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ENDORSED
FILED
San Francisco County Superior Court

JUN 16 2006

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Deputy Clerk

9 Attorneys for Plaintiff Mateel Environmental Justice Foundation

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

13 MATEEL ENVIRONMENTAL JUSTICE
14 FOUNDATION,

Case No. 437581

15 Plaintiff,

[PROPOSED] CONSENT JUDGMENT
AS TO E. MISHAN & SONS

16 v.

17 SCUNCI INTERNATIONAL, INC., et al.

18 Defendants.

1. INTRODUCTION

2 1.1 On or about October 22, 2004, the Mateel Environmental Justice Foundation
3 ("MEJF") and its attorneys, Klamath Environmental Law Center ("KELC"), sent 60 Day Notice
4 Letters to the Office of the California Attorney General of the State of California ("California
5 Attorney General"), all California counties' District Attorneys and all City Attorneys of California
6 cities with populations exceeding 750,000, (collectively, "Public Enforcers"), charging certain
7 businesses with violating the Safe Drinking Water and Toxic Enforcement Act of 1986, California
8 Health and Safety Code Section 25249.5 et seq. ("Proposition 65"), in their manufacture, distribution
9 and/or sale of wires and cables coated with polyvinyl chloride ("PVC"). Specifically, MEJF charged
10 that persons handling the PVC-coated wires and cables (hereinafter sometimes referred to as the
11 "Cords") were exposed to certain chemicals, listed under Proposition 65, including, cadmium,
12 hexavalent chromium, vinyl chloride, lead and lead compounds, lead acetate, lead phosphate, lead
13 subacetate and di(2ethylhexyl) phthalate.

14 1.2 On or about January 3, 2005, MEJF ("Plaintiff"), acting on behalf of itself, the public
15 interest, and the general public for the matters described in the Notice Letter, filed a Complaint for
16 civil penalties and injunctive relief ("Complaint") in the San Francisco Superior Court, fashioned,
17 *MATEEL ENVIRONMENTAL JUSTICE FOUNDATION v. SCUNCI INTERNATIONAL, INC.*, Case
18 No. 437581 based on the Notice Letter. The Complaint alleged, among other things, that E.
19 MISHAN & SONS, INC., ("E Mishan" or "Settling Defendant") violated Proposition 65 and
20 California Business & Professions Code Section 17200 et seq. (the "Unfair Competition Act") by
21 manufacturing, marketing and/or distributing to California residents products that are themselves or
22 which incorporate wires and cables that are PVC-coated and failing to provide clear and reasonable
23 warnings to California residents who handle and use such products that the handling and use of those
24 products in their normally intended manner will cause those persons to be exposed to Proposition 65
25 Chemicals.

26 1.3 Plaintiff and Settling Defendant are, for purposes of this Consent Judgment,
27 collectively referred to as the "Parties," with each of them a "Party".
28

1.4 For purposes of this Consent Judgment, the term "Covered Products" means products that are themselves, or that incorporate, utilize, or have appended to them, Cords, and that are manufactured, distributed, marketed or sold by the Settling Defendant. The term Covered Products includes both such products that are subject to the Warning Requirements of Section 7, and those that are not, including those products that are exempted from the warning requirements of this Consent Judgment pursuant to Sections 7.1 or 7.3. The term "Covered Products" also includes products which are manufactured, distributed, marketed and/or sold by the Settling Defendant either under its own name or brand or under the name or brand of another (e.g., privately labeled products).

1.5 For purposes of this Consent Judgment only, the Settling Defendant admits that: (a) it is a business that employs more than ten persons and manufactures, distributes and/or sells Covered Products into the State of California; (b) the Covered Products contain one or more Proposition 65 Chemicals; and (c) Proposition 65 Chemicals are chemicals listed under Proposition 65 as being known to the State of California to cause cancer and/or reproductive toxicity.

1.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaints and personal jurisdiction over the Settling Defendant as to the acts alleged in the Complaints, that venue is proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations contained in the Complaints and Notice Letters and of all claims which were or could have been raised by any person or entity based in whole or in part, directly or indirectly, on the facts alleged therein, arising therefrom or related thereto.

1.7 The Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not constitute an admission with respect to any material allegation of the Complaints, each and every allegation of which the Settling Defendant denies; nor may this Consent Judgment or compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of any Settling Defendant. The Settling Defendant maintains that its Covered Products have at all times complied with all applicable laws, including Proposition 65.

2. SETTLEMENT PAYMENT

2.1 In settlement of all of the claims referred to in this Consent Judgment against the Settling Defendant:

(a) The Settling Defendant shall pay, within ten (10) days of entry of this Consent Judgment, \$40,000 (forty thousand dollars). The payments required by the preceding sentence shall be made payable to KELC and shall subsequently and within a commercially reasonable time be divided by KELC as follows: (i) twenty two thousand five hundred (\$22,500) shall be paid to KELC for attorneys fees and costs incurred by KELC on behalf of Plaintiff in investigating this matter and negotiating this Consent Judgment on behalf of itself and the general public, (ii) seventeen thousand five hundred (\$17,500) shall, subject to Paragraph 2.2 below, be distributed by KELC at the direction of MEJF among the following non-profit organizations: Californians for Alternatives to Toxics; the Center for Ethics and Toxics, a project of the Tides Foundation; the Center on Race, Poverty and the Environment; the Ecological Rights Foundation; the Environmental Protection Information Center; the Golden Gate University School of Law Environmental Litigation Clinic; KPFA Radio; and Pacifica Reporters Against Censorship.

2.2 MEJF and KELC represent and warrant that each of the organizations identified in Paragraph 2.1(a)(ii) above is a tax exempt, section 501(c)(3) non-profit organization and that funds distributed to these organizations pursuant to this Consent Judgment may only be spent to reduce harm from toxic chemicals, or to increase consumer, worker and community awareness of health hazards posed by lead and other toxic chemicals.

