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LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

AMERICAN ENVIRONMENTAL SAFETY
INSTITUTE, a CALIFORNIA non-profit
corporation,

Plaintiff,

v.

HUCK SPAULDING ENTERPRISES, INC., a
NEW YORK corporation; et al.

Defendants.

Case No. BC 319440

[Hon. Irving S. Feffer]

~~PROPOSED~~ CONSENT JUDGMENT
ONLY AS TO DEFENDANT
SUPERIOR TATTOO EQUIPMENT
INC. d/b/a SUPERIOR TATTOO
EQUIPMENT CO.

1st Amended Complaint Filed: July 18,
2004
Dept. 51, Room 511

This Consent Judgment is entered into by and between the AMERICAN ENVIRONMENTAL SAFETY INSTITUTE, plaintiff in this matter (hereinafter "Plaintiff" or "the Institute"), and defendant SUPERIOR TATTOO EQUIPMENT INC. d/b/a SUPERIOR TATTOO EQUIPMENT CO. (hereinafter "Defendant" or "Superior").

1. **Definitions.** As used in this Consent Judgment, the following definitions shall apply:

1.1 "Products" includes all tattoo inks and/or pigment products made by or on behalf of Superior, including but not limited to Superior's "Prizm" brand of tattoo inks.

1.2 "Products" shall also include any future tattoo inks and/or pigment products that are sold by or on behalf of Superior to California consumers under any product name or brand, whether a current or new name and/or brand.

1 **1.3** “Antimony” means the chemicals Antimony oxide and Antimony trioxide
2 (collectively referred to herein as “Antimony”), listed as subject to Proposition 65 regulation in
3 Title 22, California Code of Regulations, section 12000.

4 **1.4** “Arsenic” means the chemical Arsenic (inorganic arsenic compounds/inorganic
5 oxides), listed as subject to Proposition 65 regulation in Title 22, California Code of
6 Regulations, section 12000.

7 **1.5** “Beryllium” means the chemicals Beryllium and Beryllium compounds
8 (collectively referred to herein as “Beryllium”), listed as subject to Proposition 65 regulations in
9 Title 22, California Code of Regulations, section 12000.

10 **1.6** “Chromium” means the chemical Chromium (hexavalent compounds), listed as
11 subject to Proposition 65 regulations in Title 22, California Code of Regulations, section 12000.

12 **1.7** “Cobalt” means the chemicals Cobalt metal powder and Cobalt (II) oxide
13 (collectively referred to herein as “Cobalt”), listed as subject to Proposition 65 regulations in
14 Title 22, California Code of Regulations, section 12000.

15 **1.8** “Lead” means the chemicals lead and lead compounds listed as subject to
16 Proposition 65 regulation in Title 22, California Code of Regulations, section 12000.

17 **1.9** “Nickel” means the chemicals Nickel (Metallic), Nickel acetate, Nickel carbonate,
18 Nickel carbonyl, Nickel hydroxide, Nickelocene, Nickel oxide, and Nickel subsulfide
19 (collectively referred to herein as “Nickel”), listed as subject to Proposition 65 regulations in
20 Title 22, California Code of Regulations, section 12000.

21 **1.10** “Selenium” means the chemical Selenium sulfide (“Selenium”), listed as subject
22 to Proposition 65 regulations in Title 22, California Code of Regulations, section 12000.

23 **1.11** “Heavy Metals” means Antimony, Arsenic, Beryllium, Chromium, Cobalt, Lead,
24 Nickel, and Selenium.

25 **1.12** “ppm” means parts-per-million in concentration.

26 **1.13** Plaintiff and Defendant will be referred to collectively as the “Parties” or
27 individually as a “Party.”
28

1 **2. Background.**

2 **2.1** Plaintiff American Environmental Safety Institute ("Institute") is a non-profit
3 California corporation dedicated to investigating environmental and public health hazards
4 affecting children and adults in their regular daily lives. The Institute is based in Palo Alto,
5 California, and was incorporated under the laws of the State of California in 1998. The Institute
6 is a "person" within the meaning of Health & Safety Code ("H&S Code") §25249.11(a), and
7 brought this enforcement action in the public interest pursuant to H&S Code §25249.7(d).

