

COPY

WILLIAM VERICK, SBN 140972
KLAMATH ENVIRONMENTAL LAW CENTER
FREDRIC EVENSON, SBN 198059
LAW OFFICE OF FREDRIC EVENSON
424 First Street
Eureka, California 95501
Telephone: (707) 268-8900
Facsimile: (707) 268-8901

DAVID WILLIAMS, SBN 144479
BRIAN ACREE, SBN 202505
Public Interest Lawyers Group
2070 Allston Way, Suite 300
Berkeley, CA 94704
Telephone: (510) 647-1900
Facsimile: (510) 6471905

Attorneys for Plaintiff,
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

No. 440720

PLAINTIFF,

PROPOSED CONSENT JUDGMENT AS
TO DEFENDANT R&B, INC.

V.

R&B, INC., et al.,

DEFENDANTS.

1. INTRODUCTION

1.1 On or about December 29, 2003, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel"), provided a 60-day notice of violation ("Notice dated December 29,

ENDORSED
FILED
San Francisco County Superior Court

OCT 17 2005

GOPPON PARK LI, Clerk
BY: _____ DEPUTY CLERK
Deputy Clerk

2003") to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and defendant R&B, Inc. ("Defendant"), alleging that Defendant was in violation of California Health and Safety Code Section 25249.6 because it, through the manufacture, distribution, and/or sale of galvanized products ("Galvanized Covered Products"), was in violation of certain provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code sections 25249.5 et seq. ("Proposition 65"), by knowingly and intentionally exposing persons to chemicals, including lead and lead compounds, lead phosphate, lead acetate and lead subacetate, (collectively "lead"), known to the State of California to cause cancer and/or birth defects or other reproductive harm, without first providing a clear and reasonable warning.

1.2 On or about December 31, 2004, plaintiff Mateel, provided a 60-day notice of violation ("Notice dated December 31, 2004") to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and Defendant, alleging that Defendant, through sales in California of hand tools, the handles for which are coated with polyvinyl chloride ("PVC"), including but not limited to crimping tools and wire strippers, that are manufactured, distributed or sold by Defendant ("Tools Covered Products"), was in violation of certain provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code sections 25249.5, et seq. ("Proposition 65"), by knowingly and intentionally exposing persons to chemicals, including lead, known to the State of California to cause cancer and/or birth defects or other reproductive harm, without first providing a clear and reasonable warning.

1.3 Also on June 4, 2004, the Mateel Environmental Justice Foundation ("MEJF") and its attorneys, Klamath Environmental Law Center ("KELC") sent a 60 Day Notice Letter ("Notice dated June 4, 2004") to the Office of the California Attorney General of the State of

California ("California Attorney General"), all California counties' District Attorneys and all City Attorneys of California cities with populations exceeding 750,000, (collectively, "Public Enforcers"), charging Defendant with violating the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq. ("Proposition 65"), in their sale of devices that use external wires and cables coated with polyvinyl chloride ("PVC") (Wires Covered Products"). Specifically, MEJF charged that persons handling the PVC-coated wires and cables were exposed to certain chemicals, listed under Proposition 65, including cadmium, hexavalent compounds of chromium, vinyl chloride, lead and lead compounds, lead acetate, lead phosphate, lead subacetate and di(2ethylhexyl) phthalate.

1.4 On or about April 25, 2005, plaintiff Mateel, acting in the public interest pursuant to Health and Safety Code section 25249.7(d) Mateel, filed the Complaint for Civil Penalties and Injunctive Relief in the present action ("Tools Complaint") against Defendant based on the allegations contained in the Notice regarding plastic-coated hand tools. On April 6, 2005 Mateel filed a Complaint for Civil Penalties and Injunctive Relief in San Francisco County Superior Court, Case No. 440165, based on the Notice regarding plastic-coated cords ("Cords Complaint"). The parties intend to settle all claims for both of these actions in this single Consent Judgment and, to that end, Mateel has dismissed without prejudice the Cords Complaint as against Defendant R&B, Inc.