2.3 Except as specifically provided in this Consent Judgment, each side shall bear its own costs and attorney's fees.

3. ENTRY OF CONSENT JUDGMENT

The Parties request that the Court promptly enter this Consent Judgment and waive their respective rights to a hearing or trial on the allegations of the Complaint.

4. MATTERS COVERED BY THIS CONSENT JUDGMENT

2 4.1 For purposes of Section 4 of this Consent Judgment, the term Settling Defendant shall
3 include the Settling Defendant, as defined above, and its past, present and future parents, divisions,
4 subdivisions, brands, subsidiaries and affiliates and the predecessors, successors and assigns of any of
5 them as well as their past, present and future officers, directors, employees, agents, attorneys,
6 representatives, shareholders and assigns. For purposes of Section 4, the term Settling Defendant
7 shall also be deemed to include the Settling Defendant's supplier of Covered Products, but only with
8 respect to those Covered Products that such supplier manufactures for the Settling Defendant. The
9 preceding sentence shall not apply with respect to a supplier who ships Covered Products directly to a
10 consumer at the request of the Settling Defendant, where a warning is provided to address the
11 obligations of this Consent Judgment solely pursuant to Section 7.5(e) below. A list delineating
12 some, but not necessarily all, of the names of the various business entities and brands or product
13 types referred to in this Paragraph and in existence on or before the date of this Consent Judgment is
14 attached hereto as Exhibit C.

15 4.2 As to Covered Products, this Consent Judgment is a final and binding resolution
16 between Plaintiff acting on behalf of itself and, (as to those matters referenced in the Notice Letters)
17 in the public interest pursuant to Health and Safety Code Section 25249.7(d) and the general public
18 pursuant to Business and Professions Code Section 17204 and the Settling Defendant of: (a) any
19 violation of Proposition 65; or, (b) with respect to exposures to the Proposition 65 Chemicals
20 associated with the use of Covered Products, the Unfair Competition Act; or (c) with respect to
21 exposures to the Proposition 65 Chemicals associated with the use of Covered Products, any other
22 statutory or common law claim, to the fullest extent that any such claims were or could have been
23 asserted by any person or entity against the Settling Defendant based on its or their exposure of
24 persons to chemicals contained in or otherwise associated with the use of Covered Products
25 manufactured, sold or distributed by, for or on behalf of the Settling Defendant and/or their alleged
26 failure to provide a clear and reasonable warning of such exposure to such individuals; or (d) as to
27 exposures to chemicals contained in or otherwise associated with the use of Covered Products, any
28 other claim based in whole or part on the facts alleged in the Complaints or Notice Letters, whether

based on actions or omissions committed by the Settling Defendant or any other entity within the Settling Defendant's chain of distribution, including, but not limited to, customers, wholesale or retail sellers or distributors and any other person in the course of doing business ("Downstream Entity").

4.3 As to any claims, violations (except violations of this Consent Judgment), actions, damages, costs, penalties, or causes of action which may arise or have arisen after the original date of entry of this Consent Judgment, compliance by the Settling Defendant with the terms of this Consent Judgment shall be deemed to constitute its full and complete compliance with Proposition 65 and the Unfair Competition Act with respect to the provision of warnings for chemicals contained in or otherwise associated with the use of Covered Products, provided that the concentrations of those chemicals other than lead are materially similar to that associated with the Covered Products with respect to Proposition 65 at the time this Consent Judgment is entered.

4.4 Notwithstanding Sections 4.2 or 4.3 above, as to all customers, distributors, wholesalers, retailers or any other Downstream Entity, except as otherwise indicated in Sections 4.5 and 4.6 below, which may in the course of doing business use, maintain, distribute, or sell Covered Products which are manufactured, distributed or sold by the Settling Defendant (including Covered Products which are privately labeled by the Settling Defendant for a Downstream Entity), Plaintiff (acting on behalf of itself and, as to those matters raised in the Notice Letters, on behalf of the general public) waives all rights to institute any form of legal action whether under Proposition 65 or the Unfair Competition Act or otherwise, arising out of or resulting from or related directly or indirectly to, in whole or in part, exposure to, or otherwise associated with the use of and alleged failure to warn with respect to Proposition 65 Chemicals contained in Covered Products.

4.5 Nothing in this Consent Judgment shall be deemed to release, from past liability under Proposition 65 or any other statute or regulation (except from liability for occupational exposures under the circumstances set forth in Sections 4.6, 7.5 and 7.6 of this Consent Judgment), any entity which incorporates Cords obtained from the Settling Defendant into a Covered Product the entity manufactures or distributes for sale to retail consumers, unless such entity is itself a Settling Defendant; nor shall any such entity which is not itself a Settling Defendant be entitled to utilize or otherwise rely on the provisions of this Consent Judgment. Notwithstanding the preceding sentence,

1 however, compliance with the terms of Section 7 of this Consent Judgment by an entity that
2 incorporates Cords obtained from the Settling Defendant into a Covered Product it manufactures or
3 distributes for sale to retail consumers, shall be deemed to constitute compliance with Proposition 65
4 with respect to Covered Products it sells in the future.

5 4.6 Nothing in this Consent Judgment shall be deemed to require an out of state
6 manufacturer of Covered Products to provide a Proposition 65 warning for occupational exposures
7 occurring within the State of California. Nothing in this Consent Judgment will be deemed to release
8 a California employer from liability for failure to comply with its obligations, if any, to provide
9 warnings under Proposition 65 for the exposures of its employees to chemicals contained in or
10 otherwise associated with Non-Retail Covered Products (as defined in Section 7.6 below) unless such
11 employer makes Proposition 65 warning information available to its employees in the manner
12 specified in Section 7.6 below or as otherwise permitted by 8 Cal. Code Regs. § 5194.