8 **2.2** Superior is an Arizona corporation with its headquarters and principal place of
9 business located at 6501 N. Black Canyon Highway, Phoenix, AZ 85015.

10 **2.3** On or about July 24, 2003 and January 14, 2005, the Institute served 60-Day
11 "Notices of Violation of Proposition 65" (the "Notices") on the California Attorney General, the
12 District Attorneys of every county in California, the City Attorneys of every California city with
13 a population greater than 750,000, and on the Defendant, alleging that Defendant was in
14 violation of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
15 Code §§ 25249.5 et seq. ("Proposition 65") for failing to warn purchasers of Superior's Products
16 sold in California that use of these Products expose users to Antimony, Arsenic, Beryllium,
17 Cobalt, Lead and Lead compounds, Nickel and Selenium (collectively "Heavy Metals"). No
18 public prosecutor has commenced an action regarding the matters raised in the Notices.

19 **2.4** On August 2, 2004, the Institute filed its complaint entitled *American*
20 *Environmental Safety Institute v. Huck Spaulding Enterprises, Inc., et al.*, in the Los Angeles
21 County Superior Court, No. BC 319440 (the "Complaint"). On July 7, 2005, the Court permitted
22 the Institute to file the now-operative First Amended Complaint ("Complaint").

23 **2.5** For purposes of this Consent Judgment only, the Parties stipulate that this Court
24 has jurisdiction over the allegations of the violations contained in the Notice and the Complaint,
25 and personal jurisdiction over Defendant as to the acts or omissions alleged in the Complaint;
26 that venue is proper in the County of Los Angeles; and that this Court has jurisdiction to enter
27 this Consent Judgment.

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1 **2.6** Defendant denies that the Products have been or are in violation of Proposition 65
2 or any other law, and further contends that all Products have been and are safe for use as
3 directed. However, Defendant wishes to resolve this matter without further litigation or cost.

4 **2.7** The Parties enter into this Consent Judgment to settle certain disputed claims as
5 alleged in the Notice and the Complaint, to avoid prolonged and costly litigation, and to promote
6 the public interest. By executing and complying with this Consent Judgment, no Party admits
7 any facts or conclusions of law including, but not limited to, any facts or conclusions of law
8 regarding any violations of Proposition 65, the Unfair Competition Law or any other statutory,
9 common law or equitable claim or requirement relating to or arising from Defendant's Products.
10 This Consent Judgment shall not be construed as an admission by Defendant as to any of the
11 allegations in the Notice or the Complaint.

12 **3. Injunctive Relief.**

13 **3.1 Sales of Tattoo Ink Require a Warning.**

14 (a) Effective December 1, 2005, Superior shall place the following warning
15 prominently on the label of each of its Products shipped for sale by Superior into California:

16 “**WARNING:** Tattoo inks and pigments contain toxic metals,
17 including Arsenic, Lead, Nickel and others, all of which are known
18 to the State of California to cause cancer or birth defects and other
19 reproductive harm.”

20 (b) Superior shall also send a letter on its business letterhead and a poster
21 containing the text as set forth in Exhibit A of this Consent Judgment to each of its customers
22 when they purchase a Product. Superior will instruct its customers to sign and return an
23 acknowledgement stating that they will post the warning. Superior will inform the Institute each
24 time a customer does not return the acknowledgement within a set amount of time. Superior will
25 send this letter at least once per year to each of its customers.

26 **4. Settlement and Attorney's Fees Payments.** In keeping with the concept of, but in lieu
27 of, the statutory penalties and/or restitution required under the statutes set forth in the Complaint,
28 Defendant shall pay to the Trust Account of the Carrick Law Group P.C., by wire transfer,

1 certified or bank check in immediately available funds, the sum of \$100,000.00. This settlement
2 amount shall be due and payable within five calendar days after the date of entry of this Consent
3 Judgment. This sum of \$100,000.00 shall be disbursed by the Carrick Law Group P.C. as
4 follows:

5 **4.1 To The Institute:** \$100,000.00, to be used by the Institute for its costs of
6 litigation in this matter, for the on-going compliance monitoring costs of this Consent Judgment,
7 and to enable the Institute to provide funds for future research, public education and/or advocacy
8 regarding exposure of individuals to toxic chemicals on behalf of the public interest and the
9 general public in conformity with Health and Safety Code §25192(a)(2) and its own non-profit
10 articles of incorporation.

