

1 WILLIAM VERICK (BAR NO. 140972)
FREDRIC EVENSON (BAR NO 198059)
2 KLAMATH ENVIRONMENTAL LAW CENTER
424 First Street
3 Eureka, California 95501

4 DAVID H. WILLIAMS (BAR NO. 144479)
BRIAN ACREE (BAR NO. 202505)
5 370 Grand Avenue, Suite 5
Oakland, California 94610
6 Telephone: (510) 271-0827
Attorneys for Plaintiff
7

**ENDORSED
FILED**
San Francisco County Superior Court

FEB 05 2007

GORDON PARK-LI, Clerk
BY: MARJORIE SCHWARTZ-SCOTT
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10 MATEEL ENVIRONMENTAL JUSTICE
11 FOUNDATION,

12 Plaintiff,

13 v.

14 KOLE IMPORTS, et al.

15 Defendants.
16

Case No. CGC-06-449269

[PROPOSED] CONSENT JUDGMENT
AS TO KOLE IMPORTS

1 **INTRODUCTION**

2 1.1 On or about September 6, 2005, MEJF and its attorneys, KELC, sent a Notice Letter to
3 the California Attorney General and other Public Enforcers, charging certain businesses, including
4 KOLE IMPORTS with violating Proposition 65 in their manufacture, distribution and/or sale of wires
5 and cables coated with PVC. Specifically, MEJF alleged that persons handling the PVC-coated wires
6 and cables were exposed to certain chemicals, listed under Proposition 65, including cadmium,
7 hexavalent compounds of chromium, vinyl chloride, lead and lead compounds, lead acetate, lead
8 phosphate, lead subacetate and di(2ethylhexyl) phthalate.

9 1.2 On or about October 19, 2006, MEJF and its attorneys, KELC, sent a second Notice
10 Letter to the California Attorney General and other Public Enforcers, charging certain businesses,
11 including KOLE IMPORTS, with violating Proposition 65 in their manufacture, distribution and/or
12 sale of handtools which are made with PVC components or coatings. Specifically, MEJF alleged that
13 persons handling the PVC handtools were exposed to certain chemicals, listed under Proposition 65,
14 including lead and lead compounds.

15 1.3 On or about February 7, 2006, MEJF, acting on behalf of itself, the public interest, and
16 the general public for the matters described in the Notice Letter, filed a Complaint for civil penalties
17 and injunctive relief (“Complaint”) in the San Francisco Superior Court, fashioned *MATEEL*
18 *ENVIRONMENTAL JUSTICE FOUNDATION v. KOLE IMPORTS., et al.*, Case No. CGC-06-
19 449269, based on the Notice Letter. The Complaint alleged, among other things, that KOLE
20 IMPORTS (“KOLE” or “Settling Defendant”) violated Proposition 65 by manufacturing, marketing
21 and/or distributing to California residents products that are themselves or which incorporate wires
22 and cables that are PVC-coated and failing to provide clear and reasonable warnings to California
23 residents who handle and use such products that the handling and use of those products in their
24 normally intended manner will cause those persons to be exposed to Proposition 65 chemicals.

25 1.4 For purposes of this Consent Judgment, the term “Covered Products” means products
26 that are themselves, or that incorporate, use, or have appended to them, cords, and that are
27 manufactured, distributed, marketed or sold by a Settling Defendant (“Wire Covered Products”),
28 handtool products which incorporate or use plastic coatings or coverings made of thermoplastic

1 materials (Tool Covered Products), and thermoplastic (electric) tape (Tape Covered Products). The
2 term Covered Products includes both such products that are subject to the Warning or Reformulation
3 Requirements of Section 7, and those that are not, including those products that are exempted from
4 the warning requirements of this Consent Judgment pursuant to Sections 7.2 or 7.3. The term
5 “Covered Products” also includes products which are or were manufactured, distributed, marketed
6 and/or sold by a Settling Defendant either under its own name or brand (e.g., privately labeled
7 products) or under the name or brand of another.

8 1.5 For purposes of this Consent Judgment only, and without admitting liability, each
9 Settling Defendant does not dispute that: (a) it is a business that employs or employed more than ten
10 persons, and which does or did manufacture, distribute and/or sell Covered Products into the State of
11 California; (b) the Covered Products contain one or more chemicals listed under Proposition 65; and
12 (c) chemicals listed under Proposition 65 are known to the State of California to cause cancer and/or
13 reproductive toxicity.