13 4.7 In furtherance of the foregoing, Plaintiff hereby waives any and all rights and
14 benefits which it now has, or in the future may have, conferred upon it by virtue of the provisions of
15 Section 1542 of the California Civil Code, which provides as follows:

16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
17 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
18 EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
19 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
20 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
21 DEBTOR.

22 Plaintiff understands and acknowledges that the significance and consequence of its waiver of
23 California Civil Code Section 1542 is that even if Plaintiff and/or, with respect to the matters raised
24 in the Notice Letters, any person or entity on whose behalf they purport to act or could act, suffers
25 future damages or harm arising out of, resulting from, or related directly or indirectly to, in whole or
26 in part, the matters covered in Sections 4.2, 4.3 and 4.4 above ("Damages"), Plaintiff and any person
27 or entity on whose behalf they purport to act or could act, will not be able to make any claim for such
28 Damages against the Settling Defendant or any of its customers, distributors, wholesalers, retailers, or
any other person in the course of doing business who may use, maintain, distribute or sell the
Covered Products. Furthermore, Plaintiff acknowledges that it intends these consequences for any

such Damages which may exist as of the date of this release but which Plaintiff does not know exist,
2 and which, if known, would materially affect its decision to enter into this Consent Judgment,
3 regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or
4 any other cause, no matter how justifiable such cause may be.

5 4.8 The Settling Defendant waives all rights to institute any form of legal action against
6 Plaintiff, its officers, directors, attorneys, consultants and representatives for all legal actions
7 undertaken or statements made in the course of such legal actions to seek enforcement of this action
8 and judgment.

9 5. **ENFORCEMENT OF JUDGMENT**

10 5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
11 hereto by means of noticed motion or order to show cause before the Superior Court of San Francisco
12 County.

13 6. **MODIFICATION OF JUDGMENT**

14 6.1 This Consent Judgment may be modified only upon written agreement of the Parties
15 and upon entry of a modified amended Consent Judgment by the Court, or upon motion of any Party
16 as provided by law and upon entry of a modified amended Consent Judgment by the Court.
17 Notwithstanding the immediately preceding sentence or any other term or provision of this Consent
18 Judgment, if Plaintiff or any affiliated entity, or the California Attorney General, enters into, or
19 agrees to in writing, or is otherwise bound by injunctive relief terms or provisions relating to the
20 provision of Proposition 65 warnings for Covered Products, with regard to their Cords, which, taken
21 together, are more favorable to the defendant(s) than the terms or provisions that this Consent
22 Judgment provide for a Covered Product of like kind and characteristics with respect to its
23 thermoset/thermoplastic-coated electrical cord and use, the terms of injunctive relief provided for in
24 Section 7 of this Consent Judgment shall automatically be deemed to have been modified to add such
25 more favorable terms or provisions as an option which the Settling Defendant may elect for
26 compliance with this Consent Judgment.

7. INJUNCTIVE RELIEF

2 7.1 Covered Products shall be deemed to comply with Proposition 65 and be exempt
3 from any Proposition 65 warning requirements if the Cords that are sold as a part of or in association
4 with those Covered Products meet the following criteria: (a) the surface contact layer of the Cords
5 shall have no lead as an intentionally added constituent; and (b) the surface contact layer of the Cords
6 shall have lead content by weight of no more than 0.03% (300 parts per million, or "300 ppm"). The
7 Settling Defendant may comply with the above requirements by relying on information obtained from
8 its suppliers regarding the content of the surface contact layer of the Cords, provided such reliance is
9 in good faith. Obtaining test results showing that the lead content is no more than 0.03%, using a
10 method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection)
11 of less than 300 ppm shall be deemed to establish good faith reliance. Provided that the level of
12 quantitation requirement set forth in the preceding sentence is met, the test protocol and methods
13 described on Exhibit D hereto may be relied on. Nothing in the preceding two sentences shall
14 preclude a Settling Defendant from establishing good faith reliance by an alternative means.

15 7.2 Covered Products manufactured and shipped for distribution to or sale in California
16 on or after the Effective Date that do not meet the warning exemption standard set forth in
17 Section 7.1 of this Consent Judgment and are not exempt pursuant to Section 7.3 shall be
18 accompanied by a warning as described in Section 7.4 below. For purposes of this Section, 90 days
19 after the entry of this Consent Judgment shall be considered the "Effective Date."
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1 7.3 The following Covered Products are deemed to be exempt from any Proposition 65
2 warning requirements with respect to Cords: (a) Covered Products which because of their size,
3 weight or function have Cords that are handled only infrequently (such as upon their installation in a
4 setting where they are not typically plugged and unplugged) (“Infrequently Handled Products”);
5 (b) those Covered Products that: (i) are sold at retail before the Effective Date; or (ii) are distributed
6 or shipped for sale outside the State of California; (c) Covered Products that use Cords only as
7 internal components not normally accessible to the consumer during ordinary use; and/or (d) Covered
8 Products which contain the Proposition 65 Chemical only as part of the inner conductor or other
9 component not normally accessible to the consumer during ordinary use. Exhibit E contains a list of
10 Covered Products/Product types that are deemed to meet the criteria for Infrequently Handled
11 Products set forth in this Section 7.3 and are therefore exempt. Plaintiffs have previously provided
12 the California Attorney General’s Office and the Settling Defendant with a list of Covered
13 Products/Product types that are deemed not to meet the criteria for Infrequently Handled Products set
14 forth in this Section 7.3 and therefore are not exempt (“Non-Exempt Products List”). Exhibit E and
15 the Non-Exempt Products List may be used as guidance in determining whether other Covered
16 Products meet these criteria; Exhibit E and the Non-Exempt Products List may also be used by the
17 Parties in the course of dispute resolution pursuant to Section 9. The Parties acknowledge that
18 common usage of the terms “portable” and “non-portable” do not affect the classification of any
19 Covered Products under this Consent Judgment. Covered Products may be considered Infrequently
20 Handled Products regardless of their weight or the likelihood that they may be used while moving,
21 whether that be on a person, in a car, on an airplane or otherwise.

