

COPY

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ENDORSED
FILED
San Francisco County Superior Court

OCT 06 2006

GORDON PARK-LI, Clerk
BY: _____
Deputy Clerk

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

13 MATEEL ENVIRONMENTAL JUSTICE
14 FOUNDATION,

15 Plaintiff,

16 v.

17 ATD TOOLS, INC., et al.

18 Defendants.

Case No. 442968

~~[PROPOSED]~~

CONSENT JUDGMENT AS TO ATD
TOOLS, INC.

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1. INTRODUCTION

1.1 On or about April 1, 2005, the Mateel Environmental Justice Foundation (“MEJF”) and its attorneys, Klamath Environmental Law Center (“KELC”), sent 60 Day Notice Letters 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 certain businesses 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 manufacture, distribution and/or sale of wires and cables coated with polyvinyl chloride (“PVC”) (“Wires Notice Letter”). Specifically, MEJF charged that persons handling the PVC-coated wires and cables (hereinafter sometimes referred to as the “Cords”) were exposed to certain chemicals, listed under Proposition 65, including, acrylonitrile, antimony trioxide, arsenic, 1,3 butadiene, carbon tetrachloride, carbon black extracts, chlorinated paraffins, chloroform, acrylate, ethylene thiourea, nickel, toluene, cadmium, hexavalent chromium, vinyl chloride, lead and lead compounds, lead acetate, lead phosphate, lead subacetate and di(2ethylhexyl) phthalate.

1.2 On or about August 7, 2006, Mateel also sent another Notice Letter to the Public Enforcers identified in Section 1.1 and Defendant (“Tools Notice Letter”), alleging that Defendant, through sales in California of hand tools, the handles of which were coated with thermoplastic (“Tool Covered Products”), was in violation of Proposition 65, by knowingly and intentionally exposing persons to lead and lead compounds (“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 On or about July 11, 2005, MEJF (“Plaintiff”), acting on behalf of itself, the public interest, and the general public for the matters described in the Notice Letter, filed a Complaint for civil penalties and injunctive relief (“Complaint”) in the San Francisco Superior Court, fashioned, *MATEEL ENVIRONMENTAL JUSTICE FOUNDATION v. ATD TOOLS, INC.*, Case No. 442968, based, in part, on the April 1, 2005 Notice Letter. The Complaint alleged, among other things, that ATD TOOLS, INC., (“ATD Tools” or “Settling Defendant”) violated Proposition 65 by

1 manufacturing, marketing and/or distributing to California residents products that are themselves or
2 which incorporate wires and cables that are PVC-coated and failing to provide clear and reasonable
3 warnings to California residents who handle and use such products that the handling and use of those
4 products in their normally intended manner will cause those persons to be exposed to Proposition 65
5 Chemicals.

6 1.4 For purposes of this Consent Judgment, Mateel and Defendant stipulate that this
7 Court has jurisdiction over the allegations of violations contained in the Notices and Complaint and
8 personal jurisdiction over Defendant as to the acts alleged in the Notices and Complaint, that venue is
9 proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent
10 Judgment as a full and final settlement and resolution of the allegations contained in the Notices and
11 Complaint and of all claims which were or could have been raised based on the facts alleged therein
12 or arising therefrom..

13 1.5 Mateel and Defendant agree and stipulate, and by the entry of this Consent Judgment,
14 the Court Orders that at the end of the 60 day period of the Tools Notice Letter, the complaint in this
15 action shall be deemed amended to include the allegations set forth in the Tools Notice Letter that
16 Defendant has violated Proposition 65 by sales in California of hand tools, the handles of which were
17 coated with thermoplastic which exposed persons to lead and lead compounds ("lead"), known to the
18 State of California to cause cancer and/or birth defects or other reproductive harm, without first
19 providing a clear and reasonable warning

20 1.6 Mateel and Defendant (the "Parties") enter into this Consent Judgment pursuant to a
21 full and final settlement of disputed claims between them for the purpose of avoiding prolonged
22 litigation. This Consent Judgment shall not constitute an admission with respect to any allegation
23 made in the Notices or the Complaint, each and every allegation of which Defendant denies, nor may
24 this Consent Judgment or compliance with it be used as evidence of any wrongdoing, misconduct,
25 culpability or liability on the part of Defendant.

