failure to provide clear and reasonable warning about exposure to lead from the sale or use of all
10 Covered Products manufactured, imported, distributed, marketed and/or sold by Defendant or its
11 subsidiaries, affiliates, customers, distributors, independent dealers, suppliers, authorized dealers,
12 predecessors, successors, and assigns.

13 3.2 Defendant's Waiver And Release Of Plaintiff: Defendant on its own behalf and on
14 behalf of its subsidiaries, affiliates, authorized dealers, successors, and assigns and its directors,
15 officers, agents, attorneys, representatives, and employees release Plaintiff and its members,
16 directors, officers, agents, attorneys, representatives, employees, heirs, successors, and assigns
17 from, and waives all claims for injunctive relief or damages, penalties, fines, sanctions,
18 mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any other
19 sum incurred or claimed or which could have been claimed for matters related to the Action.

20 3.3 Matters Covered By This Consent Judgment/Release of Future Claims: As to
21 Covered Products, this Consent Judgment is a full, final, and binding resolution between the
22 Plaintiff, acting on behalf of itself and, as to those matters raised in Plaintiff's Notice, the public
23 interest pursuant to Health and Safety Code Section 25249.7(d) and the general public pursuant
24 to Business and Professions Code Section 17204, on the one hand, and Defendant on the other
25 hand, for the alleged failure to provide clear, reasonable, and lawful warnings of exposure to lead
26 used or contained in Covered Products manufactured, imported, distributed, marketed and/or sold
27 by Defendant. As to Covered Products, compliance with the terms of this Consent Judgment
28 resolves any issue, now and in the future, concerning compliance by Defendant with existing

1 requirements of Proposition 65 and the Unfair Competition Act to provide clear and reasonable
2 warning about exposure to lead in Covered Products manufactured, imported, distributed,
3 marketed and/or sold by Defendant.

4 3.4 Waiver Of Civil Code Section 1542: This Consent Judgment is intended as a full
5 settlement and compromise of all claims arising out of or relating to Plaintiffs' Notice and/or the
6 Action regarding Covered Products, except as set forth herein. No claim is reserved as between
7 the Parties hereto, and each Party expressly waives any and all rights which it may have under the
8 provisions of Section 1542 of the Civil Code of the State of California, which provides:

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

11 4. MONETARY PAYMENTS

12 4.1 Within fifteen (15) days following the parties' execution of this Consent
13 Judgment, Defendant shall pay \$3,000, in the form of a check made payable to "Brian Gaffney,
14 Attorney Client Trust Account" with this amount to be paid to and used by Rose Foundation for
15 Communities and the Environment ("Rose") to reduce harm from toxic chemicals or other
16 pollutants, or to increase consumer worker and community awareness of health hazards posed by
17 toxic chemicals. The payment for use by Rose shall not be construed as a credit against the
18 personal claims of absent third parties for restitution against Defendant. The check shall be
19 delivered by overnight delivery to Brian Gaffney, 370 Grand Avenue, Suite 5, Oakland, CA
20 94610. In the event this Consent Judgment becomes null and void under either Paragraphs 11 or
21 12 infra, Plaintiff shall, within fifteen days, return the payment made under this paragraph to
22 Defendant.

23 4.2 Within fifteen (15) days following the parties' execution of this Consent
24 Judgment, Defendant shall pay \$12,000, in the form of a check made payable to "Brian Gaffney,
25 Attorney Client Trust Account" as reimbursement for the investigation fees and costs, testing
26 costs, expert witness fees, attorneys fees, and other litigation costs and expenses. The check shall
27 be delivered by overnight delivery to Brian Gaffney, 370 Grand Avenue, Suite 5, Oakland, CA
28 94610. In the event this Consent Judgment becomes null and void under either Paragraphs 11 or
12 infra, Plaintiff shall, within fifteen days, return the payment made under this paragraph to