1.5 For purposes of this Consent Judgment, Mateel and Defendant stipulate that this Court has jurisdiction over the allegations of violations contained in both the Tools and Cords Complaints ("the Complaints") and has personal jurisdiction over 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 and final settlement and

resolution of the allegations contained in the Complaints and of all claims which were or could have been raised based on the facts alleged therein or arising therefrom.

1.6 Mateel and Defendant enter into this Consent Judgment pursuant to a full and final settlement of disputed claims between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not constitute an admission with respect to any allegation made in the Notice Dated December 29, 2003, the Notice Dated December 31, 2004, the Notice Dated June 4, 2004, or the Complaint, each and every allegation of which 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 Defendant.

2. INJUNCTIVE RELIEF-REFORMULATION FOR TOOLS COVERED PRODUCTS

2.1 No later than July 20, 2006, Defendant shall cease sales of Tools Covered Products with PVC coated handles in California unless the Tools Covered Products meet the following criteria:

- (a) The formulation of PVC used shall have no intentionally added lead.
- (b) A random sample of the bulk PVC used to manufacture the Tools Covered Products has been tested for lead content and shown lead content by weight of less than 0.02%, or 200 parts per million ("ppm"), using a test method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 200 ppm.

2.2 Defendant may comply with the above requirements by relying on information obtained from its suppliers of the tools and PVC utilized on the handles thereof provided such reliance is in good faith.

3. INJUNCTIVE RELIEF-REFORMULATION FOR WIRES COVERED PRODUCTS

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

3.2 Wires Covered Products manufactured and shipped for distribution to or sale in California on or after July 20, 2006 that do not meet the warning exemption standard set forth in Section 3.1 of this Consent Judgment and are not exempt pursuant to Section 3.3 shall be accompanied by a warning as described in Section 3.4 below. For purposes of this Section, one year after the entry of this Consent Judgment July 20, 2006 shall be considered the "Effective Date."

3.3 The following Wires Covered Products are deemed to be exempt from any Proposition 65 warning requirements with respect to Cords: (a) Wires Covered Products which because of their size, weight or function have Cords that are handled only infrequently (such as

upon their installation in a setting where they are not typically plugged and unplugged) ("Infrequently Handled Products"); (b) those Wires Covered Products that: (i) are sold at retail before the Effective Date; or (ii) are distributed or shipped for sale outside the State of California; (c) Wires Covered Products that use Cords only as internal components not normally accessible to the consumer during ordinary use; and/or (d) Wires Covered Products which contain the Proposition 65 Chemical only as part of the inner conductor or other component not normally accessible to the consumer during ordinary use. Exhibit B contains a list of Wires Covered Products/Product types that are deemed to meet the criteria for Infrequently Handled Products set forth in this Section 3.3 and are therefore exempt. Plaintiffs have previously provided the California Attorney General's Office and the Settling Defendant with a list of Wires Covered Products/Product types that are deemed not to meet the criteria for Infrequently Handled Products set forth in this Section 3.3 and therefore are not exempt ("Non-Exempt Products List"). Exhibit B and the Non-Exempt Products List may be used as guidance in determining whether other Wires Covered Products meet these criteria. The Parties acknowledge that common usage of the terms "portable" and "non-portable" do not affect the classification of any Wires Covered Products under this Consent Judgment. Wires Covered Products may be considered Infrequently Handled Products regardless of their weight or the likelihood that they may be used while moving, whether that be on a person, in a car, on an airplane or otherwise.

3.4 Should the Settling Defendant's Wires Covered Products require Proposition 65 warnings under Section 3.2, the Settling Defendant shall, except as otherwise provided in Section 3.5 below, either provide one of the warnings described below or any other Proposition 65 warning that has been reviewed and approved in writing by the California Attorney General

for use with Wires Covered Products regarding their thermoset/thermoplastic-coated wires and/or cables:

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

or

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

or

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

The word "WARNING" shall be in all capital letters and in bold typeface. The hand-washing admonition shall be in bold typeface and italicized. Inclusion of the bracketed words "cancer, and" in the above warning shall be at the Settling Defendant's option.

