

1 WILLIAM VERICK, SBN 140972
Klamath Environmental Law Center
2 FREDRIC EVENSON, SBN 198059
Law Office of Fredric Evenson
3 424 First Street
Eureka, CA 95501
4 Telephone: (707) 268-8900
Facsimile: (707) 268-8901

5 DAVID WILLIAMS, SBN 144479
6 BRIAN ACREE, SBN 202505
370 Grand Avenue, Suite 5
7 Oakland, CA 94610
Telephone: (510) 271-0826
8 Facsimile: (510) 271-0829

9 Attorneys for Plaintiff,
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO
13 (Unlimited Jurisdiction)

14 MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION,

CASE NO. 449269

15 Plaintiff,

16 v.

~~PROPOSED~~ CONSENT JUDGMENT AS
TO DEFENDANT MBR INDUSTRIES, INC.

17
18 KOLE IMPORTS, et al.,

19 Defendants.

20
21 1. INTRODUCTION

22 On or about September 6, 2005, the Mateel Environmental Justice Foundation ("MEJF")
23 and its attorneys, Klamath Environmental Law Center ("KELC") sent a 60 Day Notice Letter to
24 the Office of the California Attorney General of the State of California ("California Attorney
25 General"), all California counties' District Attorneys and all City Attorneys of California cities
26 with populations exceeding 750,000, (collectively, "Public Enforcers"), charging MBR
27 Industries, Inc. ("Defendant" or "Settling Defendant") with violating the Safe Drinking Water and
28 Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq.

ENDORSED
FILED
San Francisco County Superior Court

FEB 16 2007

GORDON PARK-LI, Clerk
BY: CYNTHIA S. HERBERT
Deputy Clerk

1 (“Proposition 65”), in their manufacture, distribution and/or sale of wires and cables coated with
2 polyvinyl chloride (“PVC”). Specifically, MEJF charged that persons handling the PVC-coated
3 wires and cables were exposed to certain chemicals, listed under Proposition 65, including
4 cadmium, hexavalent compounds of chromium, vinyl chloride, lead and lead compounds, lead
5 acetate, lead phosphate, lead subacetate and di(2ethylhexyl) phthalate.

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

17 b. Plaintiff and Settling Defendant are, for purposes of this Consent Judgment,
18 collectively referred to as the “Parties,” with each of them a “Party”.

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

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

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

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

23 **2. SETTLEMENT PAYMENT**

24 2.1 In settlement of all of the claims referred to in this Consent Judgment against the
25 Settling Defendant:

26 a. The Settling Defendant shall pay \$20,000 (twenty thousand dollars), payable
27 to Klamath Environmental Law Center (KELC) such that payment is received by KELC, 424
28

1 First Street, Eureka, CA 95501, on or before January 3, 2007. This \$20,000 payment shall be
2 divided as follows: (i) \$15,000 (fifteen thousand dollars) shall be made payable to KELC for
3 attorneys fees and costs incurred by KELC on behalf of Plaintiff in investigating this matter and
4 negotiating this Consent Judgment on behalf of itself and the general public, (ii) \$5,000 (five
5 thousand dollars) shall be made payable to Californians for Alternatives to Toxics, a California
6 non-profit corporation. Both of the above-referenced payments shall be mailed to KELC, which
7 shall distribute the \$5,000 payment to Californians for Alternatives to Toxics within a
8 commercially reasonable amount of time. In the event this settlement and proposed consent
9 judgment has not been approved by the court within 120 days of its being signed, the payment
10 referenced in this paragraph shall be returned and the agreement deemed null and void.

11 2.2 MEJF and KELC represent and warrant that Californians for Alternatives to Toxics
12 is a tax exempt, section 501(c)(3) non-profit organization and that funds distributed to
13 Californians for Alternatives to Toxics pursuant to this Consent Judgment may only be spent to
14 reduce harm from toxic chemicals, or to increase consumer, worker and community awareness of
15 health hazards posed by lead and other toxic chemicals.

16 2.3 Except as specifically provided in this Consent Judgment, each side shall bear its
17 own costs and attorney's fees.