22 7.4 Should the Settling Defendant’s Covered Products require Proposition 65 warnings
23 under Section 7.2, the Settling Defendant shall, except as otherwise provided in Section 7.5 below,
24 either provide one of the warnings described below or any other Proposition 65 warning that has been
25 reviewed and approved in writing by the California Attorney General for use with Covered Products
26 regarding their thermoset/thermoplastic-coated wires and/or cables:
27
28

1 “**WARNING**: This product contains chemicals, including lead, known to the State of
2 California to cause [cancer, and] birth defects or other reproductive harm. *Wash*
3 *hands after handling.*”

4 or

5 “**WARNING**: Handling the cord on this product will expose you to lead, a chemical
6 known to the State of California to cause [cancer, and] birth defects or other
7 reproductive harm. *Wash hands after handling.*”

8 or

9 “**WARNING**: The power cord on this product contains lead, a chemical known to the
10 State of California to cause [cancer, and] birth defects or other reproductive harm.
11 *Wash hands after handling.*”

12
13 The word “**WARNING**” shall be in all capital letters and in bold typeface. The hand-washing
14 admonition shall be in bold typeface and italicized. Inclusion of the bracketed words “cancer, and” in
15 the above warning shall be at the Settling Defendant’s option.

16 7.5 Unless otherwise indicated herein, the warning required or authorized in Sections 7.4
17 shall be given by having it: (a) affixed to the Covered Product itself or to the unit package of such
18 Covered Product; (b) printed on the Covered Product itself or on the unit package of such Covered
19 Product; (c) displayed on an internet site for those units of Covered Products sold on the internet;
20 (d) included in the owner’s manual if the conditions set forth in Section 7.9 below are satisfied
21 (“Owner’s Manual Warning”); or, (e) printed on the invoice issued directly to the consumer by the
22 Settling Defendant to confirm the sale, where the Settling Defendant sells Covered Products directly
23 to consumers by telephone, mail order, or internet sale, but never has physical possession of the
24 Covered Product or its packaging.

25 7.6 If the warning is printed on the product, package label, or invoice, then the warning
26 shall be contained in the same section of the label that contains other safety warnings, if any,
27 concerning the use of the Covered Product or near its displayed price and/or UPC code. Such
28 warning shall be prominently affixed to or printed on each such Covered Product, its label or package

1 or invoice, and displayed with such conspicuousness, as compared with other words, statements,
2 designs, or devices on such Covered Product, its label, package or display or invoice as to render it
3 likely to be read and understood by an ordinary individual under customary conditions of purchase or
4 use. With respect to the preceding sentence, the type size of any warning required by paragraph 7.4
5 must be legible, but otherwise need not be larger than any other warning language used in
6 conjunction with the Covered Product in question and its relative size may take into account the
7 nature, immediacy, and acuteness of the risks for which other warnings are given. If the size of a
8 Covered Product and its packaging is such that a warning required by this Consent Judgment cannot
9 physically be printed on its non-transparent portion in a legible size, the warning may be printed on a
10 separate piece of paper or cardstock and inserted into the Covered Product's packaging, provided that
11 i) the cardstock or paper containing the warning is not white or uncolored and contains only the
12 warning language, and ii) a substantial portion of the exterior of the packaging material is
13 transparent.

14 7.7 If a warning is provided on the internet pursuant to (c) above, the warning message
15 shall be displayed (or, upon the internet site user's identification as a California resident, such as
16 when the user types in a zip code, automatically appear) either: (a) on the same page on which the
17 Covered Product is displayed, (b) on the same page as the order form for the Covered Product, or (c)
18 on the same page as the price for the Covered Product.

19 7.8 If the warning is given in the owners manual pursuant to Section 7.9 below, it shall be
20 located in one of the following places in the manual: the outside of the front cover; the inside of the
21 front cover; the first page other than the cover; or the outside of the back cover. The warning shall be
22 printed or stamped in the manual or contained in a durable label or sticker affixed to the manual in a
23 font no smaller than the font used for other safety warnings in the manual. Alternatively, the warning
24 may be included in a safety warning section of the owner's manual consistent with specifications
25 issued by Underwriters Laboratories.

26 7.9 A warning in the owner's manual of a Covered Product may be used to satisfy the
27 warning requirements of this Section 7 only under the following circumstances: the Covered Product
28 (i) may cause serious injury or bodily harm (other than by means of fire or electrocution) unless used

1 as directed; or (ii) is sophisticated, difficult to understand or install, set-up, or assemble; or (iii) has
2 one or more features a consumer must read about in order to know how to program or use the
3 Covered Product. However, a Covered Product may not utilize an owner's manual warning if it
4 meets the following criteria: (a) the Covered Product is unlikely to cause serious injury or bodily
5 harm other than by means of fire or electrocution; (b) the Covered Product is easily assembled or
6 programmed by an ordinary consumer without need to reference instructions; and (c) fundamental
7 operation of the Covered Product is easily understood and commonly performed by an ordinary
8 consumer without training or need to reference operating instructions. Exhibit F contains a list of
9 Covered Products/product types for which Owner's Manual Warnings are deemed to be an allowable
10 method of communicating the warnings required by this Section 7. Plaintiffs have previously
11 provided the California Attorney General's Office and the Settling Defendant with a list of Covered
12 Products/product types for which Owner's Manual Warnings are deemed not to be an allowable
13 method of communicating the warnings required by this Section 7 (the "Non-Owner's Manual
14 Product List"). Exhibit F and the Non-Owner's Manual Product List may be used as guidance in
15 determining whether the criteria for use of owner's manual warnings set forth in this Section are
16 satisfied. Exhibit F and the Non-Owner's Manual Products List may also be used by the Parties in
17 the course of dispute resolution pursuant to Section 9.