3.5 Unless otherwise indicated herein, the warning required or authorized in Section 3.4 shall be given by having it: (a) affixed to the Wires Covered Product itself or to the unit package of such Wires Covered Product; (b) printed on the Wires Covered Product itself or on the unit package of such Wires Covered Product; (c) displayed on an internet site for those units of Wires Covered Products sold on the internet; (d) included in the owner's manual if the conditions set forth in Section 3.7 below are satisfied ("Owner's Manual Warning"); or, (e) printed on the invoice issued directly to the consumer by the Settling Defendant to confirm the sale, where the Settling Defendant sells Wires Covered Products directly to consumers by

telephone, mail order, or internet sale, but never has physical possession of the Wires Covered Product or its packaging.

3.6 If the warning is printed on the product, package label, or invoice, then the warning shall be contained in the same section of the label that contains other safety warnings, if any, concerning the use of the Wires Covered Product or near its displayed price and/or UPC code. Such warning shall be prominently affixed to or printed on each such Wires Covered Product, its label or package or invoice, and displayed with such conspicuousness, as compared with other words, statements, designs, or devices on such Wires Covered Product, its label, package or display or invoice as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. With respect to the preceding sentence, the type size of any warning required by paragraph 3.4 must be legible, but otherwise need not be larger than any other warning language used in conjunction with the Wires Covered Product in question and its relative size may take into account the nature, immediacy, and acuteness of the risks for which other warnings are given. If the size of a Wires Covered Product and its packaging is such that a warning required by this Consent Judgment cannot physically be printed on its non-transparent portion in a legible size, the warning may be printed on a separate piece of paper or cardstock and inserted into the Wires Covered Product's packaging, provided that i) the cardstock or paper containing the warning is not white or uncolored and contains only the warning language, and ii) a substantial portion of the exterior of the packaging material is transparent. If a warning is provided on the internet pursuant to (c) above, the warning message shall be displayed (or, upon the internet site user's identification as a California resident, such as when the user types in a zip code, automatically appear) either: (a) on the same page on which the Wires Covered Product is displayed, (b) on the same page as the

order form for the Wires Covered Product, or (c) on the same page as the price for the Wires Covered Product.

3.7 If the warning is given in the owners manual pursuant to Section 3.8 below, it shall be located in one of the following places in the manual: the outside of the front cover; the inside of the front cover; the first page other than the cover; or the outside of the back cover. The warning shall be printed or stamped in the manual or contained in a durable label or sticker affixed to the manual in a font no smaller than the font used for other safety warnings in the manual. Alternatively, the warning may be included in a safety warning section of the owner's manual consistent with specifications issued by Underwriters Laboratories.

3.8 A warning in the owner's manual of a Wires Covered Product may be used to satisfy the warning requirements of this Section 3 only under the following circumstances: the Wires Covered Product (i) may cause serious injury or bodily harm (other than by means of fire or electrocution) unless used as directed; or (ii) is sophisticated, difficult to understand or install, set-up, or assemble; or (iii) has one or more features a consumer must read about in order to know how to program or use the Wires Covered Product. However, a Wires Covered Product may not utilize an owner's manual warning if it meets the following criteria: (a) the Wires Covered Product is unlikely to cause serious injury or bodily harm other than by means of fire or electrocution; (b) the Wires Covered Product is easily assembled or programmed by an ordinary consumer without need to reference instructions; and (c) fundamental operation of the Wires Covered Product is easily understood and commonly performed by an ordinary consumer without training or need to reference operating instructions. Exhibit C contains a list of Wires Covered Products/product types for which Owner's Manual Warnings are deemed to be an allowable method of communicating the warnings required by this Section 2. Plaintiffs have previously provided the California Attorney General's Office and the Settling Defendant with a

list of Wires Covered Products/product types for which Owner's Manual Warnings are deemed not to be an allowable method of communicating the warnings required by this Section 2 (the "Non-Owner's Manual Product List"). Exhibit C and the Non-Owner's Manual Product List may be used as guidance in determining whether the criteria for use of owner's manual warnings set forth in this Section are satisfied