18 **3. ENTRY OF CONSENT JUDGMENT**

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

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

22 4.1 For purposes of Section 4 of this Consent Judgment, the term Settling Defendant shall
23 include the Settling Defendant, as defined above, and its past, present and future parents,
24 divisions, subdivisions, brands, subsidiaries and affiliates and the predecessors, successors and
25 assigns of any of them, as well as their past, present and future officers, directors, employees,
26 agents, attorneys, representatives, shareholders and assigns. For purposes of Section 4, the term
27 Settling Defendant shall also be deemed to include the Settling Defendant's supplier of Covered
28

1 Products, but only with respect to those Covered Products that such supplier manufactures for the
2 Settling Defendant. The preceding sentence shall not apply with respect to a supplier who ships
3 Covered Products directly to a consumer at the request of the Settling Defendant, where a
4 warning is provided to address the obligations of this Consent Judgment solely pursuant to
5 Section 7.5(e) below. A list delineating some, but not necessarily all, of the names of the various
6 business entities and brands or product types referred to in this Paragraph and in existence on or
7 before the date of this Consent Judgment is attached hereto as Exhibit C.

8 4.2 As to Covered Products, this Consent Judgment is a final and binding resolution
9 between Plaintiff acting on behalf of itself and, (as to those matters referenced in the Notice
10 Letters) in the public interest pursuant to Health and Safety Code Section 25249.7(d): (a) any
11 violation of Proposition 65; or, (b) with respect to exposures to the Proposition 65 Chemicals
12 associated with the use of Covered Products, any other statutory or common law claim, to the
13 fullest extent that any such claims were or could have been asserted by any person or entity
14 against the Settling Defendant based on its or their exposure of persons to chemicals contained in
15 or otherwise associated with the use of Covered Products manufactured, sold or distributed by, for
16 or on behalf of the Settling Defendant and/or their alleged failure to provide a clear and
17 reasonable warning of such exposure to such individuals; or (c) as to exposures to chemicals
18 contained in or otherwise associated with the use of Covered Products, any other claim based in
19 whole or part on the facts alleged in the Complaints or Notice Letters, whether based on actions
20 or omissions committed by the Settling Defendant or any other entity within the Settling
21 Defendant's chain of distribution, including, but not limited to, customers, wholesale or retail
22 sellers or distributors and any other person in the course of doing business ("Downstream
23 Entity").

24 4.3 As to any claims, violations (except violations of this Consent Judgment), actions,
25 damages, costs, penalties, or causes of action which may arise or have arisen after the original
26 date of entry of this Consent Judgment, compliance by the Settling Defendant with the terms of
27 this Consent Judgment shall be deemed to constitute its full and complete compliance with
28

1 Proposition 65 with respect to the provision of warnings for chemicals contained in or otherwise
2 associated with the use of Covered Products, provided that the concentrations of those chemicals
3 other than lead are materially similar to that associated with the Covered Products with respect to
4 Proposition 65 at the time this Consent Judgment is entered.

5 4.4 Notwithstanding Sections 4.2 or 4.3 above, as to all customers, distributors,
6 wholesalers, retailers or any other Downstream Entity, except as otherwise indicated in Sections
7 4.5 and 4.6 below, which may in the course of doing business use, maintain, distribute, or sell
8 Covered Products which are manufactured, distributed or sold by the Settling Defendant
9 (including Covered Products which are privately labeled by the Settling Defendant for a
10 Downstream Entity), Plaintiff (acting on behalf of itself and, as to those matters raised in the
11 Notice Letters, on behalf of the general public) waives all rights to institute any form of legal
12 action whether under Proposition 65 or the Unfair Competition Act or otherwise, arising out of or
13 resulting from or related directly or indirectly to, in whole or in part, exposure to, or otherwise
14 associated with the use of and alleged failure to warn with respect to Proposition 65 Chemicals
15 contained in Covered Products.

16 4.5 In furtherance of the foregoing, Plaintiff hereby waives any and all rights and
17 benefits which it now has, or in the future may have, conferred upon it by virtue of the provisions
18 of Section 1542 of the California Civil Code, which provides as follows:

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

26 Plaintiff understands and acknowledges that the significance and consequence of its waiver of
27 California Civil Code Section 1542 is that even if Plaintiff and/or, with respect to the matters
28 raised in the Notice Letters, any person or entity on whose behalf they purport to act or could act,
suffers future damages or harm arising out of, resulting from, or related directly or indirectly to,

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

10 4.6 The Settling Defendant waives all rights to institute any form of legal action against
11 Plaintiff, its officers, directors, attorneys, consultants and representatives for all legal actions
12 undertaken or statements made in the course of such legal actions to seek enforcement of this
13 action and judgment.

14 5. ENFORCEMENT OF JUDGMENT

15 5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
16 hereto by means of noticed motion or order to show cause before the Superior Court of San
17 Francisco County.