18 7.10 The Settling Defendant may provide an Owner's Manual Warning on any Covered
19 Products/product types, except for those listed on the Non-Owner's Manual Product List, that satisfy
20 the criteria in Section 7.9, whether or not that Covered Product or product type is listed on Exhibit F.
21 Settling Defendant shall provide to Plaintiff, by certified mail or other confirmable delivery, a list of
22 those Covered Products for which an owners manual warning is proposed to be given. Plaintiff shall,
23 within 60 days, notify Settling Defendant as to whether Plaintiff agrees that an owner's manual
24 warning is appropriate. In the event that Plaintiff determines that an Owner's Manual Warning is not
25 appropriate, it shall provide a written explanation of the basis therefore. In the event that the Settling
26 Defendant disagrees with Plaintiff's determination the settling defendant may elect to invoke the
27 Dispute Resolution process provided for in Section 9 hereof. Products not existing as of the
28 Effective Date that are introduced for sale after January 1, 2006 may use a owner's manual warning if

1 approved in writing by the California Attorney General's office, following 60 days prior notice to
2 Plaintiff.

3 7.11 The requirement for product labeling, set forth herein, is imposed pursuant to the
4 terms of this Consent Judgment. The Parties recognize that product labeling is not the exclusive
5 method of providing a warning under Proposition 65 and its implementing regulations.

6 8. **ADDED INFREQUENTLY HANDLED PRODUCTS**

7 8.1 Exhibit E contains a list of Infrequently Handled Products that are deemed to meet
8 the criteria of Section 7.3(a) and, therefore, deemed to be exempt from Proposition 65 warning
9 requirements. The Products appearing on Exhibit E and the Non-Exempt Products List may be used
10 as guidance to interpret the criteria of Section 7.3(a). A Covered Product not appearing on the Non-
11 Exempt Products List, is exempt if it meets the criteria of Section 7.3(a) whether or not it appears on
12 Exhibit E.

13 8.2 At least 60 days prior to retail sale, Settling Defendant shall provide to Plaintiff by
14 certified mail or other confirmable delivery, a list of those Covered Products which do not exist as of
15 the Effective Date for which Settling Defendant contends are infrequently handled products for which
16 no warning is required. Plaintiff shall, within 60 days, notify Settling Defendant as to whether
17 Plaintiff agrees that that the Covered Product is infrequently handled and does not require a warning.
18 In the event that Plaintiff determines that a warning is required it shall provide a written explanation
19 of the basis therefore. In the event that the Settling Defendant disagrees with Plaintiff's
20 determination the settling defendant may elect to invoke the Dispute Resolution process provided for
21 in Section 9 hereof. Products not existing as of the Effective Date that are introduced for sale after
22 January 1, 2008 may be sold without a warning because they are infrequently handled if so approved
23 in writing by the California Attorney General's office, following 60 days prior notice to Plaintiff.

24
25 9. **DISPUTE RESOLUTION**

26 9.1 Wherever this Consent Judgment provides that the Settling Defendant may invoke
27 the Dispute Resolution process or file a motion to have the Court resolve an issue, the Settling
28 Defendant seeking a resolution shall first mail (by certified mail) and fax a notice to Plaintiff, setting

1 forth the dispute and the basis for the Party's position. The Parties interested in the dispute shall then
2 meet and confer in good faith within sixty (60) days to determine whether the dispute may be
3 resolved in order to avoid further litigation of the issue, unless both Parties waive, in writing, notice
4 and the opportunity to meet and confer. In the event that Plaintiff fails to meet and confer within the
5 sixty (60) day period, the Settling Defendant's position shall be deemed to have prevailed. In the
6 event that, after meeting and conferring, Plaintiff disapproves or disagrees with a position taken by
7 the Settling Defendant, Plaintiff shall notify the Settling Defendant in writing, sent by an overnight
8 delivery service requiring a signature upon delivery, within 14 (fourteen) days of meeting and
9 conferring. Should the Plaintiff do so and should the Settling Defendant wish to pursue its position,
10 the Settling Defendant shall then seek to have the California Attorney General concur with the
11 Settling Defendant's position. If the California Attorney General concurs in writing with the Settling
12 Defendant, the Settling Defendant shall provide notice thereof to Plaintiff and the Settling
13 Defendant's view shall prevail. If, however, the California Attorney General does not concur with
14 the Settling Defendant within ninety (90) days of the date on which the Settling Defendant sought the
15 California Attorney General's concurrence, the Settling Defendant shall have the right to bring the
16 issue to the Court by noticed motion for its de novo review and, provided that it is proceeding in good
17 faith, shall not be subject to further penalties during the pendency of such motion and/or if the motion
18 is not contested by Plaintiff. In the event that the Plaintiff chooses to contest such a motion and
19 prevails, 1) the Settling Defendant shall be deemed to be in compliance with the terms of this
20 Consent Judgment provided that it implements the warning requirements imposed as the result of the
21 Court's determination within ninety (90) days that the Court's determination is final; and 2) Plaintiff
22 may elect to seek to recover its attorney fees incurred in association with such motion as provided for
23 by California Civil Procedure Code Section 1021.5.

