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10 Attorneys for Plaintiff  
11 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

15 MATEEL ENVIRONMENTAL JUSTICE  
16 FOUNDATION,

17 Plaintiff,

18 vs.

19 ABG ACCESSORIES, INC., et al.  
20 Defendants.

Case No. 462477

**[PROPOSED] CONSENT JUDGMENT**

21  
22 **1. INTRODUCTION**

23 1.0 On April 18, 2007, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION  
24 ("Plaintiff" or "MEJF") acting on behalf of itself and the general public, filed a Complaint for civil  
25 penalties and injunctive relief ("Complaint") in San Francisco Superior Court, Case No. 462477,  
26 against defendant, DARON FASHIONS, INC. ("Defendant" or "Daron"), among others. (MEJF  
27 and Daron are collectively referred to as "the Parties.") The Complaint alleges that Daron violated  
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ENDORSED  
FILED  
San Francisco County Superior Court

JAN 22 2008

GORDON PARK-LI, Clerk  
BY: \_\_\_\_\_  
Deputy Clerk

1 provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety  
2 Code sections 25249.5, *et seq.* (Proposition 65), and Business and Professions Code sections  
3 17200 *et seq.* (the "Unfair Competition Act"), by, among other things, knowingly and  
4 intentionally exposing persons to products containing lead and/or lead compounds, which are  
5 chemicals known to the State of California to cause cancer and/or birth defects or other  
6 reproductive harm, without first providing a clear and reasonable warning to such individuals.  
7 The Complaint was based upon a 60-Day Notice letter, dated March 15, 2007, sent by MEJF to  
8 Daron, the California Attorney General, all District Attorneys, and all City Attorneys with  
9 populations exceeding 750,000. A copy of the 60-Day Notice letter is attached as Exhibit A to the  
10 complaint in this action.

11 1.1 Daron filed a timely answer to the Complaint denying each and every allegation set  
12 forth therein and asserting numerous affirmative defenses.

13 1.2 Defendant is a business that employs more than ten persons and manufactures,  
14 distributes and/or markets within the State of California clothing made with lead-containing  
15 polyvinyl chloride, neoprene and/or other plastic materials ("PVC Materials"). Pursuant to  
16 Proposition 65, lead and lead compounds are chemicals known to the State of California to cause  
17 cancer and reproductive toxicity. Products containing lead and/or lead compounds that are sold or  
18 distributed in the State of California may be, under specified circumstances, subject to the  
19 Proposition 65 warning requirement set forth in Health and Safety Code section 25249.6. Plaintiff  
20 alleges that clothing made with lead-containing PVC Materials ("PVC Clothing") that is  
21 manufactured, distributed, sold and/or marketed by Daron for use in California, requires a warning  
22 under Proposition 65. For purposes of this Consent Judgment, the term "Covered Products" shall  
23 be defined as PVC Clothing that is: (i) distributed, sold or used within the State of California, and  
24 (ii) Manufactured by Daron or any other entity acting on its behalf, and distributed, marketed  
25 and/or sold by Daron or by any other entity that distributes, markets or sells Daron's PVC  
26 Clothing, or manufactured by any other entity for Daron, whether or not the clothing bears Daron  
27 labels.

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1           1.3    For purposes of this Consent Judgment only, the parties stipulate that this Court has  
2 subject matter jurisdiction over the allegations of violations contained in the Complaint and  
3 personal jurisdiction over Daron as to the acts alleged in the Complaint, that venue is proper in the  
4 County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a  
5 full settlement and resolution of the allegations contained in the Complaint and of all claims which  
6 were or could have been raised by any person or entity based in whole or in part, directly or  
7 indirectly, on the facts alleged therein or arising therefrom or related to.

8           1.4    Daron disputes that it has violated Proposition 65 as described in the 60-Day Notice  
9 Letter, the Complaint, or otherwise. This Consent Judgment shall not constitute an admission with  
10 respect to any material allegation of the Complaint, each and every allegation of which Daron  
11 denies, nor may this Consent Judgment or compliance with it be used as evidence of any  
12 wrongdoing, misconduct, culpability or liability on the part of Daron.