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1 2. INJUNCTIVE RELIEF-REFORMULATION FOR TOOLS COVERED PRODUCTS

2 2.1 After the Effective Date, Defendant shall cease the shipment or distribution of Tool
3 Covered Products for retail sale in California unless such Tool Covered Products meet the following
4 criteria:

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

11 For purposes of this Section, ninety (90) days after the entry of this Consent Judgment shall be
12 considered the "Effective Date".

13 2.2 Defendant may comply with the above requirements by relying on information
14 obtained from its suppliers of the tools and/or PVC utilized on the handles thereof, provided such
15 reliance is in good faith.

16 3. INJUNCTIVE RELIEF-REFORMULATION FOR WIRES COVERED PRODUCTS

17 3.1 Wire Covered Products shall be deemed to comply with Proposition 65 and be exempt
18 from any Proposition 65 warning requirements if the Cords that are sold as a part of or in association
19 with those Wire Covered Products meet the following criteria: (a) the surface contact layer of the
20 Cords shall have no lead as an intentionally added constituent; and (b) the surface contact layer of the
21 Cords shall have lead content by weight of no more than 0.03% (300 parts per million[ppm]).

22 Defendant may comply with the above requirements by relying on information obtained from its
23 suppliers regarding the content of the surface contact layer of the Cords, provided such reliance is in
24 good faith. Obtaining test results showing that the lead content is no more than 0.03%, using a
25 method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection)
26 of less than 300 ppm shall be deemed to establish good faith reliance. Provided that the level of
27 quantitation requirement set forth in the preceding sentence is met, the test protocol and methods
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1 described on Exhibit A hereto may be relied on. Nothing in the preceding two sentences shall
2 preclude Defendant from establishing good faith reliance by an alternative means.

3 3.2 Wire Covered Products that are shipped by Defendant after the Effective Date for
4 distribution to or sale in California that do not meet the warning exemption standard set forth in
5 Section 3.1 of this Consent Judgment and are not exempt pursuant to Section 3.3 shall be
6 accompanied by a warning as described in Section 3.4 below. For purposes of this Section, ninety
7 (90) days after the entry of this Consent Judgment shall be considered the “Effective Date.”

8 3.3 The following Wire Covered Products are deemed to be exempt from any Proposition
9 65 warning requirements with respect to Cords: (a) Wire Covered Products which because of their
10 size, weight or function have Cords that are handled only infrequently (such as upon their installation
11 in a setting where they are not typically plugged and unplugged) (“Infrequently Handled Products”);
12 (b) those Wire Covered Products that: (i) are sold at retail before the Effective Date; or (ii) are
13 distributed or shipped for sale outside the State of California; (c) Wire Covered Products that use
14 Cords only as internal components not normally accessible to the consumer during ordinary use;
15 and/or (d) Wire Covered Products which contain Proposition 65 Chemicals only as part of the inner
16 conductor or other component not normally accessible to the consumer during ordinary use. Exhibit
17 B contains a list of Wire Covered Products/Product types that are deemed to meet the criteria for
18 Infrequently Handled Products set forth in this Section 3.3 and are therefore exempt. Mateel has
19 previously provided the California Attorney General’s Office and Defendant with a list of Wire
20 Covered Products/Product types that are deemed not to meet the criteria for Infrequently Handled
21 Products set forth in this Section 3.3 and therefore are not exempt (“Non-Exempt Products List”).
22 Exhibit B and the Non-Exempt Products List may be used as guidance in determining whether other
23 Wire Covered Products meet these criteria. The Parties acknowledge that common usage of the
24 terms “portable” and “non-portable” do not affect the classification of any Wire Covered Products
25 under this Consent Judgment. Wire Covered Products may be considered Infrequently Handled
26 Products regardless of their weight or the likelihood that they may be used while moving, whether
27 that be on a person, in a car, on an airplane or otherwise.
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1 3.4 Should Defendant’s Wire Covered Products require Proposition 65 warnings under
2 Section 3.2, Defendant shall, except as otherwise provided in Section 3.5 below, either provide one of
3 the warnings described below or any other Proposition 65 warning that has been reviewed and
4 approved in writing by the California Attorney General for use with Wire Covered Products
5 regarding their thermoset/thermoplastic-coated wires and/or cables:

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

9 or

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

13 or

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

17 The word “WARNING” shall be in all capital letters and in bold typeface. The hand-washing
18 admonition shall be in bold typeface and italicized. Inclusion of the bracketed words “cancer, and” in
19 the above warning shall be at Defendant’s option.

20 3.5 Unless otherwise indicated herein, the warning required or authorized in Section 3.4
21 shall be given by having it: (a) affixed to the Wire Covered Product itself or to the unit package of
22 such Wire Covered Product; (b) printed on the Wire Covered Product itself or on the unit package of
23 such Wire Covered Product; (c) displayed on an internet site for those units of Wire Covered
24 Products sold on the internet; (d) included in the owner’s manual if the conditions set forth in
25 Section 3.7 below are satisfied (“Owner’s Manual Warning”); or, (e) printed on the invoice issued
26 directly to the consumer by Defendant to confirm the sale, where the Defendant sells Wire Covered
27 Products directly to consumers by telephone, mail order, or internet sale, but never has physical
28 possession of the Wire Covered Product or its packaging.

1 3.6 If the warning is printed on the product, package label, or invoice, then the warning
2 shall be contained in the same section of the label that contains other safety warnings, if any,
3 concerning the use of the Wire Covered Product or near its displayed price and/or UPC code. Such
4 warning shall be prominently affixed to or printed on each such Wire Covered Product, its label or
5 package or invoice, and displayed with such conspicuousness, as compared with other words,
6 statements, designs, or devices on such Wire Covered Product, its label, package or display or invoice
7 as to render it likely to be read and understood by an ordinary individual under customary conditions
8 of purchase or use. With respect to the preceding sentence, the type size of any warning required by
9 paragraph 3.4 must be legible, but otherwise need not be larger than any other warning language used
10 in conjunction with the Wire Covered Product in question and its relative size may take into account
11 the nature, immediacy, and acuteness of the risks for which other warnings are given. If the size of a
12 Wire Covered Product and its packaging is such that a warning required by this Consent Judgment
13 cannot physically be printed on its non-transparent portion in a legible size, the warning may be
14 printed on a separate piece of paper or cardstock and inserted into the Wire Covered Product's
15 packaging, provided that i) the cardstock or paper containing the warning is not white or uncolored
16 and contains only the warning language, and ii) a substantial portion of the exterior of the packaging
17 material is transparent. If a warning is provided on the internet pursuant to (c) above, the warning
18 message shall be displayed (or, upon the internet site user's identification as a California resident,
19 such as when the user types in a zip code, automatically appear) either: (a) on the same page on
20 which the Wire Covered Product is displayed, (b) on the same page as the order form for the Wire
21 Covered Product, or (c) on the same page as the price for the Wire Covered Product.

22 3.7 If the warning is given in the owners manual pursuant to Section 3.8 below, it shall be
23 located in one of the following places in the manual: the outside of the front cover; the inside of the
24 front cover; the first page other than the cover; or the outside of the back cover. The warning shall be
25 printed or stamped in the manual or contained in a durable label or sticker affixed to the manual in a
26 font no smaller than the font used for other safety warnings in the manual. Alternatively, the warning
27 may be included in a safety warning section of the owner's manual consistent with specifications
28 issued by Underwriters Laboratories.