14 1.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over the allegations of violations contained in the Complaints and personal jurisdiction
16 over each Settling Defendant as to the acts alleged in the Complaints and/or the Notice Letters, that
17 venue is proper in the County of San Francisco and that this Court has jurisdiction to enter this
18 Consent Judgment as a full settlement and resolution of the allegations contained in the Complaints
19 and Notice Letters and of all claims which were or could have been raised by any person or entity
20 based in whole or in part, directly or indirectly, on the facts alleged therein, arising there from or
21 related thereto.

22 1.7 The Parties enter into this Consent Judgment to effectuate a full and final settlement
23 of any and all claims between the Parties for the purpose of avoiding prolonged litigation. This
24 Consent Judgment shall not constitute an admission with respect to any allegation of the Complaints,
25 and each Settling Defendant denies each and every allegation of the Complaint brought against that
26 Settling Defendant. Neither this Consent Judgment nor compliance with it may be used as evidence
27 of any wrongdoing, misconduct, culpability or liability on the part of any Settling Defendant. Each
28

1 Settling Defendant maintains that its Covered Products have at all times complied with all applicable
2 laws, including Proposition 65.

3 2. SETTLEMENT PAYMENT

4 2.1 In settlement of all of the claims referred to in this Consent Judgment against the
5 Settling Defendant:

6 (a) Settling Defendant agrees to pay an amount of Forty-five thousand dollars (\$45,000)
7 distributed as follows:

8 (i) Twenty-five thousand dollars (\$25,000) shall be paid to KELC for attorneys fees
9 and costs incurred by KELC on behalf of Plaintiff in investigating these matters, prosecuting this
10 action and negotiating a settlement with each Settling Defendant on behalf of itself and the general
11 public (said sum shall be paid such that it is received by KELC on or before December 15, 2006);

12 (ii) Twenty thousand dollars (\$20,000) shall, subject to Paragraph 2.2 below, be made
13 payable to KELC, to be paid such it is received by KELC on or before March 1, 2007, and within a
14 commercially reasonable time thereafter distributed by KELC at the direction of MEJF among the
15 following non-profit organizations: Californians for Alternatives to Toxics; the Center for Ethics and
16 Toxics, a project of the Tides Foundation; the Center on Race, Poverty and the Environment; the
17 Ecological Rights Foundation; the Environmental Protection Information Center; the Golden Gate
18 University School of Law Environmental Litigation Clinic;

19 (iii) In the event this settlement and consent judgment has not been approved by the
20 Court within 120 days of December 15, 2006, the funds disbursed as required above shall be returned
21 to counsel for each Settling Defendant, and the settlement shall be deemed null and void.

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

27 2.2 Except as specifically provided in this Consent Judgment, each side shall bear its own
28 costs and attorney's fees.

1 3. **ENTRY OF CONSENT JUDGMENT**

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

4 4. **MATTERS COVERED BY THIS CONSENT JUDGMENT**

5 4.1 For purposes of this Section 4, the term Settling Defendant shall include each Settling
6 Defendant, as defined above, and its past, present and future parents, divisions, subdivisions, brands,
7 subsidiaries and affiliates and the predecessors, successors and assigns of any of them, as well as
8 their past, present and future officers, directors, employees, agents, attorneys, representatives,
9 shareholders and assigns. For purposes of this Section 4, the term Settling Defendant shall also be
10 deemed to include, to the extent permissible under applicable law, the Settling Defendant's supplier
11 of Covered Products, but only with respect to those Covered Products that such supplier
12 manufactures for the Settling Defendant.

