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1 Michael Freund SBN 99687
2 Law Office of Michael Freund
3 1915 Addison Street
4 Berkeley, CA 94704
5 Telephone: (510) 540-1993
6 Facsimile: (510) 540-5543
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11 ALAMEDA COUNTY
12 JUL 16 2010
13 CLERK OF THE SUPERIOR COURT
14 By Shirley M. Johnson Deputy

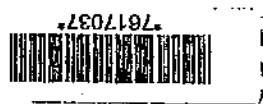
15 FILED

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF ALAMEDA

18 Case No. R610511941

19 [REDACTED] CONSENT JUDGMENT

20 DAVID STEINMAN,
21 Plaintiff,
22 v.
23 THE DIAL CORPORATION and DOES 1 to
24 100,
25 Defendants.



I. INTRODUCTION

1.1 On April 28, 2010, Plaintiff David Steinman ("Plaintiff") as a private attorney

general and in the public interest filed a Complaint for Injunctive and Declaratory Relief and Civil Penalties against Defendant The Dial Corporation ("Dial," and collectively the "Parties"). The

Complaint alleges that Dial violated the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Section 25249.5 et seq., also known as "Proposition 65," through the sale of

Dial Clean & Soft Aloe Antibacterial Hand Soap (the "Covered Product"), by knowingly and intentionally exposing consumers to 1,4-dioxane, a chemical known to the State of California to

cause cancer, without first providing a clear and reasonable warning. Dial denies the allegations in the Complaint, and further denies that the Covered Product requires a Proposition 65 warning.

1.2 The Complaint is based on allegations contained in a Notice of Violation dated March 5, 2009, served on the California Attorney General, other public enforcers, and Dial. A true and

correct copy of the Notice of Violation is attached hereto as Exhibit A. Plaintiff states that he is a committed environmentalist, journalist, consumer health

advocate, publisher, and author, whose major books include *Diet for a Poisoned Planet* (1990, 2007), *The Safe Shopper's Bible* (1995), *Living Healthy in A Toxic World* (1996), and *Safe Trip to Eden: Ten Steps to Save the Planet Earth from Global Warming Meltdown* (2007); through this legal action,

Plaintiff seeks to eliminate exposure to 1,4-dioxane and to protect the public health by reducing or eliminating the public's exposure to toxic chemicals; he is, and at all times set forth herein has been,

acting in the public interest under provisions of Proposition 65, as set forth at Health and Safety Code section 25249.7(d).

1.4 Dial is a business entity that employs ten or more persons and manufactures, distributes and/or sells the Covered Product to consumers within the State of California.

1.5 The Parties enter into this Consent Judgment pursuant to a full settlement of disputed claims between the Parties as alleged in the Complaint for the purpose of avoiding prolonged

litigation. Plaintiff has diligently prosecuted this matter and is settling this case in the public interest. Nothing in the Consent Judgment shall be construed as an admission by Dial of any

fact, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or

1 be construed as an admission by Dial of any fact, issue of law or violation of law, at any time, for any
 2 purpose. Nothing in the Consent Judgment shall prejudice, waive or impair any right, remedy or
 3 defense that Dial may have in any other or further legal proceedings. Nothing in the Consent
 4 Judgment, or any document referred to herein, shall be construed as giving rise to any presumption or
 5 inference of admission or concession by Dial as to any fault, wrongdoing or liability whatsoever.
 6 However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and
 7 duties of Dial under the Consent Judgment.

II. JURISDICTION AND VENUE

8 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
 9 jurisdiction over the subject matter of this action and personal jurisdiction over the Parties, that venue
 10 is proper in this Court, and that this Court has jurisdiction to enter a Consent Judgment pursuant to
 11 the terms set forth herein.

III. INJUNCTIVE RELIEF — REFORMULATION AND TESTING

12 **3.1 Reformulation of Dial Clean & Soft Aloe Antibacterial Hand Soap**

13 As of the Effective Date, Dial shall not ship for sale in California any Covered Product
 14 without the Proposition 65 warning described in Section 3.2, unless the Covered Product has been
 15 manufactured so that it will contain no more than 10 parts per million ("ppm") of 1,4-dioxane, as
 16 defined in, and verified by, the Certification Protocol described in Section 3.3. To the extent Dial is in
 17 compliance with the obligations imposed by the Section 3.3, a Proposition 65 warning is not required
 18 for the Covered Product.