18 6. MODIFICATION OF JUDGMENT

19 6.1 This Consent Judgment may be modified only upon written agreement of the Parties
20 and upon entry of a modified amended Consent Judgment by the Court, or upon motion of any
21 Party as provided by law and upon entry of a modified amended Consent Judgment by the Court.
22 Notwithstanding the immediately preceding sentence or any other term or provision of this
23 Consent Judgment, if Plaintiff or any affiliated entity, or the California Attorney General, enters
24 into, or agrees to in writing, or is otherwise bound by injunctive relief terms or provisions relating
25 to the provision of Proposition 65 warnings for Covered Products, with regard to their Cords,
26 which, taken together, are more favorable to the defendant(s) than the terms or provisions that this
27 Consent Judgment provide for a Covered Product of like kind and characteristics with respect to
28

1 its thermoset/thermoplastic-coated electrical cord and use, the terms of injunctive relief provided
2 for in Section 7 of this Consent Judgment shall automatically be deemed to have been modified to
3 add such more favorable terms or provisions as an option which the Settling Defendant may elect
4 for compliance with this Consent Judgment.

5 **7. INJUNCTIVE RELIEF**

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

20 7.2 Covered Products manufactured and shipped for distribution to or sale in California
21 on or after the Effective Date that do not meet the warning exemption standard set forth in
22 Section 7.1 of this Consent Judgment and are not exempt pursuant to Section 7.3 shall be
23 accompanied by a warning as described in Section 7.4 below. For purposes of this Section, one
24 year after the entry of this Consent Judgment shall be considered the "Effective Date."

25 7.3 The following Covered Products are deemed to be exempt from any Proposition 65
26 warning requirements with respect to Cords: (a) Covered Products which because of their size,
27 weight or function have Cords that are handled only infrequently (such as upon their installation
28

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

20 7.4 Should the Settling Defendant’s Covered Products require Proposition 65 warnings
21 under Section 7.2, the Settling Defendant shall, except as otherwise provided in Section 7.5
22 below, either provide one of the warnings described below or any other Proposition 65 warning
23 that has been reviewed and approved in writing by the California Attorney General for use with
24 Covered Products regarding their thermoset/thermoplastic-coated wires and/or cables:

25 **“WARNING:** This product contains chemicals, including lead, known to the State
26 of California to cause [cancer, and] birth defects or other reproductive harm.

27 *Wash hands after handling.”*

1 or

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

5 or

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

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

12 7.5 Unless otherwise indicated herein, the warning required or authorized in Sections 7.4
13 shall be given by having it: (a) affixed to the Covered Product itself or to the unit package of such
14 Covered Product; (b) printed on the Covered Product itself or on the unit package of such
15 Covered Product; (c) displayed on an internet site for those units of Covered Products sold on the
16 internet; (d) included in the owner’s manual if the conditions set forth in Section 7.9 below are
17 satisfied (“Owner’s Manual Warning”); or, (e) printed on the invoice issued directly to the
18 consumer by the Settling Defendant to confirm the sale, where the Settling Defendant sells
19 Covered Products directly to consumers by telephone, mail order, or internet sale, but never has
20 physical possession of the Covered Product or its packaging.

21 7.6 If the warning is printed on the product, package label, or invoice, then the warning
22 shall be contained in the same section of the label that contains other safety warnings, if any,
23 concerning the use of the Covered Product or near its displayed price and/or UPC code. Such
24 warning shall be prominently affixed to or printed on each such Covered Product, its label or
25 package or invoice, and displayed with such conspicuousness, as compared with other words,
26 statements, designs, or devices on such Covered Product, its label, package or display or invoice
27 as to render it likely to be read and understood by an ordinary individual under customary
28

1 conditions of purchase or use. With respect to the preceding sentence, the type size of any
2 warning required by paragraph 7.4 must be legible, but otherwise need not be larger than any
3 other warning language used in conjunction with the Covered Product in question and its relative
4 size may take into account the nature, immediacy, and acuteness of the risks for which other
5 warnings are given. If the size of a Covered Product and its packaging is such that a warning
6 required by this Consent Judgment cannot physically be printed on its non-transparent portion in
7 a legible size, the warning may be printed on a separate piece of paper or cardstock and inserted
8 into the Covered Product's packaging, provided that i) the cardstock or paper containing the
9 warning is not white or uncolored and contains only the warning language, and ii) a substantial
10 portion of the exterior of the packaging material is transparent. 7.5 If a warning is provided on
11 the internet pursuant to (c) above, the warning message shall be displayed (or, upon the internet
12 site user's identification as a California resident, such as when the user types in a zip code,
13 automatically appear) either: (a) on the same page on which the Covered Product is displayed, (b)
14 on the same page as the order form for the Covered Product, or (c) on the same page as the price
15 for the Covered Product.