13 4.2 As to Covered Products, this Consent Judgment is a final and binding resolution
14 between Plaintiff acting on behalf of itself and, as to those matters referenced in the Notice Letters
15 and Complaint, in the public interest pursuant to Health and Safety Code Section 25249.7(d), and the
16 Settling Defendant, of: (a) any violation of Proposition 65; and (b) with respect to exposures to the
17 Proposition 65 chemicals associated with the use of Covered Products, any other statutory or
18 common law claim, to the fullest extent that any such claims were or could have been asserted by any
19 person or entity against the Settling Defendant based on its or their alleged exposure of persons to
20 chemicals contained in or otherwise associated with the use of Covered Products manufactured, sold
21 or distributed by, for or on behalf of the Settling Defendant and/or their alleged failure to provide a
22 clear and reasonable warning of such exposure to such individuals; and (c) as to exposures to
23 chemicals contained in or otherwise associated with the use of Covered Products, any other claim
24 based in whole or part on the facts alleged in the Complaints or Notice Letters, whether based on
25 actions or omissions committed by the Settling Defendant or any other entity within the Settling
26 Defendant's chain of distribution, including, but not limited to, customers, wholesale or retail sellers
27 or distributors and any other person in the course of doing business ("Downstream Entity").
28

1 4.3 As to any claims, violations (except violations of this Consent Judgment), actions,
2 damages, costs, penalties, or causes of action which may arise or have arisen after the original date of
3 entry of this Consent Judgment, compliance by the Settling Defendant with the terms of this Consent
4 Judgment shall be deemed to constitute its full and complete compliance with Proposition 65 with
5 respect to the provision of warnings for chemicals contained in or otherwise associated with the use
6 of Covered Products, provided that the concentrations of those chemicals other than lead are
7 materially similar to that associated with the Covered Products at the time this Consent Judgment is
8 entered.

9 4.4 Notwithstanding Sections 4.2 or 4.3 above, as to all customers, distributors,
10 wholesalers, retailers or any other Downstream Entity, except as otherwise indicated in Sections 4.5
11 and 4.6 below, which may in the course of doing business use, maintain, distribute, or sell Covered
12 Products, or for Covered Products which are manufactured, distributed or sold by the Settling
13 Defendant (including Covered Products which are privately labeled by the Settling Defendant for a
14 Downstream Entity), Plaintiff (acting on behalf of itself and, as to those matters raised in the Notice
15 Letters and Complaints, on behalf of the general public) waives all rights to institute any form of
16 legal action whether under Proposition 65 or otherwise, arising out of or resulting from or related
17 directly or indirectly to, in whole or in part, exposure to, or otherwise associated with the use of and
18 alleged failure to warn with respect to Proposition 65 chemicals contained in Covered Products.

19 4.5 In furtherance of the foregoing, Plaintiff hereby waives any and all rights and
20 benefits which it now has, or in the future may have, conferred upon it by virtue of the provisions of
21 Section 1542 of the California Civil Code, which provides as follows:

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

28 Plaintiff understands and acknowledges that the significance and consequence of its waiver of
California Civil Code Section 1542 is that even if Plaintiff and/or, with respect to the matters raised
in the Notice Letters, any person or entity on whose behalf they purport to act or could act, suffers

1 future damages or harm arising out of, resulting from, or related directly or indirectly to, in whole or
2 in part, the matters covered in Sections 4.2, 4.3 and 4.4 above ("Damages"), Plaintiff and any person
3 or entity on whose behalf they purport to act or could act, will not be able to make any claim for such
4 Damages against the Settling Defendant or any of its customers, distributors, wholesalers, retailers, or
5 any other person in the course of doing business who may use, maintain, distribute or sell Covered
6 Products. Furthermore, Plaintiff acknowledges that it intends these consequences for any such
7 Damages which may exist as of the date of this release but which Plaintiff does not know exist, and
8 which, if known, would materially affect its decision to enter into this Consent Judgment, regardless
9 of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other
10 cause, no matter how justifiable such cause may be.

11 4.6 The Settling Defendant waives all rights to institute any form of legal action against
12 Plaintiff, its officers, directors, attorneys, consultants and representatives for all legal actions
13 undertaken or statements made in the course of such legal actions to seek enforcement of this action
14 and judgment.

15 5. **ENFORCEMENT OF JUDGMENT**

16 5.1 The injunctive terms of this Consent Judgment shall be enforced exclusively by the
17 Parties hereto by means of noticed motion or order to show cause before the Superior Court of San
18 Francisco County.