3.9 The Settling Defendant may provide an Owner's Manual Warning on any Wires Covered Products/product types that satisfy the criteria in Section 3.8, except for those listed on the Non-Owner's Manual Product List, whether or not that Wires Covered Product or product type is listed on Exhibit C. Products not existing as of the Effective Date that are introduced for sale after January 1, 2006 may use a owner's manual warning if use of the owner's manual warning has been approved in writing by the California Attorney General 's office, following 60 days prior notice to Plaintiff.

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

4. INJUNCTIVE RELIEF-REFORMULATION FOR GALVANIZED PRODUCTS

4.1 Unless formulated or reformulated in the manner specified in Paragraphs 4.2.1, 4.2.2, or 4.2.3 below, beginning no later than July 20, 2006, Settling Defendants shall provide Proposition 65 warnings in the manner set forth in Paragraphs 4.3.1, 4.3.2, and 4.3.3 below in conjunction with the manufacture or sale in California of any Galvanized Products as defined herein. For purposes of this Agreement, the term "Galvanized Products" shall include, without limitation, any and all galvanized fastener products (including, without limitation, galvanized nails, screws, bolts, washers, staples or other fasteners) manufactured, distributed, and/or sold by a Settling Defendant for sale in California.

4.2 Certain Formulated or Reformulated Galvanized Products that are Excluded From Proposition 65 Warning Requirements: Settling Defendants are not required to provide Proposition 65 warnings for Galvanized Products meeting the specifications of Paragraphs 4.2.1, 4.2.2, or 4.2.3 below:

4.2.1 Excluded Galvanized Products Galvanized with High Grade or Special High Grade Zinc Coating: Settling Defendants are not required to provide Proposition 65 warnings for Galvanized Products that are galvanized with zinc coating meeting the chemical specifications set forth for "High Grade" zinc in ASTM specifications B6 (1998), or zinc coating meeting the chemical specifications set forth for "Special High Grade" zinc set forth in ASTM specifications B6 (1998). A copy of ASTM specifications B6 (1998) is attached hereto as Exhibit C.

4.2.2 Excluded Galvanized Products Electrogalvanized with Prime Western Zinc Coating: Settling Defendants are not required to provide Proposition 65 warnings for Galvanized Products that are galvanized with zinc coating meeting the chemical specifications set forth for "Prime Western" zinc in ASTM specifications B6 (1998) provided that such coating material has been applied to the Galvanized Products by means of electro-galvanization.

4.2.3 Excluded Galvanized Products that are Collated: Settling Defendants are not required to provide Proposition 65 warnings regarding Galvanized Products regardless of their zinc coating specification if they are collated or otherwise bound together in a manner designed for use in nail guns and similar applications.

4.3 All Galvanized Products that do not fall within the requirements of Paragraphs 4.2.1, 4.2.2, or 4.2.3 above ("Non-Excluded Galvanized Products") shall be subject to the requirements of Paragraphs 4.3.1, 4.3.2, and 4.3.3 below.

4.3.1 Non-Excluded Galvanized Products Sold in Packages weighing 5 Pounds or less. Non-Excluded Galvanized Packages manufactured for shipment for sale in California after July 20, 2006 in packages weighing 5 pounds or less shall contain the following Proposition 65 warning:

"WARNING: This product contains chemicals known to the State of California to cause cancer, and birth defects or other reproductive harm. *Wash hands after handling.*"

Such language shall be printed or affixed to the package or its shrink wrapping in a type a size that is at least as conspicuous as, but not necessarily any more prominent than, other instructional or warning text and information printed on or affixed to the Galvanized Product's packaging or wrapping.