24 10. **TERMINATION**

25 The Settling Defendant may elect (but is not required) to terminate its participation in this
26 Consent Judgment beginning on January 31, 2009 or any date thereafter by means of filing with the
27 court and serving on the Plaintiff, the California Attorney General, and counsel of record to the
28 Settling Defendant with a notice of termination. In the event of the exercise of such an election, the

1 Settling Defendant's obligations and rights and benefits hereunder shall immediately be deemed to
2 cease to exist.

3 11. APPLICATION OF JUDGMENT

4 The obligations of this Consent Judgment shall apply to and be binding upon all plaintiffs,
5 acting in the public interest pursuant to Health and Safety Code section 25249.7(d) and on behalf of
6 the general public pursuant to Business and Professions Code section 17204, and the Settling
7 Defendant and the successors or assigns of any of them.

8 12. AUTHORITY TO STIPULATE

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

12 13. NOTICES

13 Whenever a notice is called for by this Consent Judgment, it shall be provided to the Settling
14 Defendant at the addresses identified in Exhibit B hereto. If any Party desires to change the
15 individual and/or address designated to receive notice on its behalf, such Party shall provide notice to
16 all other Parties pursuant to the terms of this Section.

17 14. RETENTION OF JURISDICTION

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

19 15. ENTIRE AGREEMENT

20 This Consent Judgment contains the sole and entire agreement and understanding of the
21 Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
22 commitments and understandings related hereto. No representations, oral or otherwise, express or
23 implied, other than those contained herein have been made by any Party hereto. No other agreements
24 not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the
25 Parties.
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1 16. GOVERNING LAW

2 The validity, construction and performance of this Consent Judgment shall be governed by the
3 laws of the State of California, without reference to any conflicts of law provisions of California law.

4 17. COURT APPROVAL

5 If this Consent Judgment is not approved and entered by the Court, or if the entry of this Consent

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1 Judgment is successfully challenged, this Consent Judgment shall be of no force or effect, and cannot
2 be used in any proceeding for any purpose.

3
4 IT IS SO STIPULATED:

5 DATED: _____

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

6
7
8 By: see previous page
William Verick

9
10 DATED: 4/27/06

E. MISHAN & SONS, INC.

11
12
13 By:  _____

14
15 IT IS SO ORDERED.

16 DATED: _____

Peter J. Busch

17
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JUDGE, SUPERIOR COURT OF CALIFORNIA

1 Judgment is successfully challenged, this Consent Judgment shall be of no force or effect, and cannot
2 be used in any proceeding for any purpose.

3
4 IT IS SO STIPULATED:

5 DATED: 4/28/06

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

6
7
8 By: 
William Verick

9
10 DATED: _____

E. MISHAN & SONS, INC.,

11
12
13 By: See next page

14
15 IT IS SO ORDERED.

16 DATED: _____

See next page
JUDGE, SUPERIOR COURT OF CALIFORNIA

EXHIBIT A
(Copy Of 60-Day Notice Letter)

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1 EXHIBIT B
2 (Address For Notice Under Consent Judgment)

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4 E. MISHAN & SONS

5
6
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8 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

9 William Verick
10 Klamath Environmental Law Center
11 424 First Street
12 Eureka, CA 95501
13 Tel: 707-268-8900
14 Fax: 707-268-8901
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1 EXHIBIT C
2 (Optional List of Certain Brand Names and Product Type)

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4 A. Brand Names:

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6 B: Product Types:

7 E. MISHAN products with power cords including, but not limited to, the following products:
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4 EXHIBIT D
5 (Exemplar of Optional Testing Protocol)
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9 Step 1: Cut 3-inch section of a cable that has not previously been used or
10 wiped.

11 Step 2. On multiconductor cables, remove the insulated conductors and any
12 other inner components from the 3-inch section of the cable. On single insulated
13 conductors, remove the metallic conductor from the 3-inch section of the cable.
14 Place the outer nonmetallic covering into a lead free receptacle (such as a
15 pre-labeled resealable plastic food storage bag).

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

18 Step 4. Prepare samples for laboratory analysis according to EPA Method
19 160.4 or 3050. Samples must be completely digested before proceeding to step 5.

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

21 Step 6. Compute the arithmetic mean from the three samples.
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EXHIBIT E
(Infrequently Handled Products)

1	208- and 220-volt appliances (unless appliance is portable)
2	AC Adapters for foreign outlets and other voltage converters
3	Adjustable beds
4	Air Conditioner
5	Air Purifier
6	Amplifier for home stereo systems (including associated power and interconnector cords, but not including interconnector cords for microphones or musical instruments)
7	Answering machine
8	Audio mixer and associated power cords for in-studio, non-portable mixer units
9	Audio or video cable and adapter cords
10	Audio switcher power cords, unless designed to plug into front of audio/video appliance
11	Audio/video equipment and associated power and patch/pin cords (if A/V equipment is (i) not portable, e.g., no handle or carrying case, (ii) is not designed to plug into front of audio/video appliance, and (iii) is otherwise designed for long term installation)
12	Auto power adapters and cord, unless designed to plug into cigarette lighter or similar in-dash power source
13	Automotive wires and cables (installed)
14	Back cushion massager
15	Bathtub bubble mat
16	Bathtub spas
17	Battery Connection Cords (internal)
18	Battery charger units (except those used for automobiles)
19	Beard Trimmer (cordless models only)
20	Blender (not including hand-held models)
21	Bread Machine
22	Broadcast Equipment, and associated power and interconnector cords (if designed for in-studio or other non-portable installation)
23	Building wire (installed)
24	Calculator
25	Caller ID Unit
26	Can Opener
27	Carafes/Decanters, if cord attaches to separate base unit
28	Carbon Monoxide Detectors
29	Cash Registers
30	CATV Receiver Power Cords
31	CB radio/antenna cords (not handsets)
32	CD Player/changer (non-portable units only)
33	CD/DVD Home Theater Systems
34	Cielo Bath
35	Circuit Cable
36	Clock
37	Coffee Maker
38	Color Imaging System Power Cord & Cable (non-portable and not for use with portable computer system)
39	Combo Wash/Dryer