11 **4.2 Attorneys Fees and Costs:** The parties shall each bear their own attorneys' fees
12 and costs.

13 **5. Termination of All Claims.**

14 **5.1 Claims Covered and Release.** This Consent Judgment includes the resolution of
15 actual and potential claims that were considered or could have been brought by the Institute on
16 behalf of the public interest and the general public regarding Heavy Metals in Defendant's
17 Products. This Consent Judgment is a final and binding resolution between the Institute, on
18 behalf of the public interest and the general public, and Defendant, of any and all alleged
19 violations of Proposition 65 that was or could have been asserted in the Notice or Complaint by
20 the Institute on behalf of the public interest and the general public against Defendant or
21 purchasers or sellers of Defendant's Products arising from or related to Defendant's Products up
22 through the date of entry of this Consent Judgment, including, but not limited to, any claims for
23 attorneys' fees and costs. The Institute, on behalf of the public interest and the general public,
24 hereby releases Defendant from and against the claims described in this paragraph to the extent
25 such claims do, did, or could arise from or relate to Defendant's Products; however, the Institute
26 cannot and does not release any claims, including specifically any personal injury or directly
27 related claims, that could be brought by any individual or organization. Defendant hereby
28 releases the Institute from and against any claims arising out of the Institute's filing or

1 prosecution of this action. Each Party respectively waives any right to appeal or other review of
2 this Consent Judgment, except as expressly provided in this Consent Judgment.

3 **5.2 Waiver and Release of Unknown Claims.** To the extent that California Civil
4 Code section 1542 or similar provisions of law are deemed to apply to the releases by the
5 Institute and Superior set forth above, both the Institute and Superior each acknowledges and
6 agrees that the release set forth above applies to all claims for injuries, damages, restitution,
7 penalties or losses related to or arising from Defendants' Products, whether those for injuries,
8 damages, restitution, penalties or losses are known or unknown, foreseen or unforeseen, or
9 patent or latent. The Institute and Superior each certifies that it has read California Civil Code
10 section 1542. The Institute hereby knowingly and expressly waives its rights, on behalf itself,
11 the public interest and the general public, and Superior hereby knowingly and expressly waives
12 its rights, respectively, under California Civil Code Section 1542, which provides as follows:

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

16 To the extent that California Civil Code § 1542 or similar provisions of law are deemed
17 to apply to the release by Defendant set forth above, Defendant separately acknowledges and
18 agrees that the release set forth above applies to any claim for malicious prosecution, abuse of
19 process, damages, or other similar claim related to or arising out of the Institute's filing or
20 prosecution of this action. Defendant hereby knowingly and expressly waives any rights under
21 California Civil Code § 1542, the text of which is set forth above.

22 **6. Covenant Not To Sue.** The Institute and Defendant covenant and agree that with regard
23 to those matters that the Institute has herein released and that are described above, neither the
24 Institute nor Defendant will ever institute a lawsuit or administrative proceedings against another
25 Party, nor shall any Party assert any claim of any nature against any person or entity hereby
26 released with regard to any such matters which have been released. However, nothing in this
27 paragraph shall be interpreted to preclude enforcement of this Consent Judgment pursuant to
28 Section 7 below.

1 **7. Enforcement of Consent Judgment.** Any Party may, by noticed motion or order to
2 show cause before the Superior Court of Los Angeles, enforce this Consent Judgment. To
3 enforce this Consent Judgment, any Party must first give written notice of any violation of this
4 Consent Judgment alleged to have occurred to the Party alleged to be in violation. The Parties
5 shall meet and confer in good faith and attempt to resolve the alleged violation. If a resolution is
6 not reached within thirty (30) days of the date of the notice, the aggrieved Party may move the
7 Court to hear and resolve the dispute. The prevailing Party in any proceeding brought to enforce
8 this Consent Judgment shall be entitled to recover from the other Party the prevailing Party's
9 reasonable attorneys' fees and costs incurred in the investigation and prosecution of such an
10 enforcement proceeding.