13 **2.    SETTLEMENT PAYMENT**

14           2.0    In settlement of all of the claims that are alleged, or could have been alleged, in the  
15 Complaint Daron shall pay \$20,000 to the Klamath Environmental Law Center ("KELC") to cover  
16 Plaintiff's attorneys' fees. Additionally, Daron shall pay \$10,000 to Californians for Alternatives  
17 to Toxics; and \$10,000 to the Ecological Rights foundation for use toward reducing exposures to  
18 toxic chemicals and other pollutants, and toward increasing consumer, worker and community  
19 awareness of health hazards posed by lead and other toxic chemicals. The parties agree and  
20 acknowledge that the charitable contributions made pursuant to this section shall not be construed  
21 as a credit against the personal claims absent third parties for restitution against Defendant. Daron  
22 shall not be required to pay a civil penalty pursuant to Health and Safety Code section 25249.7(b).  
23 The above described payments shall be forwarded by Defendant so that they are received at least 5  
24 days prior to the hearing date scheduled for approval of this Consent Judgment. If the Consent  
25 Judgment is not approved within 120 days of the date scheduled for approval, the above described  
26 payments shall be returned and the provisions of this Consent judgment shall become null and  
27 void.

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1 **3. ENTRY OF CONSENT JUDGMENT**

2 3.0 The Parties hereby request that the Court enter this Consent Judgment forty-five  
3 (45) days after the Consent Judgment is served on the Attorney General in accordance with Title  
4 11, *California Code of Regulations*, Section 3003(a). Upon the Court's entry of a final judgment,  
5 including any third-party appeals to the entry of the judgment, MEJF and Daron waive their  
6 respective rights to a hearing or trial on the allegations in the Complaint.

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

8 4.0 This Consent Judgment, once entered by the Court, is a final and binding resolution  
9 between MEJF, acting on behalf of itself and (as to those matters raised in the Notice Letter) the  
10 general public, and Daron of: (i) any violation of Proposition 65 or the Unfair Competition Act  
11 (including but not limited to the claims made in the Complaint); and (ii) any other statutory or  
12 common law claim to the fullest extent that any of the foregoing described in (i) or (ii) were or  
13 could have been asserted by any person or entity against Daron or its parents, subsidiaries or  
14 affiliates, and all of their customers, distributors, wholesalers, retailers, or any other person in the  
15 course of doing business, and the successors and assigns of any of them, who may use, maintain,  
16 distribute or sell Covered Products ("Released Entities"), based on its or their exposure of persons  
17 to Covered Products or their failure to provide a clear and reasonable warning of exposure to such  
18 individuals; and (iii) as to alleged exposures to Covered Products, any other claim based in whole  
19 or in part on the facts alleged in the Complaint, whether based on actions committed by the  
20 Released Entities. As to alleged exposures to Covered Products, compliance with the terms of this  
21 Consent Judgment resolves any issue, now and in the future, concerning compliance by Daron and  
22 the Released Entities, with the requirements of Proposition 65 and the Unfair Competition Act  
23 with respect to Covered Products, and any alleged resulting exposure.

24 4.1 As to alleged exposures to Covered Products and other claims in the Complaint,  
25 MEJF, by and on behalf of itself, and its respective agents, successors, attorneys and assigns,  
26 waives any and all rights to institute any form of legal action, and releases all claims against Daron  
27 and the Released Entities, and all of their respective parents, subsidiaries or affiliates, and all of  
28 their customers, distributors, wholesalers, retailers, or any other person in the course of doing

1 business, and the successors and assigns of any of them, who may use, maintain, distribute or sell  
2 the Covered Products, whether, under Proposition 65, the Unfair Competition Act or any other  
3 statute, provision of common law or any theory or issue, arising out of or resulting from, or related  
4 directly or indirectly to, in whole or in part, the Covered Products, including but not limited to any  
5 exposure to, or failure to warn with respect to, the Covered Products (referred to collectively in  
6 this paragraph as the "Claims"). In furtherance of the foregoing, as to alleged exposures to  
7 Covered Products, MEJF hereby waives any and all rights and benefits which it now has, or in the  
8 future may have, conferred upon it with respect to the Claims by virtue of the provisions of section  
9 1542 of the California Civil Code, which provides as follows:

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

13 MEJF understands and acknowledges that the significance and consequence of this waiver of  
14 California Civil Code section 1542 is that even if it suffers future damages arising out of or  
15 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,  
16 including but not limited to any exposure to, or failure to warn with respect to exposure to, the  
17 Covered Products, MEJF will not be able to make any claim for those damages against Daron or  
18 the Released Entities. Furthermore, MEJF acknowledges that it intends these consequences for  
19 any such Claims as may exist as of the date of this release but which MEJF does not know exist,  
20 and which, if known, would materially affect their decision to enter into this Consent Judgment,  
21 regardless of whether their lack of knowledge is the result of ignorance, oversight, error,  
22 negligence, or any other cause.