4.3.2 Non-Excluded Galvanized Products Sold in Bulk:: Non-Excluded Galvanized Products manufactured for shipment for sale in California after July 20, 2006 in packages weighing more than 5 pounds shall: (a) have the Proposition 65 warning language specified in Paragraph 4.2.1 above printed on or affixed to the exterior of the package or its shrink wrapping, and (b) have at least ten (10) Proposition 65 warning card inserts containing the same language as specified in Paragraph 4.2.1 above placed within the interior of the package. Such warning card package inserts shall be at least 1.5" by 1.5" in size and shall be printed on sixty-five (65) pound hard stock.

4.3.3 MSDS Warnings for Non-Excluded Galvanized Products:: In addition to meeting the requirements of Paragraphs 4.2.1 and 4.2.2 above, by no later than July 20, 2006, Settling Defendant shall include the warning language specified in Paragraph 4.2.1 above in any material safety data sheet ("MSDS") provided in conjunction with Non-Excluded Galvanized Products for sale in California.

4.4 If Settling Defendant wishes to employ a warning method other than those specified in this Consent Judgment, Settling Defendant may do so upon obtaining the advanced written consent of the California Attorney General's Office and providing a copy of such consent to all parties in accordance with the notice provisions set forth in Paragraph 11 of this Consent Judgment.

5. MONETARY RELIEF

5.1 Within fifteen (15) days after entry of this Consent Judgment by the Court, Defendant shall pay five thousand (\$5,000) to the Ecological Rights Foundation and five thousand dollars (\$5,000) to Californians for Alternatives to Toxics. Both groups are California non-profit organizations that advocate for workers' and consumers' safety and for awareness and reduction of toxic exposures. The foregoing settlement payments shall be mailed to the attention of William Verick, Klamath Environmental Law Center, 424 First Street, Eureka, California 95501, who shall provide them to the respective organizations within fifteen (15) days of receipt.

6. ATTORNEYS' FEES

6.1 Within fifteen (15) days after entry of this Consent Judgment, Defendant shall pay twenty thousand dollars (\$20,000) to the Klamath Environmental Law Center to cover plaintiffs' attorneys' fees and costs. The above payment shall be mailed to the attention of William Verick, Klamath Environmental Law Center, 424 First Street, Eureka, California 95501.

6.2 Except as specifically provided in this Consent Judgment, plaintiff and Defendant shall bear their own costs and attorneys' fees.

7. ENFORCEMENT OF JUDGMENT/STIPULATED REMEDIES

7.1 The terms of this Consent Judgment are enforceable by and among the parties hereto or, with respect to the injunctive relief provided for herein, by the California Attorney General.

8. MATTERS COVERED BY THIS CONSENT JUDGMENT

8.1 This Consent Judgment is a full, final and binding resolution between the Plaintiff acting on behalf of itself and, (as to those matters referenced in the Notice Dated December 29, 2003, Notice Dated December 31, 2004, and the Notice Dated June 4, 2004)) in the public interest pursuant to Health and Safety Code section 25249.7(d) and on behalf of the general public pursuant to Business and Professions Code section 17204, and Defendant concerning any violation of Proposition 65 and/or the Unfair Competition Act regarding any claims made or which could have been made in the Notices and/or the Complaint, or any other statutory or common law claim that could have been asserted against Defendant and/or its affiliates, parent or subsidiary corporations, divisions, successors, officers, directors, assigns, distributors, retailers, and/or customers for failure to provide clear, reasonable, and lawful warnings of exposure to lead contained in or otherwise associated with the Galvanized Products or the Tools or Wires Covered Products manufactured, sold or distributed by, for, or on behalf of, Defendant. Compliance with the terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance by Defendant and/or its affiliates, parent or subsidiary corporations, divisions, successors, officers, directors, assigns, distributors, retailers, and/or customers with the requirements of Proposition 65 and the Unfair Competition Act with respect to lead contained in or otherwise associated with Covered Products.

8.2 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 Defendant with the terms of this consent judgment shall be deemed to be full and complete compliance with Proposition 65 as to claims regarding exposure to lead in Tools or Wires Covered Products.