19 5.2 If the Plaintiff identifies any products using or incorporating thermoplastic coatings
20 sold in California for which a warning or reformulation is required and such warning is not actually
21 being given or reformulation has not actually occurred ("Default"), prior to taking any other
22 enforcement action based on the Default, Plaintiff, within thirty (30) days of having knowledge of the
23 Default, shall notify the responsible Settling Defendant in writing with confirmable delivery ("Notice
24 of Default"). The Notice of Default shall identify the product using or incorporating thermoplastic
25 coatings by product name, description and, if available, identification code(s) and a picture of the
26 item and packaging as well as the dates on and locations at which all Defaults were observed. In the
27 event that the Settling Defendant notifies Plaintiff within thirty (30) days of receiving the Notice of
28 Default that it will implement, within forty (40) days thereafter, such measures as are necessary to

1 correct the Defaults ("Notice of Cure"), and includes with the Notice of Cure a payment of five
2 thousand dollars (\$5,000), of which three thousand dollars (\$3,000) shall be paid to MEJF as
3 attorney's fees and investigative costs and two thousand dollars (\$2,000) shall be paid to MEJF as a
4 civil penalty to be divided as required by statute, plaintiff will take no further action based on the
5 Default. No Notice of Default shall be required of any subsequent violations of the Consent
6 Judgment by that Settling Defendant and plaintiff shall be free to pursue any available enforcement
7 action or remedy without prior notice

8 6. **MODIFICATION OF JUDGMENT**

9 6.1 This Consent Judgment may be modified only upon written agreement of the Parties
10 and upon entry of a modified amended Consent Judgment by the Court, or upon motion of any Party
11 as provided by law and upon entry of a modified amended Consent Judgment by the Court.
12 Notwithstanding the immediately preceding sentence or any other term or provision of this Consent
13 Judgment, if Plaintiff or any affiliated entity, or the California Attorney General, enters into, or
14 agrees to in writing, or is otherwise bound by injunctive relief terms or provisions relating to the
15 provision of Proposition 65 warnings for Covered Products, which, taken together, are more
16 favorable than the terms or provisions that this Consent Judgment provide for a Covered Product of
17 like kind and characteristics with respect to its thermoset/thermoplastic-coated electrical cord and
18 use, the terms of injunctive relief provided for in Section 7 of this Consent Judgment shall
19 automatically be deemed to have been modified to add such more favorable terms or provisions as an
20 option which the Settling Defendant may elect for compliance with this Consent Judgment.

21 7. **INJUNCTIVE RELIEF**

22 7.1 Wire Covered Products

23 7.1.1 As to Wire Covered Products, warnings as described in paragraph 7.1.4 below
24 are required, unless: (1) the reformulation conditions set forth in Section 7.1.2 (a) and (b) are both
25 met; (2) the Wire Covered Product is an Infrequently Handled product as defined in Section 7.1.3; (3)
26 the Wire Covered Products are distributed for retail sale before the Effective Date, (4) the Wire
27 Covered Products are distributed for retail sale outside of the State of California; or (5) the Wire
28

1 Covered Products use cords only as internal components not normally accessible to the consumer
2 during ordinary use.

3 7.1.2 Reformulation conditions include both of the following: (a) the PVC used in
4 the wire coating shall have no lead as an intentionally added constituent; and (b) a representative
5 sample of the bulk PVC used to manufacture the wire coatings of the Wire Covered Products has
6 shown lead content by weight of less than 0.03% (300 parts per million “300 ppm”), using a test
7 method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection)
8 of less than 300 ppm. Compliance may be met by relying on information obtained from suppliers of
9 the Covered Products provided such reliance is in good faith.

10 7.1.3 Infrequently Handled Products.

11 Warning shall not be required for a Wire Covered Product, which because of its size,
12 weight or function has cords that are handled only infrequently (such as upon their installation in a
13 setting where they are not typically plugged and unplugged) (“Infrequently Handled Products”).
14 Exhibit A contains a list of Wire Covered Products/product types that are deemed to meet the criteria
15 for Infrequently Handled Products set forth in this Section 7.1.3 and are therefore exempt. Exhibit B
16 is a list of Wire Covered Products/product types that are deemed not to meet the criteria for
17 Infrequently Handled Products set forth in this Section 7.1.3, and therefore are not exempt. This list
18 was previously provided to the California Attorney General’s Office (“Non-Exempt Products List”).
19 Exhibit A and Exhibit B may be used, in combination, as guidance in determining whether a Wire
20 Covered Product should be considered sufficiently “infrequently handled” to not require a warning.