1 3.8 A warning in the owner’s manual of a Wire Covered Product may be used to satisfy
2 the warning requirements of this Section 3 only under the following circumstances: the Wire Covered
3 Product (i) may cause serious injury or bodily harm (other than by means of fire or electrocution)
4 unless used as directed; or (ii) is sophisticated, difficult to understand or install, set-up, or assemble;
5 or (iii) has one or more features a consumer must read about in order to know how to program or use
6 the Wire Covered Product. However, a Wire Covered Product may not utilize an owner’s manual
7 warning if it meets the following criteria: (a) the Wire Covered Product is unlikely to cause serious
8 injury or bodily harm other than by means of fire or electrocution; (b) the Wire Covered Product is
9 easily assembled or programmed by an ordinary consumer without need to reference instructions; and
10 (c) fundamental operation of the Wire Covered Product is easily understood and commonly
11 performed by an ordinary consumer without training or need to reference operating instructions.
12 Exhibit C contains a list of Wire Covered Products/product types for which Owner’s Manual
13 Warnings are deemed to be an allowable method of communicating the warnings required by this
14 Section 2. Mateel has previously provided the California Attorney General’s Office and Defendant
15 with a list of Wire Covered Products/product types for which Owner’s Manual Warnings are deemed
16 not to be an allowable method of communicating the warnings required by this Section 2 (the “Non-
17 Owner’s Manual Product List”). Exhibit C and the Non-Owner’s Manual Product List may be used
18 as guidance in determining whether the criteria for use of owner’s manual warnings set forth in this
19 Section are satisfied

20 3.9 Defendant may provide an Owner’s Manual Warning on any Wire Covered
21 Products/product types that satisfy the criteria in Section 3.8, except for those listed on the Non-
22 Owner’s Manual Product List, whether or not that Wire Covered Product or product type is listed on
23 Exhibit C. Products not existing as of the Effective Date that are introduced for sale after July 1,
24 2006 may use a owner’s manual warning if use of the owner’s manual warning has been approved in
25 writing by the California Attorney General’s office, following 60 days prior notice to Mateel.

26 3.10 The requirement for product labeling, set forth herein, is imposed pursuant to the
27 terms of this Consent Judgment. The Parties recognize that product labeling is not the exclusive
28 method of providing a warning under Proposition 65 and its implementing regulations.

1 4. MONETARY RELIEF

2 4.1 Within fifteen (15) days after entry of this Consent Judgment by the Court, Defendant
3 shall pay twenty thousand dollars (\$20,000) to the Ecological Rights Foundation a California
4 non-profit organization that advocates for workers' and consumers' safety and for awareness and
5 reduction of toxic exposures. The foregoing settlement payment shall be mailed to the attention of
6 William Verick, Klamath Environmental Law Center, 424 First Street, Eureka, California 95501,
7 who shall provide them to the respective organization within fifteen (15) days of receipt.

8 5. ATTORNEYS' FEES

9 5.1 Within fifteen (15) days after entry of this Consent Judgment, Defendant shall pay
10 twenty-five thousand dollars (\$25,000) to the Klamath Environmental Law Center to cover Mateel's
11 attorneys' fees and costs. The above payment shall be mailed to the attention of William Verick,
12 Klamath Environmental Law Center, 424 First Street, Eureka, California 95501.

13 5.2 Except as specifically provided in this Consent Judgment, Mateel and Defendant shall
14 bear their own costs and attorneys' fees.

15 6. ENFORCEMENT OF JUDGMENT/STIPULATED REMEDIES

16 6.1 The terms of this Consent Judgment are enforceable by and among the Parties hereto
17 or, with respect to the injunctive relief provided for herein, by the California Attorney General.