11 **8. Application of Consent Judgment.** Sections 5 and 6 of this Consent Judgment shall
12 apply to, be binding upon and inure to the benefit of, the Parties, their divisions, subdivisions,
13 subsidiaries, affiliates, successors, predecessors and assigns, and the directors, officers,
14 employees, legal counsel, and agents of each of them, as applicable, and will inure to the benefit
15 of the Parties' parent companies, all suppliers, distributors, wholesalers, retailers and contract
16 manufacturers, and all of their respective directors, officers, employees, legal counsel, and
17 agents.

18 **9. Modification/Termination of Consent Judgment.** This Consent Judgment may be
19 modified upon written agreement of Defendant and the Institute, as to Defendant, with approval
20 of the Court, or upon noticed motion for good cause shown. Such "good cause" shall include,
21 but not be limited to, any change in applicable law relating to Proposition 65 within the State of
22 California that, should its terms be applicable to Products similar to Defendant's Products or to
23 ingredients of Defendant's Products, would materially alter the obligations of Defendant
24 hereunder. If any of the statutes at issue in this action are individually or collectively amended
25 by the California Legislature in the future, or if regulations implementing these statutes are
26 lawfully adopted and/or amended by the appropriate administrative agency, the Parties shall
27 comply with that provision of law or regulation as then-amended. If a final judgment against
28 another defendant in this matter establishes alternative relief injunctive relief, Defendant may

1 file a motion to comply with the terms of that alternative relief in lieu of the requirements of this
2 Consent Judgment.

3 **10. Governing Law.** This Consent Judgment shall be governed by, and construed in
4 accordance with, the laws of the State of California.

5 **11. Entire Agreement.** The Parties declare and represent that no promise, inducement or
6 other agreement has been made conferring any benefit upon any party except those contained
7 herein and that this Consent Judgment contains the entire agreement pertaining to the subject
8 matter hereof. This Consent Judgment supersedes any prior or contemporaneous negotiations,
9 representations, agreements and understandings of the Parties with respect to such matters,
10 whether written or oral. Parol evidence shall be inadmissible to show agreement by, between or
11 among the Parties to any term or condition contrary to or in addition to the terms and conditions
12 contained in this Consent Judgment, The Parties acknowledge that each has not relied on any
13 promise, representation or warranty, expressed or implied, not contained in this Consent
14 Judgment except for those contained in the Confidentiality Undertaking except with regard to
15 that certain declaration executed under penalty of perjury by Superior providing information that
16 induced Plaintiff to enter into the financial terms of this Consent Judgment, which declaration
17 may be used solely as evidence in any future enforcement proceeding brought pursuant to
18 Section 7 above.

19 **12. Challenges.** Subject to their rights to apply for a modification of this Consent Judgment
20 for good cause shown under Section 9 hereof, the Parties agree that they, individually or
21 collectively, will not seek to challenge or to have determined invalid, void or unenforceable any
22 provision of this Consent Judgment or this Consent Judgment itself. The Parties understand that
23 this Consent Judgment contains the relinquishment of legal rights and each Party has, as each
24 has deemed appropriate, sought the advice of legal counsel, which each of the Parties has
25 encouraged the other to seek. Further, no Party has reposed trust or confidence in any other
26 Party so as to create a fiduciary, agency or confidential relationship.

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1 **13. Construction.** This Consent Judgment has been jointly negotiated and drafted. The
2 language of this Consent Judgment shall be construed as a whole according to its fair meaning
3 and not strictly for or against any Party.

4 **14. Authority to Stipulate to Consent Judgment.** Each signatory to this Consent Judgment
5 represents and warrants that each signatory has all requisite power, authority and legal right
6 necessary to execute and deliver this Consent Judgment and to perform and carry out the
7 transactions contemplated by this Consent Judgment. Each signatory to this Consent Judgment
8 represents that each has been duly authorized to execute this Consent Judgment. No other or
9 further authorization or approval from any person will be required for the validity and
10 enforceability of the provisions of this Consent Judgment.