21 7.1.4 If a warning is required, Settling Defendant shall provide a Proposition 65
22 warning for Wire Covered Products as follows:

23 (a) A Settling Defendant shall provide the following warning statement for all
24 units of Wire Covered Products that: (i) are distributed, marketed, sold or shipped by Settling
25 Defendant for retail sale to take place in California 90 days after the entry of this consent judgment ;
26 and (ii) do not meet the requirements of paragraph 7.1. Settling Defendant shall provide the
27 following warning statement for all units of Wire Covered Products for which Settling Defendant
28

1 issues a purchase order on or after February 1, 2007 (the "Effective Date") and which do not meet
2 the requirements of paragraph 7.1.1:

3
4 **PROP 65 WARNING:** This product contains lead, a chemical known to the State
5 of California to cause, [cancer, and] birth defects or other reproductive harm.
6 *Wash your hands after handling this product.*

7 or

8 **PROP 65 WARNING:** Handling the cords on this product exposes you to lead, a
9 chemical known to the State of California to cause [cancer, and] birth defects and
10 other reproductive harm. *Wash hands after use.*

11 or

12
13 **PROP 65 WARNING:** Handling the coated electrical wires of this product
14 exposes you to lead, a chemical known to the State of California to cause [cancer,
15 and] birth defects or other reproductive harm. *Wash hands after use.*

16
17 The phrase "PROP 65" may be excluded at the Defendant's discretion. If included,
18 the phrase "PROP 65" shall be in capitals. The word "WARNING" shall be in capitals. The
19 words "*Wash hands after handling this product*" or "*Wash hands after use,*" shall be italicized
20 or underlined. Inclusion of the bracketed words "cancer, and" in the above warning shall be
21 at Settling Defendant's option. The foregoing does not preclude any Settling Defendant from
22 adding a warning for additional Proposition 65 listed chemicals unless the Attorney General
23 takes the position that such a warning would be misleading or an overwarning. Such warning
24 shall be prominently affixed to or printed on each Wire Covered Product, its label, or package
25 and contained in the same section of the label that contains other safety warnings, if any,
26 concerning the use of the Wire Covered Product or near its displayed price and/or UPC code,
27 and with such conspicuousness, as compared with other words, statements, designs, or
28 devices on the Wire Covered Product, its label, package or display as to render it likely to be

1 read and understood by an ordinary individual under customary conditions prior to the
2 purchase of the Wire Covered Product. The warning shall be at least the same size as the
3 largest of any other safety warnings, if any.

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

24 (i) If the warning is given in the owners manual, it shall be placed
25 in one of the following places in the manual: (1) the outside of the front cover; (2) the inside
26 of the front cover; (3) the first page other than the cover; or (4) the outside of the back cover.
27 The warning shall be printed or stamped in the manual or contained in a durable label or
28 sticker affixed to the manual in a font no smaller than the font used for other safety warnings

1 in the manual. Alternatively, the warning may be included in a safety warning section of the
2 owner's manual consistent with specifications issued by Underwriters Laboratories.

3 (c) The requirement for product labeling set forth in subparagraphs (a) and
4 (b) above is imposed pursuant to the terms of this Consent Judgment. The parties recognize
5 that product labeling is not the exclusive method of providing a warning under Proposition 65
6 and its implementing regulations.

7 (d) As to any Wire Covered Products, if Proposition 65 warnings for lead or lead
8 compounds no longer should be required, or if warning language different from that set forth in this
9 Consent Judgment is required, because of a change or changes in law, or based on a California
10 Attorney General opinion letter specific as to the Wire Covered Products, Settling Defendant shall
11 have no further warning obligations pursuant to this Consent Judgment. In the event that Settling
12 Defendant ceases to implement or modifies the warnings required under this Consent Judgment,
13 Settling Defendant shall provide written notice to Plaintiff MEJF of its intent to do so, and of the
14 basis for its intent, no less than thirty (30) days in advance. Plaintiff MEJF shall notify Settling
15 Defendant in writing of any objection within thirty (30) days of its receipt of such notice, or such
16 objection by the Plaintiff shall be waived.