16 7.7 If the warning is given in the owners manual pursuant to Section 7.8 below, it shall
17 be located in one of the following places in the manual: the outside of the front cover; the inside
18 of the front cover; the first page other than the cover; or the outside of the back cover. The
19 warning shall be printed or stamped in the manual or contained in a durable label or sticker
20 affixed to the manual in a font no smaller than the font used for other safety warnings in the
21 manual. Alternatively, the warning may be included in a safety warning section of the owner's
22 manual consistent with specifications issued by Underwriters Laboratories.

23 7.8 A warning in the owner's manual of a Covered Product may be used to satisfy the
24 warning requirements of this Section 7 only under the following circumstances: the Covered
25 Product (i) may cause serious injury or bodily harm (other than by means of fire or electrocution)
26 unless used as directed; or (ii) is sophisticated, difficult to understand or install, set-up, or
27 assemble; or (iii) has one or more features a consumer must read about in order to know how to
28

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

17 7.9 The Settling Defendant may provide an Owner's Manual Warning on any Covered
18 Products/product types, except for those listed on the Non-Owner's Manual Product List, that
19 satisfy the criteria in Section 7.8, whether or not that Covered Product or product type is listed on
20 Exhibit F. Settling Defendant shall provide to Plaintiff, by certified mail or other confirmable
21 delivery, a list of those Covered Products for which an owners manual warning is proposed to be
22 given. Plaintiff shall, within 60 days, notify Settling Defendant as to whether Plaintiff agrees that
23 an owner's manual warning is appropriate. In the event that Plaintiff determines that an Owner's
24 Manual Warning is not appropriate, it shall provide a written explanation of the basis therefore.
25 In the event that the Settling Defendant disagrees with Plaintiff's determination the settling
26 defendant may elect to invoke the Dispute Resolution process provided for in Section 9 hereof.
27 Products not existing as of the Effective Date that are introduced for sale after January 1, 2006

28

1 may use a owner's manual warning if approved in writing by the California Attorney General's
2 office, following 60 days prior notice to Plaintiff.

3 7.10 The requirement for product labeling, set forth herein, is imposed pursuant to the
4 terms of this Consent Judgment. The Parties recognize that product labeling is not the exclusive
5 method of providing a warning under Proposition 65 and its implementing regulations.

6 **8. ADDED INFREQUENTLY HANDLED PRODUCTS**

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

13 8.2 At Least 60 days prior to retail sale, Settling Defendant shall provide to Plaintiff by
14 certified mail or other confirmable delivery, a list of those Covered Products which do not exist as
15 of the Effective Date for which Settling Defendant contends are infrequently handled products for
16 which no warning is required. Plaintiff shall, within 60 days, notify Settling Defendant as to
17 whether Plaintiff agrees that that the Covered Product is infrequently handled and does not
18 require a warning. In the event that Plaintiff determines that a warning is required it shall
19 provide a written explanation of the basis therefore. In the event that the Settling Defendant
20 disagrees with Plaintiff's determination the settling defendant may elect to invoke the Dispute
21 Resolution process provided for in Section 9 hereof. Products not existing as of the Effective
22 Date that are introduced for sale after January 1, 2006 may be sold without a warning because
23 they are infrequently handled if so approved in writing by the California Attorney General's
24 office, following 60 days prior notice to Plaintiff.

25 **9. DISPUTE RESOLUTION**

26 9.1 Wherever this Consent Judgment provides that the Settling Defendant may invoke
27 the Dispute Resolution process or file a motion to have the Court resolve an issue, the Settling
28

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

1 10. **APPLICATION OF JUDGMENT**

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

6 11. **AUTHORITY TO STIPULATE**

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

10 12. **NOTICES**

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

15 13. **RETENTION OF JURISDICTION**

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

17 14. **ENTIRE AGREEMENT**

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

24 15. **GOVERNING LAW**

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

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

16. COURT APPROVAL

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

IT IS SO STIPULATED:

Dated: _____

MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION

By William Verick
William Verick, President

Dated: _____

MBR INDUSTRIES, INC.

By _____

IT IS SO ORDERED.

Dated: _____

Judge of the Superior Court

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

16. COURT APPROVAL

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

IT IS SO STIPULATED:

Dated: _____

Dated: 12/12/2006

IT IS SO ORDERED.

Dated: FEB 16 2007

MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION

By _____
William Verick, President

MBR INDUSTRIES, INC.