18 7. MATTERS COVERED BY THIS CONSENT JUDGMENT

19 7.1 This Consent Judgment is a full, final and binding resolution between Mateel, acting
20 on behalf of itself and, (as to those matters referenced in the Notices) in the public interest pursuant to
21 Health and Safety Code section 25249.7(d), and Defendant concerning any alleged violation of
22 Proposition 65 regarding any claims (statutory, common law or other) that were made or that could
23 have been made against Defendant and/or its affiliates, parent or subsidiary corporations, divisions,
24 successors, officers, directors, assigns, distributors, wholesalers, retailers, customers or any other
25 person in the course of doing business who may use, maintain, distribute, market or sell the Tool
26 Covered Products or Wire Covered Products (hereafter referred to as the "Defendant Releasees") for
27 failure to provide clear, reasonable, and lawful warnings of exposure to: (1) lead contained in or
28 otherwise associated with the Tool Covered Products or (2) the Proposition 65 Chemicals contained

1 in or otherwise associated with the Wire Covered Products, that were sold by Defendant. This
2 Consent Judgment shall serve to release and protect from any potential Proposition 65 liability,
3 wholesalers, distributors, retailers and sellers of any Tool Covered Products and Wire Covered
4 Products that were shipped by Defendant before the Effective Date, with such wholesalers,
5 distributors, retailers and sellers not required to comply with the reformulation and/or Proposition 65
6 warning requirements, set forth in Sections 2 and 3 of this Consent Judgment, for such products so
7 long as such products are sold at retail within 180 days of the Effective Date. Compliance with the
8 terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance by
9 Defendant Releasees with the requirements of Proposition 65 with respect to the lead contained in or
10 otherwise associated with the Tool Covered Products and the Proposition 65 Chemicals contained in
11 or otherwise associated with the Wire Covered Products sold or distributed prior to the entry of this
12 Consent Judgment.

13 7.2 As to any claims, violations (except violations of this Consent Judgment), actions,
14 damages, costs, penalties or causes of action which may arise or have arisen after the original date of
15 entry of this Consent Judgment, compliance by Defendant with the terms of this consent judgment
16 shall be deemed to be full and complete compliance with Proposition 65 as to claims regarding
17 exposure to lead in Tool Covered Products and the Proposition 65 Chemicals in Wire Covered
18 Products, provided that the concentrations of those chemicals other than lead are materially similar to
19 that associated with the Covered Products at the time this Consent Judgment is entered.

20 7.3 In furtherance of the foregoing, Mateel hereby waives any and all rights and benefits
21 which it now has, or in the future may have, conferred upon it with respect to the Tool Covered
22 Products and Wire Covered Products by virtue of the provisions of Section 1542 of the California
23 Civil Code, which provides as follows:

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

1 Mateel understands and acknowledges that the significance and consequence of this waiver of
2 California Civil Code Section 1542 is that even if Mateel suffers future damages arising out of or
3 resulting from, or related directly or indirectly to, in whole or in part from the Tool Covered Products
4 or Wire Covered Products, Mateel will not be able to make any claim for those damages against the
5 Defendant Releasees. Furthermore, Mateel acknowledges that it intends these consequences for any
6 such claims which may exist as of the date of this release but which Mateel does not know exist, and
7 which, if known, would materially affect its decision to enter into this Consent Judgment, regardless
8 of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other
9 cause.

10 8. SERVICE ON THE CALIFORNIA ATTORNEY GENERAL

11 8.1 Mateel shall serve a copy of this Consent Judgment, signed by both Parties, on the
12 California Attorney General on behalf of the Parties so that the California Attorney General may
13 review this Consent Judgment at least forty five (45) days prior to its submittal to the Court for
14 approval. As soon as is feasible following the forty-fifth (45th) day after the date on which the
15 California Attorney General has been served with the aforementioned copy of this Consent Judgment,
16 and in the absence of any written objection by the California Attorney General to the terms of this
17 Consent Judgment or written request by the California Attorney General for additional time, the
18 Parties shall then submit promptly this Consent Judgment to the Court for approval. Prior to
19 submittal to the Court for approval, Mateel shall attach a proof of service attesting that this Consent
20 Judgment has been served on the California Attorney General and the manner and date on which that
21 service was made.