17 7.1.5 Notwithstanding any other provision of this Consent Judgment, if or when a
18 Settling Defendant has nine (9) or fewer employees [as defined by CCR Title 22 Section 12102(h)] it
19 is released of any obligation to meet the injunctive provisions set forth in 7.1 through 7.4 above.
20 However, if a Settling Defendant chooses, because of having nine (9) or fewer employees, or
21 otherwise, to not comply with the injunctive provisions set forth in section 7.1 through 7.4, none of
22 the releases set forth in this Consent Judgment which apply or concern other entities in the chain of
23 distribution shall apply.

24 7.2 Tool Covered Products

25 7.2.1 PVC used in the production of handles for Tool Covered Products for which a
26 purchase order is issued by Settling Defendant after the Effective Date shall meet the following
27 criteria:

28 (a) The PVC shall have no lead as an intentionally added constituent;

1 (b) A representative sample of the bulk PVC used to manufacture the Tool
2 Covered Products shall have been tested for lead, and must have shown lead content by weight of less
3 than .02% (200 parts per million "200 ppm"), using a test method of sufficient sensitivity to establish
4 a limit of quantification (as distinguished from detection) of less than 200 ppm.

5 (c) Settling Defendant may comply with the above requirements by relying upon
6 information obtained from its suppliers, provided such reliance is in good faith.

7 7.3 Tape Covered Products

8 7.3.1 PVC used in the production of Tape Covered Products for which a purchase
9 order is issued by Settling Defendant after the Effective Date shall meet the following criteria:

10 (a) The PVC shall have no lead as an intentionally added constituent;

11 (b) A representative sample of the bulk PVC used to manufacture the Tape
12 Covered Products shall have been tested for lead, and must have shown lead content by weight of less
13 than 30 parts per million ("30 ppm") using a test method of sufficient sensitivity to establish a limit
14 of quantification (as distinguished from detection) of less than 30 ppm.

15 (c) Settling Defendant may comply with the above requirements by relying upon
16 information obtained from its suppliers, provided such reliance is in good faith.

17 8. TERMINATION

18 The Settling Defendant may elect (but is not required) to terminate its participation in this
19 Consent Judgment beginning on January 31, 2012 or any date thereafter by means of filing with the
20 Court and serving notice of termination on the Plaintiff, the California Attorney General, and counsel
21 of record for the Settling Defendant. In the event of the exercise of such an election, the Settling
22 Defendant's obligations and rights and benefits hereunder shall immediately be deemed to cease to
23 exist.

24 9. APPLICATION OF JUDGMENT

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

1 10. **AUTHORITY TO STIPULATE**

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

5 11. **NOTICES**

6 Whenever a notice is called for by this Consent Judgment, it shall be provided to the Settling
7 Defendant at the following address:

8 Rob Kole
9 Kole Imports
10 24600 South Main Street
11 Carson, CA 90745

12
13 With a copy to: Jennifer Taggart, Esq.
14 Demetriou, Guercio, Springer & Francis, LLP
15 801 South Grand Avenue, 10th Floor
16 Los Angeles, CA 90017-0174

17 If any party desires to change the individual and/or address designated to receive notice on its
18 behalf, such party shall provide a formal notice to the Court and to all other Parties.

19 12. **RETENTION OF JURISDICTION**

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

21 13. **ENTIRE AGREEMENT**

22 This Consent Judgment contains the sole and entire agreement and understanding of the
23 Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
24 commitments and understandings related hereto. No representations, oral or otherwise, express or
25 implied, other than those contained herein have been made by any party hereto. No other agreements
26 not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the
27 Parties.
28

1 14. GOVERNING LAW

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

4 15. COURT APPROVAL

5 If this Consent Judgment is not approved and entered by the Court, or if the entry of this
6 Consent Judgment is successfully challenged, this Consent Judgment shall be of no force or effect,
7 and cannot be used in any proceeding for any purpose.
8

9 IT IS SO STIPULATED;

10
11 DATED: 12-08-06

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION
By: 

12
13
14
15
16 DATED: 12-08-06

KOLE IMPORTS
By: 
Rob Kole, President

17
18
19
20
21
22
23
24
25 IT IS SO ORDERED.