8.3 In furtherance of the foregoing, Plaintiff hereby waives any and all rights and benefits which it now has, or in the future may have, conferred upon it with respect to the Galvanized Products or the Tools and Wires Covered Products by virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

Plaintiff understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542 is that even if Plaintiff suffers future damages arising out of or resulting from, or related directly or indirectly to, in whole or in part, the Galvanized Products or the Tools and Wires Covered Products, they will not be able to make any claim for those damages against Defendant, or its parent, subsidiaries or affiliates, or any of its customers, distributors, wholesalers, retailers or any other person in the course of doing business who may manufacture, use, maintain, distribute, market or sell the Galvanized Products or the Tools and Wires Covered Products. Furthermore, Plaintiff acknowledges that it intends these consequences for any such claims which may exist as of the date of this release but which Plaintiff does not know exist, and which, if known, would materially affect its decision to enter into this Consent Judgment, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

9. APPLICATION OF JUDGMENT

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

10. MODIFICATION OF JUDGMENT

10.1 This Consent Judgment may be modified only upon written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as provided by law and upon entry of a modified Consent Judgment by the Court.

11. NOTICE

11.1 When any Party is entitled to receive any notice or report under this Consent Judgment, the notice or report shall be sent by U.S. mail or overnight courier service to:

- (a) For Mateel: William Verick, Esq., Klamath Environmental Law Center, 424 First Street, Eureka, California 95501; and
- (b) For R&B, Inc.: Office of General Counsel, R&B, Inc. 3400 East Walnut Street, Colmar, PA 18915.

11.2 Any Party may modify the person and address to whom notice is to be sent by sending each other Party notice in accordance with this Paragraph.

12. AUTHORITY TO STIPULATE

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

13. RETENTION OF JURISDICTION

13.1 This Court shall retain jurisdiction over the matters covered herein and the enforcement and/or application of this Consent Judgment.

14. ENTIRE AGREEMENT

14.1 This Consent Judgment contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

15. GOVERNING LAW

15.1 The validity, construction and performance of this Consent Judgment shall be governed by the laws of the State of California.

16. COURT APPROVAL

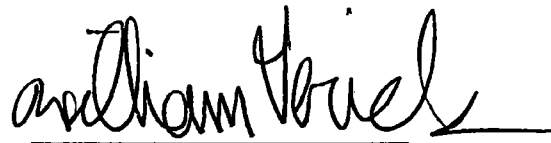
16.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

IT IS SO STIPULATED:

DATED:

By: 
Defendant R&B, Inc.

DATED: *Aug. 25, 2005*



William Verick
Klamath Environmental Law Center

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: **OCT 17 2005**

RONALD E. QUIDACHAY
JUDGE OF THE SUPERIOR COURT

1 EXHIBIT A
2 (Exemplar of Optional Testing Protocol)

3
4 Step 1: Cut 3-inch section of a cable that has not previously been used or
5 wiped.

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

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

11 Step 4. Prepare samples for laboratory analysis according to EPA Method
12 160.4 or 3050, ensuring that each sample has been completely digested.

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

14 Step 6. Compute the arithmetic mean from the three samples.
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT B
(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
	Cash Registers
	CATV Receiver Power Cords
	CB radio/antenna cords (not handsets)
	CD Player/changer (non-portable units only)
	CD/DVD Home Theater Systems
	Cielo Bath
	Circuit Cable
	Clock
	Coffee Maker
	Color Imaging System Power Cord & Cable (non-portable and not for use with portable computer system)
	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	Convector 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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