By  _____
BRIAN POMERANC
VICE-PRESIDENT

PETER J. BUSCH
Judge of the Superior Court

EXHIBIT A
(60 Day Notice Letter)

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

Klamath

September 6, 2005

EDWARD G. WEIL
DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 70550
OAKLAND CA 94612-0550

Greetings:

This office and the Mateel Environmental Justice Foundation ("Mateel") hereby give you notice that the private businesses on the attached service list are in violation of Cal. Health & Safety Code § 25249.6. This office and Mateel are both private enforcers of Proposition 65, both organizations may be reached at the below listed address and telephone number, I may be considered a "responsible individual" at both organizations, and I may be contacted at the same address and telephone number. The above referenced violations occur when California residents come into contact with thermoset/thermoplastic-coated wires, cables, and/or cords/cord sets, including PVC-coated wires, cords/cord sets, plugs and connectors, and both SPT and HPN cords/cord sets (hereinafter collectively "Cords"). These businesses market products with, or that are themselves, Cords. Some examples of the products that incorporate Cords are those listed in the attached Product List. Though a specific model or SKU or product number is given as an example, this notice pertains to all variations of the specific type of product of which the named model is an example. Handling of, and contact with, these Cords exposes people to acrylonitrile, antimony trioxide, arsenic, 1,3 butadiene, carbon tetrachloride, carbon black extracts, chlorinated paraffins, chloroform, ethyl acrylate, ethylene thiourea, nickel, toluene, cadmium, hexavalent chromium, vinyl chloride, lead and lead compounds, lead acetate, lead phosphate, lead subacetate, and di(2ethylhexyl) phthalate. Handling Cords causes these chemicals to come off the coating of the Cords and to be transferred to the skin of the person handling the Cords. These chemicals are then ingested through hand-to-mouth contact and hand-to-food-to-mouth and hand-to-cigarette-to-mouth behavior. These chemicals are also absorbed through the skin, through mucous membranes and enter the body through cuts, punctures and abrasions. Smokers also inhale those chemicals transferred from hands to cigarettes. People are thus exposed to these chemicals via the ingestion, inhalation, dermal absorption, mucous membrane absorption and subcutaneous routes. The listed companies did not and do not provide people with clear and reasonable warnings before they expose them to lead. The above referenced violations have occurred every day since at least September 6, 2002 and will continue every day until the lead is taken out of these products or until warnings are given. These violations are alleged for occupational exposures as well as for consumer and environmental exposures. We do not, however, allege occupational exposure violations as to any of these products the listed businesses make outside of California, except as to workplaces the businesses themselves maintain in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off the property of the businesses and in each of California's 58 counties.

Cordially,

William Verick

244 First Street, Eureka, CA 95501 • (707) 268-8900 (phone) (707) 268-8901 (fax)

SERVICE LIST

EDWARD G. WEIL
DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY
GENERAL
P.O. BOX 70550
OAKLAND CA 94612-0550

OFFICE OF THE CITY ATTORNEY
CITY OF OAKLAND
545 14TH ST 12TH FLOOR
OAKLAND, CA 94612

OFFICE OF THE CITY ATTORNEY
CITY OF SAN FRANCISCO
CITY HALL ROOM 206
400 VAN NESS
SAN FRANCISCO, CA 94102

OFFICE OF THE CITY ATTORNEY
CITY OF SACRAMENTO
980 9th Street, 10th Floor
SACRAMENTO, CA 95814

OFFICE OF THE CITY ATTORNEY
CITY OF SAN JOSE
151 W. MISSION ST.
SAN JOSE, CA 95110

OFFICE OF THE CITY ATTORNEY
CITY OF LOS ANGELES
200 N. MAIN ST.
LOS ANGELES, CA 90012

OFFICE OF THE CITY ATTORNEY
CITY OF SAN DIEGO
202 C ST. FLOOR 2
SAN DIEGO, CA 92101

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF ALAMEDA
225 FALLON ST. #9
OAKLAND, CA 94612

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF ALPINE
P O BOX 248
MARKLEEVILLE, CA 96120

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF AMADOR
118 COURT ST. SUITE 202
JACKSON, CA 95642

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF BUTTE
25 COUNTY CENTER DR.
OROVILLE, CA 95965

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF CALAVERAS
GOVERNMENT CENTER
891 MOUNTAIN RANCH ROAD
SAN ANDREAS, CA 95249

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF COLUSA
347 MARKET ST.
COLUSA, CA 95932

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF CONTRA COSTA
P.O. BOX 670
MARTINEZ, CA 94553

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF DEL NORTE
450 H ST #171
CRESCENT CITY, CA 95531

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF EL DORADO
515 MAIN ST.
PLACERVILLE, CA 95467

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF FRESNO
2220 TULARE ST #1000
FRESNO, CA 93721