26 DATED: FEB 05 2007

PETER J. BUSCH
JUDGE, SUPERIOR COURT OF CALIFORNIA
PETER J. BUSCH

EXHIBIT A
(Infrequently Handled Wire 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)

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39	Combo Wash/Dryer
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)

1	83	Electronic White Board/Print Board Power Cords and Cables
2	84	Espresso & Cappuccino Makers
3	85	Facial Spas
4	86	Factory Automation Equipment (industrial systems, not for home use)
5	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).
6	88	Fax Machines
7	89	Fire Alarm cable
8	90	Fish Roaster
9	91	Flatbread Maker
10	92	Food Processor/Chopper (not including hand-held models)
11	93	Fountain, Decorative
12	94	Freezer
13	95	Garbage Disposals and associated cords (whether sold separately or with product)
14	96	Generators (large systems with only grounding wire)
15	97	Hair Clippers (cordless models only)
16	98	Hair Dryer (only models with retractable cord)
17	99	Hair setter (rollers only, not curling irons)
18	100	Ham and Two-Way Radio and Accessories and Adapters (not handset cords, unless microphone is designed on stand with switch)
19	101	Hard Disk Recorder peripheral and power cords (not including those for portable computers)
20	102	Headphones (cordless models only)
21	103	Headset with Earphone and Microphone (cordless models only)
22	104	Hole punch
23	105	Hot Lather Machine
24	106	Hot Lotion dispenser
25	107	Hot Pot/Kettle/Tea Brewer (if cord attaches to separate base unit)
26	108	Hot Water Dispenser
27	109	Humidifier/Dehumidifier
28	110	Ice Cream Maker
	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)

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126	Mixer (non-hand-held models only)
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	Paraffin/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 associated 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)

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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/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

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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 Cable Utility Cable and Wire (Power and Communications)

EXHIBIT B

(Descriptive Examples of Non-Exempt Wire Products For Which Warnings Are Required)

1	Audio or video adapter cords for portable products
2	Audio or video cable for portable products
3	Audio/Video/Computer/telecommunications cables packaged individually for retail sales
4	Automotive cigarette lighter adapters
5	Blender (hand-held models)
6	Camera cords and accessories
7	Carving knife
8	CB radio handsets
9	Clip on lights
10	Coffee grinder
11	Computer joystick
12	Computer mouse cords
13	Computer peripheral AC adapter cord and I/F cable for portable computers or portable peripheral devices
14	Computer peripheral PCMCIA card cord for portable computers
15	Computer peripheral wires and cables designed to plug into front of desktop computer (e.g. USB cords)
16	Computer peripheral wires and cables for portable computer and those that may plug into the front of the desktop computer.
17	Computer speaker cords which can be used with portable computers
18	Corded shaver
19	Corn popper
20	Curling iron
21	Data logger cable included with portable devices.
22	Desktop computer power/patch/pin cords designed so may plug into the front of the computer
23	External CD/DVD and tape drives for portable computers
24	Food processor/Chopper (hand-held models)
25	Griddle
26	Grill (countertop)
27	Hair clipper (corded)
28	Hair dryer
29	Hand held drink mixer
30	Hot pot/Kettle/Tea brewer (unless cord attached to separate power base)
31	Ice crusher
32	Iron (unless cordless)
33	Juicer/Juice extractor (household or portable)
34	Laptop computer cords
35	Meat Slicer
36	Mixer (hand held models)
37	Microphone cable (except for cords powering base unit of cordless microphone system)