22 9. APPLICATION OF JUDGMENT

23 9.1 The obligations of this Consent Judgment shall apply to and be binding upon Mateel
24 and any and all plaintiffs, acting in the public interest pursuant to Health and Safety Code section
25 25249.7(d), and Defendant and the successors or assigns of any of them.

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1 10. MODIFICATION OF JUDGMENT

2 10.1 This Consent Judgment may be modified only upon written agreement of the Parties
3 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as
4 provided by law and upon entry of a modified Consent Judgment by the Court.

5 11. NOTICE

6 11.1 When any party is entitled to receive any notice or report under this Consent
7 Judgment, the notice or report shall be sent by U.S. mail or overnight courier service to:

8 (a) For Mateel: William Verick, Esq., Klamath Environmental Law Center, 424
9 First Street, Eureka, California 95501; and

10 (b) For ATD Tools,

11 Mr. Jan Akerberg, President
12 ATD Tools, Inc.
13 160 Enterprise Dr.
Wentzville, MO 63385

Dennis Byrne, Esq.
(415) 972-6305

14 11.2 Any party may modify the person and address to whom notice is to be sent by sending
15 each other party notice in accordance with this Paragraph.

16 12. AUTHORITY TO STIPULATE

17 12.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
18 the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the
19 party represented and legally to bind that party.

20 13. RETENTION OF JURISDICTION

21 13.1 This Court shall retain jurisdiction over the matters covered herein and the
22 enforcement and/or application of this Consent Judgment.

23 14. ENTIRE AGREEMENT

24 14.1 This Consent Judgment contains the sole and entire, agreement and understanding of
25 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
26 negotiations, commitments and understandings related hereto. No representations, oral or otherwise,
27 express or implied, other than those contained herein have been made by any party hereto. No other
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1 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
2 any of the Parties.

3 15. GOVERNING LAW

4 15.1 The validity, construction and performance of this Consent Judgment shall be
5 governed by the laws of the State of California.

6 16. COURT APPROVAL

7 16.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect,
8 and cannot be used in any proceeding for any purpose.

9 IT IS SO STIPULATED:

10 DATED: 08-16-2006

By: Jan A. Sheehy

11 Its: _____
12 Defendant ATD Tools, Inc.

14 DATED:

By: _____
15 William Verick

16 Its: _____
17 Plaintiff Mateel Environmental Justice Foundation

20 IT IS SO ORDERED, ADJUDGED AND DECREED:

PETER J. BUSCH

22 Dated: **OCT 06 2006**

23 _____
24 JUDGE OF THE SUPERIOR COURT

1 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
2 any of the Parties.

3 15. GOVERNING LAW

4 15.1 The validity, construction and performance of this Consent Judgment shall be
5 governed by the laws of the State of California.

6 16. COURT APPROVAL

7 16.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect,
8 and cannot be used in any proceeding for any purpose.

9 IT IS SO STIPULATED:

10 DATED: By: _____

11 Its: _____
12 Defendant ATD Tools, Inc.

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14 DATED: By: William Verick
15 William Verick

16 Its: CEO
17 Plaintiff Mateel Environmental Justice Foundation

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20 IT IS SO ORDERED, ADJUDGED AND DECREED:

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22 Dated: _____
23 JUDGE OF THE SUPERIOR COURT

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1 EXHIBIT A
2 (Exemplar of Optional Testing Protocol)

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

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

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

12 Step 4. Prepare samples for laboratory analysis according to EPA Method
13 160.4 or 3050. Samples must be completely digested before proceeding to step 5.