11 **15. Cooperation and Further Assurances.** The Parties hereby will execute such other
12 documents and take such other actions as may be necessary to further the purposes and fulfill the
13 terms of this Consent Judgment.

14 **16. Counterparts.** This Consent Judgment may be executed in counterparts and has the
15 same force and effect as if all the signatures were obtained in one document.

16 **17. Notices.**

17 **17.1** All correspondence and notices required by this Consent Judgment to Plaintiff the
18 Institute shall be sent to:

19 Roger Lane Carrick
20 The Carrick Law Group, P.C.
21 350 S. Grand Avenue, Suite 2930
22 Los Angeles, CA 90071-3406
23 Tel: (213) 346-7930
24 Fax: (213) 346-7931
25 E-mail: roger@carricklawgroup.com

26 **17.2** All correspondence and notices required by this Consent Judgment to Defendant
27 Superior shall be sent to Defendant as follows:

28 Mr. Walt Vail
SUPERIOR TATTOO EQUIPMENT
INC. d/b/a SUPERIOR TATTOO
EQUIPMENT CO.
6501 N. Black Canyon Highway
Phoenix, AZ 85015-1049
Tel.: (602) 433-1888
Fax: (602) 433-7401

With a copy to:
Michael R. Walker, Esq.
Schian Walker P.L.C.
3550 N. Central Ave., Suite 1500
Phoenix, AZ 85012-2188
Tel.: (602) 285-4515
Fax: (602) 297-9633
E-mail: mwalker@swazlaw.com

- 1 **18. Entry of Stipulation For Entry of Consent Judgment Required. This Consent**
- 2 **Judgment shall be null and void, and without any force or effect, unless fully approved as**
- 3 **required by law and entered by the Court. If the Court does not enter this Consent Judgment, the**
- 4 **execution thereof by Defendant or the Institute shall not be construed as an admission by**
- 5 **Defendant or the Institute of any fact, issue of law or violation of law.**
- 6 **19. Jurisdiction. This Court shall retain jurisdiction of this matter to implement this Consent**
- 7 **Judgment.**
- 8 **20. Compliance with Reporting Requirements. The Institute shall comply with the**
- 9 **reporting form requirements referenced in Health and Safety Code section 25249.7(f) and**
- 10 **established in 11 California Code of Regulations §§ 3000-3008. Copies of all such reports shall**
- 11 **be supplied to Superior as provided in Section 17.2.**
- 12 **21. Non-Interference in Settlement Approval Process. The Parties will cooperate, as well**
- 13 **as use their best efforts, to secure the Attorney General's approval of this Consent Judgment, and**
- 14 **not to seek his disapproval of any portion of this Consent Judgment.**

IT IS SO STIPULATED.

Date: October 31, 2005

SUPERIOR TATTOO EQUIPMENT INC. d/b/a
SUPERIOR TATTOO EQUIPMENT CO.

By: Mali A. Vard - CEO

Date: October __, 2005

AMERICAN ENVIRONMENTAL SAFETY
INSTITUTE, a non-profit California corporation

By: _____
Deborah A. Sivas
President and CEO

1 **18. Entry of Stipulation For Entry of Consent Judgment Required.** This Consent
2 Judgment shall be null and void, and without any force or effect, unless fully approved as
3 required by law and entered by the Court. If the Court does not enter this Consent Judgment, the
4 execution thereof by Defendant or the Institute shall not be construed as an admission by
5 Defendant or the Institute of any fact, issue of law or violation of law.

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7 Judgment.

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9 reporting form requirements referenced in Health and Safety Code section 25249.7(f) and
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11 be supplied to Superior as provided in Section 17.2.

12 **21. Non-Interference in Settlement Approval Process.** The Parties will cooperate, as well
13 as use their best efforts, to secure the Attorney General's approval of this Consent Judgment, and
14 not to seek his disapproval of any portion of this Consent Judgment.

15
16 **IT IS SO STIPULATED.**

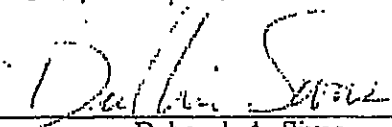
17 Date: October __, 2005

SUPERIOR TATTOO EQUIPMENT INC. d/b/a
SUPERIOR TATTOO EQUIPMENT CO.