127	Mobil telephone battery cables (internal wires and cords only)
128	Mobile telephone accessories (only those using corded base charging unit or permanently installed in automobiles)
129	Mobile video screens designed for permanent installation (such as for use in automobiles or boats)
130	Multi-function office support device (combines functions such as copier, printer, fax machine, PBX, voice mail into one)
131	Neon sign & oil burner ignition cable
132	NIC/Modem cables
133	Optical Cable/Stereo Optical Cords (unless designed to plug into front of system)
134	Optical Disc AC Adapter (non-portable and not for use with portable computer systems)
135	Optical Disc Power Cords (non-portable and not for use with portable computer systems)
136	Ovens
137	Over-Range Microwave Ovens/Hoods
138	Paper shredder
139	Parrafin/wax Bath for Hands
140	Patch/pin cords, and cables, adapter cord, coaxial cable, A/V cord, S-VHS cord (when sold with device otherwise excluded)
141	Pencil sharpener
142	Personal Hygiene System and assoicated power cord
143	Pest Repeller
144	Pet Cage Dryers
145	Portable Dishwasher
146	Portable heater (only if designed for permanent installation)
147	Portable Washer
148	Postage meters
149	Postal scales
150	Potpourri heater
151	Power bases for charging wireless devices (if designed for long term installation)
152	Power tools (corded, cordless, stationary, or portable)
153	Power/control/instrumentation tray cable (except for non-permanently-installed public address systems)
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)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

169	Roaster Oven
170	Rope Lights (other than holiday string lights) if designed for permanent/long term installation
171	Satellite dish
172	Scales
173	Scanner antenna
174	Shavers - Cordless w/Corded Recharger Base only
175	Sink Top Switch for Disposer or Hot Water Dispenser (air activated switch mounted to sink or countertop, designed for permanent/long term installation)
176	Smoke detector (internal wires or if designed for permanent/long term installation)
177	Speaker wire (designed for use with components designed for long term/permanent installation; speaker wire associated with portable equipment with attached handle or carrying case not excluded)
178	Stapler
179	Steam cooker
180	Stereo and audio power/patch/pin cords (for use with non-portable components and except where designed to plug into front of system)
181	Surge protector
182	Telecom Data Cable (installed)
183	Telecom Power Cable (installed)
184	Tele-Homecare System (power cords)
185	Telephone power and data cord (phone to wall cords only)
186	Television (except small mobile models with attached/built in handle or carrying case)
187	Television Antenna
188	Television distribution system/swapper
189	Television Monitor (including computer monitors except small mobile models with attached/built in handle or carrying case)
190	Television peripheral cords (unless designed for use with devices that plug into the front of the set)
191	Thermostat Cable
192	Toaster
193	Toaster Oven
194	Towel Warmer
195	Transcriber and foot pedal and associated power and interconnecting cords
196	Underground Low-Energy Cable (exclusion applies to consumer uses only)
197	Vanity/lighted makeup mirror
198	VCR (unless portable with attached handle or carrying case)
199	Video mixer and switcher (if component of desktop system with no separate mice)
200	Video printer power cords/connecting cables (unless used with laptop)
201	Warming drawer
202	Washer/Dryer
203	Water distiller
204	Water filter units designed for permanent/long term installation
205	Water heater designed for permanent/long term installation
206	Water jet - Dental
207	Waxers - hair removal (corded base unit only)
208	Wine cellars
209	Diesel Locomotive and Motor Cable

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT C
(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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

1 WILLIAM VERICK, CSB #140972
FREDRIC EVENSON, CSB #198059
2 KLAMATH ENVIRONMENTAL LAW CENTER
424 First Street
3 Eureka, CA 95501
(707) 268-8900

4 DAVID H. WILLIAMS, CSB #144479
5 BRIAN ACREE, CSB #202505
2070 Allston Way, Suite 300
6 Berkeley, CA 94704
Telephone: (510) 647-1900
7 Facsimile: (510) 647-1905

8 Attorneys for Plaintiff
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION
9

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

13 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

CASE NO. 440720

14 Plaintiff,

~~PROPOSED~~ ORDER APPROVING
CONSENT JUDGMENT

15 vs.

16 R&B, INC., et al.,

Date: October 17, 2005
Time: 9:30 a.m.
Dept. No.: 302

17 Defendants.
18

19 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on
20 noticed motion on October 17, 2005. The court finds that:

- 21 1. The warnings and reformulation the Consent Judgment requires comply with the
22 requirements of Proposition 65.
23

ENDORSED
FILED
San Francisco County Superior Court
OCT 17 2005
CORRIGAN PARK-LLI, Clerk
By: CYNTHIA S. HERBERT
Deputy Clerk