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

15 Step 6. Compute the arithmetic mean from the three samples.
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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
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

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40	Compactor
41	Computer Adapter Cords (not for laptops, and not designed to plug into front of system)
42	Computer Cables (in walls)
43	Computer CD/DVD Drives (installed, not used with laptops)
44	Computer docking system
45	Computer Keyboard
46	Computer modem line (data and power)
47	Computer monitor cable
48	Computer Mouse (cordless)
49	Computer Peripheral AC Adaptor cord and I/F cable (not including those for portable computers or portable peripheral devices)
50	Computer Peripheral PCMCIA Card Cord (not including those for portable computers)
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))
52	Computer Scanners (not including those designed for portable computers)
53	Computer Servers and External Storage Units
54	Computer Speaker Cords (not including those used with portable computers)
55	Computer Tape Drives
56	Controller/Tuner Power Cord
57	Convactor Power Cords
58	Cooktop Power Cords (not including those used with small portable hot plates)
59	Copier
60	Cordless Toothbrush
61	Data Logger Cable (unless included with portable device)
62	Deep fryer
63	Desktop computer power/patch/pin cords (unless designed to plug into front of computer (e.g., USB cords))
64	Digital imaging equipment (non-portable and not for use with portable computer system)
65	Digital media editor power cords/connecting cables (for installed, non-portable media editor units)
66	Digital Sender (digitizes and transmits images), for installed, non-portable units
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
	132	NIC/Modem cables
6	133	Optical Cable/Stereo Optical Cords (unless designed to plug into front of system)
7	134	Optical Disc AC Adapter (non-portable and not for use with portable computer systems)
8	135	Optical Disc Power Cords (non-portable and not for use with portable computer systems)
9	136	Ovens
	137	Over-Range Microwave Ovens/Hoods
10	138	Paper shredder
11	139	Parrafin/wax Bath for Hands
12	140	Patch/pin cords, and cables, adapter cord, coaxial cable, A/V cord, S-VHS cord (when sold with device otherwise excluded)
13	141	Pencil sharpener
14	142	Personal Hygiene System and assoicated power cord
15	143	Pest Repeller
16	144	Pet Cage Dryers
17	145	Portable Dishwasher
18	146	Portable heater (only if designed for permanent installation)
19	147	Portable Washer
20	148	Postage meters
21	149	Postal scales
22	150	Potpourri heater
23	151	Power bases for charging wireless devices (if designed for long term installation)
24	152	Power tools (corded, cordless, stationary, or portable)
25	153	Power/control/instrumentation tray cable (except for non-permanently-installed public address systems)
26	154	Pressure Cooker
27	155	Printer cables
28	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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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/Cordless 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

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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 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.

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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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8 Attorneys for Plaintiff
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION
9

ENDORSED
FILED
San Francisco County Superior Court

OCT 06 2006

GORDON PARK-LI, Clerk

BY: _____
Deputy Clerk

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12
13 COUNTY OF SAN FRANCISCO

14
15 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

CASE NO. 442968

16 Plaintiff,

17 ~~[Proposed]~~ ORDER
APPROVING SETTLEMENT
(ATD Tools, Inc.)

18 vs.

19 ATD TOOLS, INC., et al.,

Date: October 6, 2006
Time: 9:30 a.m.
Dept. No.: 302

20 Defendants.
21 _____/

22
23 Plaintiff's motion for approval of settlement and entry of Consent Judgment as to
24 Defendant **ATD Tools, Inc.**, was heard on regular noticed motion on October 6, 2006, at 9:30
25 a.m. in Department No. 302. Having reviewed the pleadings and the moving papers, having
26 reviewed the terms of the proposed consent judgment and having considered the arguments of
27 counsel, the Court finds as follows:

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

1 requirements of Proposition 65.

2 2. The payments in lieu of civil penalties specified in the Consent Judgment are
3 reasonable and conform to the criteria of Health and Safety Code § 25249.7(b)(2).

4 3. The attorneys fees awarded under the Consent Judgment and the underlying
5 hourly rates, time expended, and costs incurred are reasonable.

6
7 IT IS SO ORDERED.

8 **OCT 06 2006**

9 Dated: _____

PETER J. BUSCH

Judge of the Superior Court