1	40	Compactor
2	41	Computer Adapter Cords (not for laptops, and not designed to plug into front of system)
3	42	Computer Cables (in walls)
4	43	Computer CD/DVD Drives (installed, not used with laptops)
5	44	Computer docking system
6	45	Computer Keyboard
7	46	Computer modem line (data and power)
8	47	Computer monitor cable
9	48	Computer Mouse (cordless)
10	49	Computer Peripheral AC Adaptor cord and I/F cable (not including those for portable computers or portable peripheral devices)
11	50	Computer Peripheral PCMCIA Card Cord (not including those for portable computers)
12	51	Computer Peripheral Wires & Cables (not including those for portable computers and those designed to plug into front of desktop computer (e.g., USB cords))
13	52	Computer Scanners (not including those designed for portable computers)
14	53	Computer Servers and External Storage Units
15	54	Computer Speaker Cords (not including those used with portable computers)
16	55	Computer Tape Drives
17	56	Controller/Tuner Power Cord
18	57	Convactor Power Cords
19	58	Cooktop Power Cords (not including those used with small portable hot plates)
20	59	Copier
21	60	Cordless Toothbrush
22	61	Data Logger Cable (unless included with portable device)
23	62	Deep fryer
24	63	Desktop computer power/patch/pin cords (unless designed to plug into front of computer (e.g., USB cords))
25	64	Digital imaging equipment (non-portable and not for use with portable computer system)
26	65	Digital media editor power cords/connecting cables (for installed, non-portable media editor units)
27	66	Digital Sender (digitizes and transmits images), for installed, non-portable units
28	67	Digital Tuner (non-portable units only)
	68	Dishwasher
	69	Drink Mixer (not hand-held)
	70	Dryer
	71	DVD (non-portable units only)
	72	DVD Audio/Video Cable (unless designed to plug into front of system)
	73	DVD Recorder Power/Interconnector Cords (non-portable units only)
	74	Egg Cooker
	75	Electric Bedding
	76	Electric Grill - Indoor or Outdoor
	77	Electric Recliners/Massage Chairs
	78	Electric Sewing Machine (non-portable units only, i.e., those which have no handle or case)
	79	Electric Thermos Pot (if cord attaches to separate base unit)
	80	Electric/Digital Pianos, Organs (non-portable units only)
	81	Electrolysis Water System (corded base unit only)
	82	Electronic Musical instruments, including associated power and adaptor cords (non-portable units only)
	83	Electronic White Board/Print Board Power Cords and Cables

1	84	Espresso & Cappucino Makers
2	85	Facial Spas
3	86	Factory Automation Equipment (industrial systems, not for home use)
4	87	Fan/Heater Products (non-portable models only; i.e., in excess of 10 pounds, as packaged, or having blade diameter 9 inches or greater (rounded to the nearest whole inch) or smaller units which otherwise are regularly installed, or not typically moved from place to place).
5	88	Fax Machines
6	89	Fire Alarm cable
7	90	Fish Roaster
8	91	Flatbread Maker
9	92	Food Processor/Chopper (not including hand-held models)
10	93	Fountain, Decorative
11	94	Freezer
12	95	Garbage Disposals and associated cords (whether sold separately or with product)
13	96	Generators (large systems with only grounding wire)
14	97	Hair Clippers (cordless models only)
15	98	Hair Dryer (only models with retractable cord)
16	99	Hair setter (rollers only, not curling irons)
17	100	Ham and Two-Way Radio and Accessories and Adapters (not handset cords, unless microphone is designed on stand with switch)
18	101	Hard Disk Recorder peripheral and power cords (not including those for portable computers)
19	102	Headphones (cordless models only)
20	103	Headset with Earphone and Microphone (cordless models only)
21	104	Hole punch
22	105	Hot Lather Machine
23	106	Hot Lotion dispenser
24	107	Hot Pot/Kettle/Tea Brewer (if cord attaches to separate base unit)
25	108	Hot Water Dispenser
26	109	Humidifier/Dehumidifier
27	110	Ice Cream Maker
28	111	Ice Maker
	112	Indoor and outdoor phone cable (if designed for permanent installation)
	113	Intercoms (non-hand-held models only)
	114	Inverters/other power supplies (non-automotive uses)
	115	Iron (cordless only)
	116	Juicer/Juice extractor (non-hand-held models only)
	117	LCD Projector (CRT Monitor, receives data from computer) (except for use with portable computer)
	118	Letter opener
	119	Lighting (including tabletop and floor lamps, spotlights, or ceiling lighting, not holiday string lights or clip-on lights)
	120	Magnetic Card Reader/Writer including associated power cord and cable
	121	Meat Grinder (not hand-held models)
	122	Meat Slicer (not hand-held Electric Knives)
	123	Microphone (only including cords powering base unit of cordless microphone system)
	124	Microwave Oven
	125	Mini Speaker System including associated connection cords (not including those for use with laptop computers or other portable devices)
	126	Mixer (non-hand-held models only)

