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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 AS  
TO ABG ACCESSORIES, INC.

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. 463859,  
26 against defendant, ABG ACCESSORIES, INC. ("Defendant" or "ABG"), among others. (MEJF  
27 and ABG are collectively referred to as "the Parties.") The Complaint alleges that ABG violated  
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San Francisco County Superior Court

MAR 25 2008

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

25       1.2       For purposes of this Consent Judgment only, the parties stipulate that this Court has  
26 subject matter jurisdiction over the allegations of violations contained in the Complaint and  
27 personal jurisdiction over ABG as to the acts alleged in the Complaint, that venue is proper in the  
28 County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a

1 full settlement and resolution of the allegations contained in the Complaint and of all claims which  
2 were or could have been raised by any person or entity based in whole or in part, directly or  
3 indirectly, on the facts alleged therein or arising therefrom or related to.

4 1.3 ABG disputes that it has violated Proposition 65 as described in the 60-Day Notice  
5 Letter, the Complaint, or otherwise. This Consent Judgment shall not constitute an admission with  
6 respect to any material allegation of the Complaint, each and every allegation of which ABG  
7 denies, nor may this Consent Judgment or compliance with it be used as evidence of any  
8 wrongdoing, misconduct, culpability or liability on the part of ABG.

9 **2. SETTLEMENT PAYMENT**

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

23 **3. ENTRY OF CONSENT JUDGMENT**

24 3.0 The Parties hereby request that the Court enter this Consent Judgment forty-five  
25 (45) days after the Consent Judgment is served on the Attorney General in accordance with Title  
26 11, *California Code of Regulations*, Section 3003(a). Upon the Court's entry of a final judgment,  
27 including any third-party appeals to the entry of the judgment, MEJF and ABG waive their  
28 respective rights to a hearing or trial on the allegations in the Complaint.

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

2 4.0 This Consent Judgment, once entered by the Court, is a final and binding resolution  
3 between MEJF, acting on behalf of itself and (as to those matters raised in the Notice Letter) the  
4 general public, and ABG of: (i) any violation of Proposition 65 or the Unfair Competition Act  
5 (including but not limited to the claims made in the Complaint); and (ii) any other statutory or  
6 common law claim to the fullest extent that any of the foregoing described in (i) or (ii) were or  
7 could have been asserted by any person or entity against ABG or its parents, subsidiaries or  
8 affiliates, and all of their customers, distributors, wholesalers, retailers, or any other person in the  
9 course of doing business, and the successors and assigns of any of them, who may use, maintain,  
10 distribute or sell Covered Products ("Released Entities"), based on its or their exposure of persons  
11 to Covered Products or their failure to provide a clear and reasonable warning of exposure to such  
12 individuals; and (iii) as to alleged exposures to Covered Products, any other claim based in whole  
13 or in part on the facts alleged in the Complaint, whether based on actions committed by the  
14 Released Entities. As to alleged exposures to Covered Products, compliance with the terms of this  
15 Consent Judgment resolves any issue, now and in the future, concerning compliance by ABG and  
16 the Released Entities, with the requirements of Proposition 65 and the Unfair Competition Act  
17 with respect to Covered Products, and any alleged resulting exposure.

18 4.1 As to alleged exposures to Covered Products and other claims in the Complaint, MEJF, by  
19 and on behalf of itself, and its respective agents, successors, attorneys and assigns, waives any and  
20 all rights to institute any form of legal action, and releases all claims against ABG and the  
21 Released Entities, and all of their respective parents, subsidiaries or affiliates, and all of their  
22 customers, distributors, wholesalers, retailers, or any other person in the course of doing business,  
23 and the successors and assigns of any of them, who may use, maintain, distribute or sell the  
24 Covered Products, whether, under Proposition 65, the Unfair Competition Act or any other statute,  
25 provision of common law or any theory or issue, arising out of or resulting from, or related  
26 directly or indirectly to, in whole or in part, the Covered Products, including but not limited to any  
27 exposure to, or failure to warn with respect to, the Covered Products (referred to collectively in  
28 this paragraph as the "Claims"). In furtherance of the foregoing, as to alleged exposures to

1 Covered Products, MEJF hereby waives any and all rights and benefits which it now has, or in the  
2 future may have, conferred upon it with respect to the Claims by virtue of the provisions of section  
3 1542 of the California Civil Code, which provides as follows:

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

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

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

20 5.0 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto.  
21 The Parties may, by noticed motion or order to show cause before the Superior Court of San  
22 Francisco County, giving the notice required by law, enforce the terms and conditions contained  
23 herein. In any proceeding brought by either party to enforce this Consent Judgment, such Party  
24 may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation  
25 of Proposition 65 or this Consent Judgment. Additionally, if in such a proceeding the Court finds  
26 that ABG failed to comply with the reformulation requirements as specified in Section 7 of this  
27 Consent Judgment, and notwithstanding any other provision of this Consent Judgment, then as to  
28 such Covered Products, ABG shall not benefit from any release from liability specified in any  
29 provision of this Consent Judgment.