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF GLENN
P.O. BOX 430
WILLOWS, CA 95918

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF HUMBOLDT
825 5TH ST.
EUREKA, CA 95501

COUNTY OF IMPERIAL
COURTHOUSE, FLOOR 2
939 W. MAIN ST
EL CENTRO, CA 92243

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF INYO
P.O. DRAWER D
INDEPENDENCE, CA 93526

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF KERN
1213 TRUXTON AVE. FLOOR 4
BAKERSFIELD, CA 93301

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF KINGS
1400 W. LACEY BLVD.
HANFORD, CA 93230

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF LAKE
255 N. FORBES ST #424
LAKEPORT, CA 95453

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF LASSEN
COUNTY ADMINISTRATION
BUILDING
707 NEVADA ST.
SUSANVILLE, CA 96130

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF LOS ANGELES
18000 CRIMINAL COURTS
BUILDING
210 W. TEMPLE ST.
LOS ANGELES, CA 90012

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MADERA
209 W. YOSEMITE AVE.
MADERA, CA 93637

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MARIN
HALL OF JUSTICE #183
SAN RAFAEL, CA 94903

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MARIPOSA
P.O. BOX 748
MARIPOSA, CA 95338

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MENDOCINO
301 S. STATE ST.
UKIAH, CA 95482

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MERCED
2222 M ST.
MERCED, CA 95340

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MODOC
P.O. BOX 1171
ALTURAS, CA 9610

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MONO
P.O. BOX 617
BRIDGEPORT, CA 93517

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MONTEREY
240 CHURCH ST.
P.O. BOX 180
SALINAS, CA 93902

COUNTY OF NAPA
931 PARKWAY MALL
P.O. BOX 720
NAPA, CA 94559-0720

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF NEVADA
COURTHOUSE ANNEX
NEVADA CITY, CA 95959

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF ORANGE
400 CIVIC CENTER DR WEST
SANTA ANA, CA 92701

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF PLACER
11562 B AVE
AUBURN, CA 95603-2687

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF PLUMAS
P.O. BOX 10716
QUINCY, CA 95971

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF RIVERSIDE
4075 MAIN ST.
RIVERSIDE, CA 92501

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SACRAMENTO
P.O. BOX 749
SACRAMENTO, CA 95804

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN BENITO
419 4TH ST
HOLLISTER, CA 95023

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN BERNARDINO
316 MT. VIEW AVE.
SAN BERNARDINO, CA 92415-0004

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO
101 W. BROADWAY #1440
SAN DIEGO, CA 92101

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN FRANCISCO
850 BRYANT ST #322
SAN FRANCISCO, CA 94103

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN JOAQUIN
222 E. WEBER AVE #202
STOCKTON, CA 95202

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN LUIS OBISPO
COUNTY GOVERNMENT CENTER #450
SAN LUIS OBISPO, CA 93408

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
REDWOOD CITY, CA 94063

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA BARBARA
1105 SANTA BARBARA ST.
SANTA BARBARA, CA 93101

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA CLARA
70 W. HEDDING ST.
SAN JOSE, CA 95110

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA CRUZ
701 OCEAN ST. #200
SANTA CRUZ, CA 95060

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SHASTA
1525 COURT ST.
REDDING, CA 96001

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SIERRA
P.O. BOX 457
DOWNIEVILLE, CA 95936

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SISKIYOU
P.O. BOX 986
YREKA, CA 96097

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SOLANO
600 UNION AVE
FAIRFIELD, CA 94533

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SONOMA
600 ADMINISTRATION DR. #212J
SANTA ROSA, CA 95403

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF STANISLAUS
1100 I ST. #200
MODESTO, CA 95354

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SUTTER
1160 CIVIC CENTER BLVD. #A
YUBA CITY, CA 95993

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TEHAMA
P.O. BOX 519
REDBLUFF, CA 96080

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TRINITY
P.O. BOX 310
WEAVERVILLE, CA 96093

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TULARE
COURTHOUSE #224
VISALIA, CA 93291

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TUOLUMNE
2 S. GREEN ST.
SONORA, CA 95370

VENTURA COUNTY DISTRICT
ATTORNEY'S OFFICE
c/o GREGORY BROSE D.D.A.
4245 MARKET ST. #205
VENTURA, CA 93003

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF YOLO
204 4TH ST
P.O. BOX 1347
WOODLAND, CA 95695

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF YUBA
215 5TH ST.
MARYSVILLE, CA 95901

Marty Albertson, CEO
Guitar Center, Inc.
5795 Lindero Canyon Rd.
Westlake Village, CA 91362