1	38	Mobile telephone accessories (except for cords powering base unit of cordless microphone system)
2	39	Mobile telephone accessories (except corded base units and permanent installations in automobiles)
3	40	MP3 player
4	41	Portable digital imaging equipment
5	42	Portable DVD player
6	43	Portable fan/heater
7	44	Portable heater (unless designed for permanent installation)
8	45	Portable musical instruments and accessories including power and adapter cords (e.g. electronic keyboards, samplers, drums, guitars, amplifiers, monitors, patch cords, pick-ups)
9	46	Portable personal stereo
10	47	Portable power adapters (except for i) AC adapters for foreign outlets and other voltage converters or ii) auto power adapters and cord with are not designed to plug into cigarette lighter or similar in-dash power source)
11	48	Portable power inverters (for automotive use)
12	49	Portable television
13	50	Portable ZIP drives and accessories
14	51	Scanners for portable computers
15	52	Skillet
16	53	Slow cooker
17	54	Small portable hotplate power cords
18	55	Steam cooker
19	56	Stereo headphones (unless cordless)
20	57	Holiday String lights
21	58	Telephone handset cords
22	59	Telephone headset cords
23	60	USB, firewire cords
24	61	Vacuum
25	62	Waffle maker
26	63	Headphone/Headset cords (except for cords powering base unit of cordless system)
27	64	Extension cord
28	65	Massager (hand-held, not including back cushion massager or electric recliner/massage chairs)
	66	Heating pad
	67	Sandwich maker
	69	Video game accessories
	70	Electric thermos/carafe (without separate base unit)

EXHIBIT C

(Examples of Wire 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 patch cables 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

EXHIBIT D

(Descriptive Examples of Wire Products That May Not Carry Warnings In An Owner's Manual)

1	Patch/pin cords, and cables, adapter cord, coaxial cable, A/V cord, S-VHS cord (when sold separately or with equipment that does not appear on the list of products that may carry an owners manual warning)
2	AC adaptor cords (when sold separately or with equipment that does not appear on the list of products that may carry an owners manual warning)
3	Power and adaptor cords for portable electronic musical instruments and keyboards (when sold separately or with equipment that does not appear on the list of products that may carry an owners manual warning)
4	Video Game Accessories and Joysticks(unless reference to the owners manual is necessary to program and install software for use)
5	Telephone headset or telephone headset w/microphone (when sold separately or with equipment that does not appear on the list of products that may carry an owners manual warning)
6	Portable Stereos
7	MP3 Players
8	Massagers
9	Microphone cords
10	Handheld Mixer/Food Processor
11	Coffee Grinders
12	Telephone Handset cords (handset-to-phone cords when sold separately or with equipment that does not appear on the list of products that may carry an owners manual warning)
13	Extension cords
14	Hairdryers
15	Irons (other than travel steamers)
16	Computer mouse (if sold separately from the computer system)
17	Holiday String Lights
18	Audio and Video adapter cords or cable or portable products (when sold separately or with equipment that does not appear on the list of products that may carry an owners manual warning)
19	Power adapters and cord for use with automotive cigarette lighter or similar power outlet (when sold separately or with equipment that does not appear on the list of products that may carry an owners manual warning)

1 WILLIAM VERICK, CSB #140972
Klamath Environmental Law Center
2 FREDRIC EVENSON, CSB #198059
424 First Street
3 Eureka, CA 95501
(707) 268-8900

4 DAVID H. WILLIAMS, CSB #144479
5 BRIAN ACREE, CSB #202505
370 Grand Avenue, Suite 5
6 Oakland, CA 94610
Telephone: (510) 271-0826
7 Facsimile: (510) 271-0829

8 Attorneys for Plaintiff
9 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

15 MATEEL ENVIRONMENTAL JUSTICE
16 FOUNDATION,

CASE NO. 449269

17 Plaintiff,

~~[Proposed]~~ ORDER
APPROVING SETTLEMENT
(KOLE IMPORTS, INC.)

18 vs.

19 KOLE IMPORTS, Inc., et al.,
20 Defendants.

Date: February 5, 2007
Time: 9:30 a.m.
Dept. No.: 301

23 Plaintiff's motion for approval of settlement and entry of Consent Judgment as to
24 Defendant Inc. was heard on regular noticed motion on February 5, 2007, at 9:30 a.m. in
25 Department No. 301. Having reviewed the pleadings and the moving papers, having reviewed
26 the terms of the proposed consent judgment and having considered the arguments of counsel, the
27 Court finds as follows:

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

**ENDORSED
FILED**
San Francisco County Superior Court

FEB 05 2007

GORDON PARK-LI, Clerk
BY: MARJORIE SCHWARTZ-SCOTT
Deputy Clerk

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
9 Dated: FEB 05 2007

PETER J. BUSCH

Judge of the Superior Court

PETER J. BUSCH