1 **6. MODIFICATION OF JUDGMENT**

2 6.0 This Consent Judgment may be modified only upon written agreement of the  
3 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
4 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

5 **7. INJUNCTIVE RELIEF**

6 7.0 On and after December 1, 2007, the PVC Materials in all Covered Products sold by ABG  
7 for resale or use in California shall meet the following criteria:

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

14 7.1 ABG may comply with the above requirements by relying on information obtained  
15 from its suppliers of the Covered Products, and the PVC Materials utilized in their manufacture, so  
16 long as such reliance is in good faith. Demonstration of good faith reliance may include, but is not  
17 limited to e-mails or other written correspondence from suppliers attesting to compliance with the  
18 provisions of Section 7.0.

19 7.2 In the event that MEJF settles another actual or potential claim concerning the  
20 alleged failure of a business to provide adequate Proposition 65 warnings concerning its  
21 manufacture, distribution or sale of PVC Clothing in California, and agrees to a standard for  
22 reformulation that allows for lead content by weight of greater than 30 ppm in the PVC Materials,  
23 ABG's compliance with the less stringent standard will be deemed to meet the requirements of  
24 Sections 7.0(b) above. MEJF shall notify ABG of any and each such settlement by written notice  
25 pursuant to Section 15, within 10 days of execution of such settlement or consent judgment.

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1 **8. AUTHORITY TO STIPULATE**

2 8.0 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
3 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
4 the party represented and legally to bind that party.

5 **9. RETENTION OF JURISDICTION**

6 9.0 This Court shall retain jurisdiction of this matter to implement the Consent  
7 Judgment.

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

9 10.0 MEJF shall serve a copy of this Consent Judgment, signed by both parties, on the  
10 California Attorney General on behalf of the parties so that the Attorney General may review this  
11 Consent Judgment. MEJF, in compliance with Title 11, *California Code of Regulations*, section  
12 3003(a), also shall file and serve notice of the motion for approval of this Consent Judgment.

13 **11. ENTIRE AGREEMENT**

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

20 **12. GOVERNING LAW**

21 12.0 The validity, construction and performance of this Consent Judgment shall be  
22 governed by the laws of the State of California, without reference to any conflicts of law  
23 provisions of California law.

24 **13. COURT APPROVAL**

25 13.0 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of  
26 no force or effect, and cannot be used in any proceeding for any purpose.

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1 14.0 Any notices under this Consent Judgment shall be by personal delivery of First Class Mail.

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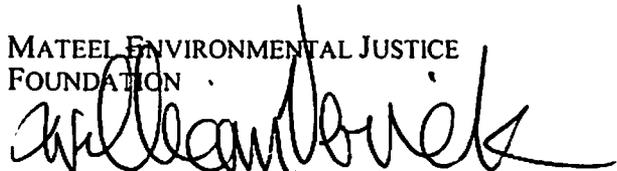
14.1

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

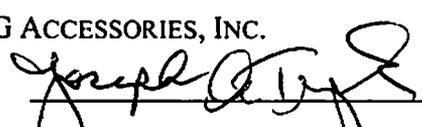
If to ABG: Gershon Mayer  
ABG Accessories, Inc.  
149 Heyward Street  
Brooklyn, NY 11206

IT IS SO STIPULATED:

DATED: 2/4/08

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION  
  
BY: WILLIAM VERICK

DATED:

ABG ACCESSORIES, INC.  
BY:   
ITS: PRESIDENT

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: MAR 25 2008

PETER J. BUSCH  
PETER J. BUSCH  
JUDGE OF THE SUPERIOR COURT

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11 Attorneys for Plaintiff  
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF SAN FRANCISCO  
16  
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18 MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION,

19 Plaintiff,

20 vs.

21 ABG ACCESSORIES, INC., et al.,

22 Defendants.  
23 \_\_\_\_\_/

CASE NO. 462477

[proposed] ORDER APPROVING  
SETTLEMENT BETWEEN PLAINTIFF  
AND ABG ACCESSORIES, INC.

Date: March 25, 2008  
Time: 9:30 a.m.  
Dept. No.: 301

24  
25 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on  
26 noticed motion on March 25, 2008. The court finds that:

- 27 1. The reformulation requirements of the Consent Judgment comply with the  
28 requirements of Proposition 65;

ENDORSED  
FILED  
San Francisco County Superior Court

MAR 25 2008

GORDON PARK-LI, Clerk  
BY: GINA GONZALES  
Deputy Clerk

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- 2. The payments in lieu of civil penalty specified in the Consent Judgment are reasonable based on the criteria in Cal Health & Safety Code §25249.7(b)(2); and
- 3. The attorneys' rates and fees awarded under the Consent Judgment are reasonable under California law.

Based upon these findings, the settlement and Consent Judgment are approved.

IT IS SO ORDERED.

Dated: MAR 25 2008

PETER J. BUSCH  
PETER J. BUSCH  
Judge of the Superior Court