Robert Kole, President
Kole Imports
24600 S. Main St
Carson, CA 90745

Bob Geisinger, President
K-Tool Corp.
31111 S. Wixom Rd.
Wixom, MI 48393

Bernard Pomeranc, President
MBR Industries, Inc.
3201 NW 116th St
Miami, FL 33167

Douglas Murphy, President
Power Port Products, Inc.
301 W. Interstate Rd.
Addison, IL 60101

Niann Tryr Peter Shual, President
Ridgerock Tools, Inc.
6979 Cherry Avenue
Long Beach, CA 90805

Stuart T. Kole, President
STK International, Inc.
311 W. Artemisia Blvd.
Compton, CA 90220

Morris Dweck, President
The NCC
140 58th Street
Brooklyn, NY 11220

PRODUCT LIST

GUITAR CENTER, INC.

PLANET WAVES, 10 FT., 1/4" TO 1/4" INSTRUMENT CABLE ITEM #PW-G-10 This product description pertains not only to the specific model of the product listed, but also for all units of all models of Instrument Cables.

PLANET WAVES INSTRUMENT CABLE ITEM #PW-G-10 This product description pertains not only to the specific model of the product listed, but also for all units of all models of Instrument Cables.

PLANET WAVES THE CIRCUIT BREAKER 10 FT. WITH RIGHT ANGLE PLUG This product description pertains not only to the specific model of the product listed, but also for all units of all models of Circuit Breakers.

PLANET WAVES THE CIRCUIT BREAKER 15 FT. INSTRUMENT CABLE WITH CUT-OFF SWITCH ITEM # PW-AG-15 This product description pertains not only to the specific model of the product listed, but also for all units of all models of Circuit Breakers.

PLANET WAVES "THE CIRCUIT BREAKER" WITH RIGHT-ANGLE PLUG - INSTRUMENT CABLE WITH CUT-OFF SWITCH This product description pertains not only to the specific model of the product listed, but also for all units of all models of Circuit Breakers.

KOLE IMPORTS

HANDSFREE CELL PHONE HEADSET Uniform Product Code Number: 731015 072491 This product description pertains not only to the specific model of the product listed, but also for all units of all models of Cell Phone Headsets.

STERLING TAPE 2 x 50 FT. ROLLS Uniform Product Code Number: 731015 082674 This product description pertains not only to the specific model of the product listed, but also for all units of all models of Tape Rolls.

K-TOOL CORP.

FLUORESCENT ANGLE LIGHT # KTI-73312 Uniform Product Code Number: 769622 733122 This product description pertains not only to the specific model of the product listed, but also for all units of all models of Fluorescent Lights.

MBR INDUSTRIES, INC.

COTA 5" PORTABLE BLACK AND WHITE T.V. WITH AM/FM RADIO MODEL NO. CT-17680 Uniform Product Code Number: 037005 176805 This product description pertains not only to the specific model of the product listed, but also for all units of all models of Portable T.V.'s.

POWER PORT PRODUCTS, INC.

25' TWIN LAMP FLUORESCENT W/OUTLET #FLD-25 Uniform Product Code Number: 074470 722526 This product description pertains not only to the specific model of the product listed, but also for all units of all models of Fluorescent Lamps.

26 WATT DUAL LAMP/FLUORESCENT WORK LIGHT This product description pertains not only to the specific model of the product listed, but also for all units of all models of Fluorescent Work Lights.

ULTRA BRIGHT TWIN LAMP DROP CORD This product description pertains not only to the specific model of the product listed, but also for all units of all models of Fluorescent Lamps.

RIDGEROCK TOOLS, INC.

NEIKO TOOLS USA 30 FT. RETRACTABLE CORD REEL WITH MAGNETIC ANGLE LIGHT CAT NO. 40262A Uniform Product Code Number: 837013 402626 This product description pertains not only to the specific model of the product listed, but also for all units of all models of Retractable Cords.

STK INTERNATIONAL, INC.

VOLTMASER VIDEO 12' COAXIAL CABLE #VV-116 Uniform Product Code Number: 788914 319431 This product description pertains not only to the specific model of the product listed, but also for all units of all models of Fluorescent Lamps.

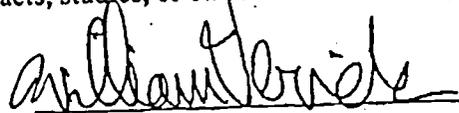
THE NCC

POWER SAFE AMERICA 25 FT. OUTDOOR EXTENSION CORD #62025 Uniform Product Code Number: 686140 620256 This product description pertains not only to the specific model of the product listed, but also for all units of all models of Fluorescent Lamps.