1 Defendant.

2 4.3 Hile Studio, Inc. understands that the sales data and declaration under penalty of
3 perjury provided to Plaintiff by Hile Studio, Inc. was a material factor upon which Plaintiff has
4 relied to determine the amount of monetary payments made under paragraph 4.1 above. To the
5 best of Hile Studio, Inc.'s knowledge, the sales data provided is true and accurate. Plaintiffs
6 understands that Defendant considers the sales data and declaration to be confidential
7 information and shall return the sales data and declaration to Defendant within fifteen days of the
8 execution of this Agreement. In the event that Plaintiff discovers facts that demonstrate to a
9 reasonable degree of certainty that the sales data is materially inaccurate, the parties shall meet in
10 a good faith attempt to resolve the matter within ten (10) days of Hile Studio, Inc.'s receipt of
11 notice from Plaintiff of his intent to challenge the accuracy of the sales data. If this good faith
12 attempt fails to resolve Plaintiff's concerns, Plaintiff shall have the right to re-institute an
13 enforcement action against Hile Studio, Inc., for those additional Covered Products, based upon
14 any existing 60-Day Notice of violation allegedly served on Hile Studio, Inc.. In such cases, all
15 applicable statutes of limitation shall be deemed tolled for the period between the date Plaintiff
16 filed the instant action and the date Plaintiff notifies Hile Studio, Inc. that he is re-instituting the
17 action for the additional Covered Products.

18 **5. RETURN OF COVERED PRODUCT**

19 Plaintiff represents that Plaintiff purchased a Covered Product (Item #HS0601) directly
20 from Defendant and has maintained the Covered Product in the same condition as when
21 purchased. Within fifteen (15) days following the Effective Date of this Consent Judgment,
22 Plaintiff will arrange with Defendant to have Item #HS0601 picked up and returned to
23 Defendant, with Defendant to pay for shipping costs and at no cost to Plaintiff. Plaintiff will not
24 receive any form of reimbursement for the purchase and return. Defendant will assume all
25 responsibility for the care and condition of Item #HS0601 upon pick-up.

26 **6. SEVERABILITY**

27 In the event that any of the provisions of this Consent Judgment are held by a court to be
28 unenforceable, the validity of the enforceable provisions remaining shall not be adversely
29 affected thereby.

30 **7. MODIFICATION OF CONSENT JUDGMENT**

This Consent Judgment may be modified only upon the written agreement of the Parties,

1 or pursuant to court order issued upon motion of a Party, and upon entry of a modified Consent
2 Judgment by this Court.

3 **8. ENFORCEMENT OF CONSENT JUDGMENT**

4 8.1 The Parties may, by motion or order to show cause before this Court, and upon
5 notice having been given to all Parties in accordance with Paragraph 11 below, unless waived,
6 enforce the terms and conditions of this Consent Judgment and seek whatever fines, costs,
7 penalties, or remedies (including reasonable attorneys' fees and costs) are provided by law.

8 8.2 The Parties may enforce the terms and conditions of this Consent Judgment
9 pursuant to paragraph 8.1 only after the complaining party has first given thirty (30) days notice
10 to the Party failing to comply with the terms and conditions of the Consent Judgment and has
11 attempted, in an open and good faith manner, to resolve such Party's failure to comply.

12 **9. GOVERNING LAW**

13 9.1 The terms of this Consent Judgment shall be governed by, and construed in
14 accordance with, the laws of the State of California.

15 9.2 The Parties, including their counsel, have participated in the preparation of this
16 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
17 This Consent Judgment was subject to revision and modification by the Parties and has been
18 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
19 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
20 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
21 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are
22 to be resolved against the drafting party should not be employed in the interpretation of this
23 Consent Judgment and, in this regard, the Parties hereby waive California Civil Code
24 Section 1654.

25 **10. ENTIRE AGREEMENT**

26 This Consent Judgment constitutes the sole and entire agreement and understanding
27 between the Parties with respect to the subject matter hereof, and any prior discussions,
28 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
and therein. There are no warranties, representations, or other agreements between the Parties,
except as expressly set forth herein. No representations, oral or otherwise, express or implied,

1 other than those specifically referred to herein, shall be deemed to exist or bind any of the Parties
2 hereto. No supplementation, modification, waiver, or termination of this Consent Judgment shall
3 be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
4 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
5 other provisions hereof, whether or not similar, nor shall such waiver constitute a continuing
6 waiver.