1	127	Mobil telephone battery cables (internal wires and cords only)
2	128	Mobile telephone accessories (only those using corded base charging unit or permanently installed in automobiles)
3	129	Mobile video screens designed for permanent installation (such as for use in automobiles or boats)
4	130	Multi-function office support device (combines functions such as copier, printer, fax machine, PBX, voice mail into one)
5	131	Neon sign & oil burner ignition cable
6	132	NIC/Modem cables
7	133	Optical Cable/Stereo Optical Cords (unless designed to plug into front of system)
8	134	Optical Disc AC Adapter (non-portable and not for use with portable computer systems)
9	135	Optical Disc Power Cords (non-portable and not for use with portable computer systems)
10	136	Ovens
11	137	Over-Range Microwave Ovens/Hoods
12	138	Paper shredder
13	139	Parrafin/wax Bath for Hands
14	140	Patch/pin cords, and cables, adapter cord, coaxial cable, A/V cord, S-VHS cord (when sold with device otherwise excluded)
15	141	Pencil sharpener
16	142	Personal Hygiene System and assoicated power cord
17	143	Pest Repeller
18	144	Pet Cage Dryers
19	145	Portable Dishwasher
20	146	Portable heater (only if designed for permanent installation)
21	147	Portable Washer
22	148	Postage meters
23	149	Postal scales
24	150	Potpourri heater
25	151	Power bases for charging wireless devices (if designed for long term installation)
26	152	Power tools (corded, cordless, stationary, or portable)
27	153	Power/control/instrumentation tray cable (except for non-permanently-installed public address systems)
28	154	Pressure Cooker
	155	Printer cables
	156	Printer power cord
	157	Projector, non-portable (no handle or carrying case)
	158	Public Address Amplifier and Accessories (non-portable or otherwise designed for permanent or long term installation)
	159	Radiator
	160	Radios with attached cord and without handles (including clock radios)
	161	Range
	162	Range Hoods/Vent
	163	Rechargeable Flashlights
	164	Rechargeable Lanterns
	165	Refrigerator
	166	Rice Cake Maker
	167	Rice Cooker
	168	Riser/Plenum cable (if designed for permanent/long term installation)

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210	Ignition Cable for Gas Tube Signage
211	Hook-Up Wire (intended for permanent or long-term installation)
212	Telephone Switching Station Cable
213	Loop Detector Wire Used in Traffic Counting
214	Utility Cable and Wire (Power and Communications)
215	Signal Cable
216	Power/Control/Instrumentation/Signal CableUtility Cable and Wire (Power and Communications)

EXHIBIT F
(Examples of Products For Which Warnings May Be Given In Owner's Manual)

1	Patch/pin cords, and cables, adapter cord, coaxial cable, A/V cord, S-VHS cord (when sold concurrently with equipment that also appears on this list)
2	AC adaptor cords (when sold concurrently with equipment that also appears on this list)
3	Air Pumps
4	Power and patch cords for professional/commercial audio/video equipment used in field (when sold concurrently with the equipment)
5	Interconnection or patchcables for portable audio/video/computer components or peripheral devices (when sold concurrently with equipment that also appears on this list)
6	Power adapters and cord for use with automotive cigarette lighter or similar power outlet (when sold concurrently with equipment that also appears on this list)
7	Power and interconnector cords for broadcast equipment used in field (when sold concurrently with the broadcast equipment)
8	Coffee warmer/urn (party-size)
9	Adapter and power cords for laptop and desktop computers/peripherals (when sold concurrently with computer or peripheral device)
10	Computer Joystick (owner's manual warning authorized only where reference to the owners manual is necessary to program or install software for use; alternatively, warning that otherwise would be placed in owner's manual must appear as part of on-screen programming/installation instructions)
11	Computer Mouse (when sold concurrently with equipment that also appears on this list)
12	Digital camera cords and cables (when sold concurrently with digital camera)
13	Portable DVD Player (e.g., with handles/carrying case)
14	Power and adaptor cords for portable electronic musical instruments and keyboards (when sold concurrently with the electronic musical instrument or keyboard)
15	Foot Massagers (wet)
16	Laptop Computer
17	Sandwich Maker
18	Telephone handset cord (handset-to-phone portion only where sold concurrently with telephone with programmable features)
19	Thermoelectric coolers
20	Travel Steamer
21	Vacuum cleaner, deep cleaner/extractor and/or carpet shampoo machine (both regular or retractable cord models)
22	Vaporizer
23	Video Camera power cords, adaptor cords (e.g., AC, auto), charger cords, connecting cables (when sold concurrently with video camera)
24	Video game accessories (owner's manual warning authorized where: i) accessory is sold with another product for which owners manual warnings are allowed; or ii) reference to the owners manual is necessary to program or install software for use). Warning that would otherwise be placed in owner's manual may alternatively be displayed as part of on-screen programming/installation instructions where use of such are necessary for initial product use.

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25	Stand alone video mixer or switcher with non-integrated mouse
26	Portable warming tray
27	Cord of handheld waxers used for hair removal
28	Mobile telephones
29	Camera Cords and cables (only if sold concurrently with camera)
30	Telephones with programmable features

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3 Eureka, CA 95501
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370 Grand Avenue, Suite 5
6 Oakland, CA 94610
Telephone: (510) 271-0826
7 Facsimile: (510) 271-0829

8 Attorneys for Plaintiff
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION
9

ENDORSED
FILED
San Francisco County Superior Court

JUN 16 2006

GORDON PARK-LI, Clerk
BY: ERICKA LARNAUTI
Deputy Clerk

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12
13 COUNTY OF SAN FRANCISCO
14

15 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

16 Plaintiff,

17
18 vs.

19 SCUNCI INTERNATIONAL, INC., et al.,

20 Defendants.
21 _____/

CASE NO. 437581

[Proposed] ORDER
APPROVING SETTLEMENT
(E. Mishan & Sons)

Date: June 16, 2006
Time: 9:30 a.m.
Dept. No.: 301

22
23 Plaintiff's motion for approval of settlement and entry of Consent Judgment as to
24 Defendant E. Mishan & Sons was heard on regular noticed motion on June 16, 2006, at 9:30 a.m.
25 in Department No. 301. Having reviewed the pleadings and the moving papers, having reviewed
26 the terms of the proposed consent judgment and having considered the arguments of counsel, the
27 Court finds as follows:

28 1. The warnings and reformulation the Consent Judgment requires comply with the