CERTIFICATE OF MERIT

I, William Verick, hereby declare: This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings. I am the attorney for the noticing party. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the person(s) consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: September 6, 2005


William Verick

This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliances in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

CERTIFICATE OF SERVICE

I, Alison Nichols, declare:

If called, I could and would testify as follows: I am over eighteen. My business address is 424 First Street, Eureka, California, 95501. On September 6, 2005, I caused the attached 60-DAY NOTICE LETTER, or a letter identical in substance, to be served by U.S. Mail on those public enforcement agencies listed on the attached SERVICE LIST; in addition on the same date and by U.S. Mail I caused the attached 60-DAY NOTICE LETTER and PROPOSITION 65: A SUMMARY to be sent by Certified U.S. Mail to the private business entities also listed on the attached SERVICE LIST. I deposited copies of these documents in envelopes, postage pre-paid, with the U.S. Postal Service on the day on which the mail is collected. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 6, 2005, at Eureka, California.

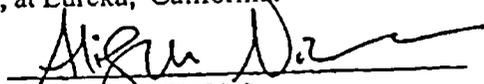

ALISON NICHOLS

EXHIBIT B
(Person and Address To Receive Notice)

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

For Mateel Environmental Justice Foundation:

William Verick, Esq.
Klamath Environmental Law Center
424 First Street
Eureka, CA 95501

For MBR Industries:

Kevin Markow, Esq.
Becker & Poliakoff
3111 Stirling Road
Fort Lauderdale, FL 33312-6525

EXHIBIT C

(List of Entities and Brands of Covered Products)

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

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

EXHIBIT D

(Exemplar of Optional Testing Protocol)

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

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

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

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

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

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

EXHIBIT E
(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)

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

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

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

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

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)

1	169	Roaster Oven
2	170	Rope Lights (other than holiday string lights) if designed for permanent/long term installation
3	171	Satellite dish
4	172	Scales
5	173	Scanner antenna
6	174	Shavers - Cordless w/Corded Recharger Base only
7	175	Sink Top Switch for Disposer or Hot Water Dispenser (air activated switch mounted to sink or countertop, designed for permanent/long term installation)
8	176	Smoke detector (internal wires or if designed for permanent/long term installation)
9	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)
10	178	Stapler
11	179	Steam cooker
12	180	Stereo and audio power/patch/pin cords (for use with non-portable components and except where designed to plug into front of system)
13	181	Surge protector
14	182	Telecom Data Cable (installed)
15	183	Telecom Power Cable (installed)
16	184	Tele-Homecare System (power cords)
17	185	Telephone power and data cord (phone to wall cords only)
18	186	Television (except small mobile models with attached/built in handle or carrying case)
19	187	Television Antenna
20	188	Television distribution system/swapper
21	189	Television Monitor (including computer monitors except small mobile models with attached/built in handle or carrying case)
22	190	Television peripheral cords (unless designed for use with devices that plug into the front of the set)
23	191	Thermostat Cable
24	192	Toaster
25	193	Toaster Oven
26	194	Towel Warmer
27	195	Transcriber and foot pedal and associated power and interconnecting cords
28	196	Underground Low-Energy Cable (exclusion applies to consumer uses only)
	197	Vanity/lighted makeup mirror
	198	VCR (unless portable with attached handle or carrying case)
	199	Video mixer and switcher (if component of desktop system with no separate mice)
	200	Video printer power cords/connecting cables (unless used with laptop)
	201	Warming drawer
	202	Washer/Dryer
	203	Water distiller
	204	Water filter units designed for permanent/long term installation
	205	Water heater designed for permanent/long term installation
	206	Water jet - Dental
	207	Waxers - hair removal (corded base unit only)
	208	Wine cellars
	209	Diesel Locomotive and Motor Cable

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

210 Ignition Cable for Gas Tube Signage
211 Hook-Up Wire (intended for permanent or long-term installation)
212

EXHIBIT F
 (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.

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
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION
9

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

15 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

CASE NO. 449269

16 Plaintiff,

[Proposed] ORDER
17 APPROVING SETTLEMENT
(MBR Industries, Inc.)

18 vs.

19 KOLE IMPORTS, Inc., et al.,

Date: February 7, 2007

Time: 9:30 a.m.

Dept. No.: 301

20 Defendants.
21 _____/

22
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 7, 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 16 2007
GORDON PARK-LI, Clerk
BY: CYNTHIA S. HERBERT
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 **FEB 16 2007**
9 Dated: _____

PETER J. BUSCH

 Judge of the Superior Court