7 **11. NOTICES**

8 All notices or correspondence to be given pursuant to this Consent Judgment shall be in
9 writing and shall be personally delivered or sent by first-class, registered, certified mail,
10 overnight courier, and/or via facsimile transmission (with presentation of facsimile transmission
confirmation) addressed to the Parties as follows:

11 For Plaintiffs: Ecological Rights Foundation
12 867 B Redwood Drive
13 Garberville, CA 95542
(707) 923 4846 fax

14 With a copy to: Brian Gaffney
15 LAW OFFICES OF BRIAN GAFFNEY
16 370 Grand Avenue, Suite 5
17 Oakland, CA 94610
18 (510) 891 9380 fax

19 For Defendant: Patricia Lee-Gulley
20 GORDON & REES LLP
21 4675 MacArthur Court, Suite 800
22 Newport Beach, CA 92660
23 (949) 474-2060 fax

24 The contacts and/or addresses stated immediately above may be amended by giving
25 notice to all Parties to this Consent Judgment.

26 **12. COMPLIANCE WITH REPORTING REQUIREMENTS/ATTORNEY GENERAL
27 OFFICE REVIEW AND COMMENT**

28 The parties agree to comply with the reporting form requirements referenced in
Health & Safety Code § 25249.7(f). Within a reasonable time of receiving all necessary
signatures to this Consent Judgment, and consistent with Health & Safety Code §25249.7(f),
Plaintiff shall notice a Motion to Approve Settlement and for Entry of Consent Judgment
("Motion") in the San Francisco Superior Court for a hearing scheduled not earlier than forty-
five (45) days later. Plaintiff shall serve this Consent Judgment and the noticed Motion to the
California Attorney General's office within a reasonable time of receiving all necessary

1 signatures.

2 It is expressly understood and agreed by the Parties hereto that the rights and obligations
3 contained in this Consent Judgment are expressly conditioned on the non-opposition by the
4 California Attorney General's Office to this Consent Judgment. Should the Attorney General
5 object to the Consent Judgment, the Parties shall negotiate in good faith to modify the Consent
6 Judgment in a manner that resolves the objection of the Attorney General. If the Parties cannot
7 agree on appropriate modifications within thirty (30) days of receiving the Attorney General's
8 objections, this Consent Judgment shall, at any Party's option, be deemed null and void as to
9 that Party, shall not bind that Party, and shall not be construed as an admission or waiver of any
10 claim or defense and cannot be used for any purpose.

11 **13. COURT APPROVAL/EFFECTIVE DATE**

12 The Court shall either approve or disapprove of this Consent Judgment in its entirety,
13 without alteration, deletion or amendment, unless otherwise so stipulated by the Parties and their
14 counsel. Defendant agrees to support the motion to approve this Consent Judgment in full, and
15 shall take all reasonable measures to ensure that it is entered without delay. In the event that the
16 Court fails to approve and order entry of the Consent Judgment without any change whatsoever
17 (unless otherwise so stipulated by the Parties), this Consent Judgment shall become null and void
18 upon the election of either Party and upon written notice to all of the Parties to the Action
19 pursuant to the notice provisions herein.

20 If the Court enters this Consent Judgment, Plaintiff shall, within ten (10) working days
21 after the Effective Date, electronically provide or otherwise serve a copy of it and the report
22 required pursuant to 11 Cal. Code Regs. § 3004 to/on the California Attorney General's Office.

23 The Effective Date of this Consent Judgment shall be the date it is entered by the Court.

24 **14. AUTHORIZATION**

25 The undersigned are authorized to execute this Consent Judgment on behalf of their
26 respective Parties and have read, understood, and agree to all of the terms and conditions of this
27 Consent Judgment.

28 **15. COUNTERPARTS/FACSIMILE SIGNING**

This Consent Judgment may be executed in one or more counterparts, each of which
shall be deemed an original, and all of which, when taken together, shall constitute one and the
same document. All signatures need not appear on the same page of the document and

1 signatures of the Parties transmitted by facsimile shall be deemed binding.