18
19 By: _____
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21
22 Date: October 31, 2005

AMERICAN ENVIRONMENTAL SAFETY
INSTITUTE, a non-profit California corporation

23
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25 By:  _____
26 Deborah A. Sivas
27 President and CEO
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EXHIBIT A

SUPERIOR TATTOO EQUIPMENT CO. INC. LETTERHEAD

Dear Customer:

I am writing to alert you to the new warning language you will see on our tattoo ink and/or pigment products. This warning language results from a California lawsuit we recently settled. In the summer of 2004, the American Environmental Safety Institute sued a wide array of tattoo ink and/or pigment manufacturers, alleging violations of California's unique public health and consumer protection law, Proposition 65. This law requires that individuals be provided with a clear and reasonable warning before being exposed to chemicals listed by the State of California as causing cancer or birth defects and other reproductive harm.

The lawsuit alleged that tattoo inks and/or pigment products contain Antimony, Arsenic, Beryllium, Cobalt, Lead and Lead compounds, Nickel and Selenium (collectively "Toxic Metals"), each of which is a dangerous toxic chemical that is known to the State of California to cause cancer and/or reproductive harm. The lawsuit alleged that individuals in California are exposed to these Toxic Metals when tattoo artists use tattoo inks and/or pigment products in the application of tattoos on or under a person's skin.

In settling this lawsuit, the manufacturers of tattoo inks and/or pigments did not admit any violation of law, but did agree to put the new warning language on their products to avoid further litigation. This warning information must be passed on to your retail customers who are tattooed with this tattoo ink and/or pigment product. Superior requests that you put up the enclosed poster in a prominent place in your place of business in order to give the following warning to your customers:

WARNING: Tattoo inks and pigments contain many heavy metals, including Lead, Arsenic and others. All of these heavy metals have been scientifically determined by the State of California to cause cancer or birth defects and other reproductive harm. Pregnant women and women of childbearing age in particular should consult with their doctor before getting any tattoo. A person is exposed to tattoo inks and/or pigments when they get a tattoo because they are injected with tattoo ink under their skin or the tattoo ink is applied on their skin.

Please acknowledge receipt of this letter and your commitment to comply with its terms by checking here , filling in your business name as follows:

_____, and then faxing a copy of this letter back to us at () ____-____. Thank you for your attention to this new legal requirement.

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POSTER SIZE AND TEXT

(Size of poster must be no less than 20" by 24")

WARNING: Tattoo inks and pigments contain many heavy metals, including Lead, Arsenic and others. All of these heavy metals have been scientifically determined by the State of California to cause cancer or birth defects and other reproductive harm. Pregnant women and women of childbearing age in particular should consult with their doctor before getting any tattoo. A person is exposed to tattoo inks and/or pigments when they get a tattoo because they are injected with tattoo ink under their skin or the tattoo ink is applied on their skin.

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THE COURT HEREBY FINDS:

1. The warning required by the foregoing stipulated Consent Judgment complies with the provisions of Health & Safety Code §§ 25249.5-25249.13.

2. The Parties' agreement that no civil penalties are warranted is in accord with the criteria set forth in Health & Safety Code § 25249.7(b)(2), in that payments totaling \$100,000.00 in lieu of such penalties to American Environmental Safety Institute are to be used by the Institute for its costs of litigation in this matter, for the on-going compliance monitoring costs of this Consent Judgment, and to enable the Institute to provide funds for future research, public education and/or advocacy regarding exposure of individuals to toxic chemicals on behalf of the public interest and the general public in conformity with Health and Safety Code §25192(a)(2) and its own non-profit articles of incorporation, thus furthering the remedial purposes established under the Proposition 65 statute as set forth in the Complaint, in a manner that is consistent with the private enforcement mechanism and funds allocation scheme established by Health & Safety Code § 25192 and § 25249.7 *et. seq.*

4. This Consent Judgment is hereby adopted as the ORDER and JUDGMENT of this Court.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

DATED: NOV 16 2005

IRVING S. FEFFER

IRVING S. FEFFER
JUDGE OF THE SUPERIOR COURT