23 **5. ENFORCEMENT AND PRECLUSIVE EFFECT OF JUDGMENT**

24 5.0 The terms of this Consent Judgment shall be enforced exclusively by the Parties  
25 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of  
26 San Francisco County, giving the notice required by law, enforce the terms and conditions  
27 contained herein. In any proceeding brought by either party to enforce this Consent Judgment,  
28 such Party may seek whatever fines, costs, penalties or remedies as may be provided by law for

1 any violation of Proposition 65 or this Consent Judgment. Additionally, if in such a proceeding  
2 the Court finds that Daron failed to comply with the reformulation requirements as specified in  
3 Section 7 of this Consent Judgment, and notwithstanding any other provision of this Consent  
4 Judgment, then as to such Covered Products, Daron shall not benefit from any release from  
5 liability specified in any provision of this Consent Judgment.

6 **6. MODIFICATION OF JUDGMENT**

7 6.0 This Consent Judgment may be modified only upon written agreement of the  
8 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
9 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

10 **7. INJUNCTIVE RELIEF**

11 7.0 On and after December 1, 2007, the PVC Materials in all Covered Products sold by  
12 Daron for resale or use in California shall meet the following criteria:

- 13 (a) The PVC Materials shall have no lead as an intentionally added constituent;  
14 (b) A representative sample of the bulk PVC Materials used to manufacture the  
15 Covered Products shall have been tested for lead, and must have shown lead  
16 content by weight of less than 0.003% (30 parts per million "30 ppm"), using a test  
17 method of sufficient sensitivity to establish a limit of quantification (as  
18 distinguished from detection) of less than 30 ppm.

19 7.1 Daron may comply with the above requirements by relying on information obtained  
20 from its suppliers of the Covered Products, and the PVC Materials utilized in their manufacture, so  
21 long as such reliance is in good faith. Demonstration of good faith reliance may include, but is not  
22 limited to e-mails or other written correspondence from suppliers attesting to compliance with the  
23 provisions of this Section 7.1. MEJF is informed and believes that Daron has made reasonable  
24 efforts to remove previously distributed Covered Products from commerce.

25 7.2 In the event that MEJF settles another actual or potential claim concerning the  
26 alleged failure of a business to provide adequate Proposition 65 warnings concerning its  
27 manufacture, distribution or sale of PVC Clothing in California, and agrees to a standard for  
28 reformulation that allows for lead content by weight of greater than 30 ppm in the PVC Materials,

1 Daron's compliance with the less stringent standard will be deemed to meet the requirements of  
2 Sections 7.0(b) above. MEJF shall notify Daron of any and each such settlement by written notice  
3 pursuant to Section 15, within 10 days of execution of such settlement or consent judgment.

4 **8. AUTHORITY TO STIPULATE**

5 8.0 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
6 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
7 the party represented and legally to bind that party.

8 **9. RETENTION OF JURISDICTION**

9 9.0 This Court shall retain jurisdiction of this matter to implement the Consent  
10 Judgment.

11 **10. SERVICE ON THE ATTORNEY GENERAL**

12 10.0 MEJF shall serve a copy of this Consent Judgment, signed by both parties, on the  
13 California Attorney General on behalf of the parties so that the Attorney General may review this  
14 Consent Judgment. MEJF, in compliance with Title 11, *California Code of Regulations*, section  
15 3003(a), also shall file and serve notice of the motion for approval of this Consent Judgment.

16 **11. ENTIRE AGREEMENT**

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

23 **12. GOVERNING LAW**

24 12.0 The validity, construction and performance of this Consent Judgment shall  
25 be governed by the laws of the State of California, without reference to any conflicts of  
26 law provisions of California law.

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1 **13. COURT APPROVAL**

2 13.0 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of  
3 no force or effect, and cannot be used in any proceeding for any purpose.

4 **14. NOTICES**

5 14.0 Any notices under this Consent Judgment shall be by personal delivery of First  
6 Class Mail.

7 14.1

8 If to MEJF: William Verick, Esq.  
9 Klamath Environmental Law Center  
424 First Street  
10 Eureka, CA 95501

11 If to Daron Fashions: Marlyn M. Gates, Esq.  
12 Katten Muchin Rosenman LLP  
2029 Century Park East  
13 Suite 2600  
Los Angeles, CA 90067

16 IT IS SO STIPULATED:

17 DATED: 12/5/07

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION  
*William Verick*  
BY: WILLIAM VERICK

21 DATED: 11/30/07

DARON FASHIONS INC.  
BY: *ARN ROSABERG*  
ITS: *PRESIDENT*

24 IT IS SO ORDERED, ADJUDGED AND DECREED:

25 DATED: JAN 22 2008

PETER J. BUSCH

JUDGE OF THE SUPERIOR COURT