2 **APPROVED AS TO FORM:**

3 Dated: 4/1, 2005

LAW OFFICES OF BRIAN GAFFNEY

By: Brian Gaffney
Brian Gaffney

Attorney for Plaintiff
ECOLOGICAL RIGHTS FOUNDATION

7 Dated: April 27, 2005

GORDON & REES LLP

By: Patricia Lee Gully
Patricia Lee-Gully

Attorney for Defendant
HILE STUDIO INC.

12 **IT IS SO STIPULATED:**

ECOLOGICAL RIGHTS FOUNDATION

14 Dated: _____, 2005

By: _____
James Lamport
Executive Director

17 Dated: 4/25, 2005

HILE STUDIO, INC

By: Gillian Hile
Gillian Hile
Vice President
Hile Studio, Inc.

22 In accordance with the stipulation of Plaintiff Ecological Rights Foundation and
23 Defendant Hile Studio, Inc. in this matter,

24 **IT IS SO ORDERED, ADJUDGED, AND DECREED:**

26 Dated: JUN 17 2005

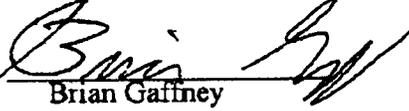
JAMES L. WARREN
JUDGE OF THE SUPERIOR COURT

1 signatures of the Parties transmitted by facsimile shall be deemed binding.

2 **APPROVED AS TO FORM:**

3 Dated: 4/1, 2005

LAW OFFICES OF BRIAN GAFFNEY

4 By: 
5 Brian Gaffney

6 Attorney for Plaintiff
7 ECOLOGICAL RIGHTS FOUNDATION

8 Dated: _____, 2005

GORDON & REES LLP

9 By: _____
10 Patricia Lee-Gulley

11 Attorney for Defendant
12 HILE STUDIO INC.

13 **IT IS SO STIPULATED:**

14 ECOLOGICAL RIGHTS FOUNDATION

15 Dated: APRIL 4, 2005

16 By: 
17 James Lamport
18 Executive Director

19 Dated: _____, 2005

HILE STUDIO, INC

20 By: _____
21 Gillian Hile
22 Vice President
23 Hile Studio, Inc.

24 In accordance with the stipulation of Plaintiff Ecological Rights Foundation and
25 Defendant Hile Studio, Inc. in this matter,

26 **IT IS SO ORDERED, ADJUDGED, AND DECREED:**

27 Dated: _____

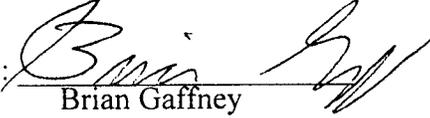
28 _____
JUDGE OF THE SUPERIOR COURT

1 signatures of the Parties transmitted by facsimile shall be deemed binding.

2 **APPROVED AS TO FORM:**

3 Dated: 4/1, 2005

LAW OFFICES OF BRIAN GAFFNEY

4 By: 
5 Brian Gaffney

6 Attorney for Plaintiff
7 ECOLOGICAL RIGHTS FOUNDATION

8 Dated: _____, 2005

GORDON & REES LLP

9 By: _____
10 Patricia Lee-Gulley

11 Attorney for Defendant
12 HILE STUDIO INC.

13 **IT IS SO STIPULATED:**

14 ECOLOGICAL RIGHTS FOUNDATION

15 Dated: _____, 2005

16 By: _____
17 James Lamport
18 Executive Director

19 Dated: _____, 2005

HILE STUDIO, INC

20 By: _____
21 Gillian Hile
22 Vice President
23 Hile Studio, Inc.

24 In accordance with the stipulation of Plaintiff Ecological Rights Foundation and
25 Defendant Hile Studio, Inc. in this matter,

26 **IT IS SO ORDERED, ADJUDGED, AND DECREED:**

27 Dated: _____

28 _____
JUDGE OF THE SUPERIOR COURT