3.2 Clear and Reasonable Warning

19 To the extent that any Covered Product for sale in California requires a Proposition 65
 20 warning, Dial shall provide the following clear and reasonable warning to consumers:
 21 **WARNING:** This product contains a chemical known to the State of California to cause cancer.
 22 The warning shall be prominently affixed to or printed on the container of the Covered
 23 Product with such conspicuousness, as compared with other statements or designs on the container,
 24 as to render it likely to be read and understood by an ordinary purchaser or user of the Covered
 25 Product.

3.3 Certification Requirements

Commencing no more than ten days after the Effective Date, Dial shall commence selection of samples and testing of the Covered Product at either (1) its analytical chemistry laboratory, which is qualified to conduct assays on FDA-regulated products and is subject to inspection by the FDA, or (2) at any laboratory that is certified by the California Environmental Laboratory Accreditation Program. Dial shall use either of the two testing protocols described in Exhibit B. Dial may choose, in its sole discretion, either of the two testing protocols or locations for the testing required by this Consent Judgment.

Following entry of this Consent Judgment, Plaintiff may, at his option, access and observe Dial's analytical chemistry laboratory. Plaintiff agrees to submit a written request to obtain access to Dial's laboratory at least sixty days prior to the anticipated visit, and Dial shall make commercially reasonable efforts to accommodate Plaintiff's requested date. Plaintiff further agrees to comply with Dial's safety, security and other procedures during his visit (including, without limitation, execution of a confidentiality agreement) to be determined in Dial's sole discretion. Plaintiff agrees that he will be able to access Dial's laboratory once, and that the visit will not involve discussion of methodology, instrumentation, or raw materials. Plaintiff shall be responsible for all fees, costs and expenses associated with his visit to Dial's laboratory. All correspondence regarding the visit shall be directed to the addresses listed in Section 16.

Testing shall be conducted in each of four consecutive quarters.¹ Dial shall maintain certifications from the Senior Vice President of Research and Development attesting that randomly selected samples from three lots of the Covered Product have levels of 1,4-dioxane that are below 10 ppm when analyzed using the methods referenced above. Dial shall be required to conduct no further testing as long as no single quarterly sample tested contains a concentration of 1,4-dioxane in excess of 10 ppm.

¹ In no way does this Consent Judgment require Dial to manufacture the Product each quarter. To the extent the Product is not manufactured in any particular quarter, there is no testing requirement. If the Product is not manufactured in one or more quarters, the next quarter in which the product is manufactured shall be deemed a "consecutive quarter" for purposes of Section 3.3. If Dial ceases to manufacture the Product, there shall be no further testing obligation.

1 In the event that a single quarterly sample contains a concentration in excess of 10 ppm, Dial
2 shall test and maintain certifications for four additional quarters, or until all of the samples measured
3 in four consecutive quarters contain concentrations of 10 ppm or less of 1,4-dioxane, whichever
4 occurs first. If Dial changes the formulation or processing of the Covered Product in any manner that
5 would reasonably be expected to result in an increase in the levels of 1,4-dioxane after testing has
6 been discontinued, Dial shall test randomly selected samples from three lots of the new formulation
7 of the Covered Product to ensure that those samples contain a 1,4-dioxane concentration of 10 ppm or
8 less.

9 **3.4 Maintenance of Records**

10 Dial shall retain copies of the certifications referenced in Section 3.3 for a period of four years
11 from the date testing commenced and shall provide such certifications to Plaintiff upon written
12 request. Dial shall also retain copies of the test results for a period of four years from the date of
13 testing and shall provide copies of the quarterly test reports to the Attorney General upon his written
14 request.

15 **IV. PAYMENT**

16 In full and final satisfaction of Plaintiff's costs of litigation, attorney's fees and all other
17 expenses, Dial shall make a total payment of \$25,000, payable within fifteen (15) business days of
18 receipt of the Notice of Entry of Consent Judgment by Defendant. Said payments shall be for the
19 following:

20 A. \$13,000 as a payment in lieu of penalties, payable to Freedom Press, which includes
21 \$10,000 for reimbursement of out-of-pocket expenses, and \$3,000 for the purpose of testing
22 consumer products for 1,4-dioxane, formaldehyde and other toxic chemicals; and research into
23 alternatives to the use of toxic chemicals, the promotion of those alternatives. The Tax Identification

24 No. for Freedom Press is 95-4736088.

25 B. \$12,000 payable to Michael Freund as reimbursement of Plaintiff's reasonable
26 attorney's fees and costs.

27 The foregoing payments shall be mailed to the Law Office of Michael Freund at the address
28 in Section 16 of this Consent Judgment.

V. RELEASE AND CLAIMS COVERED

This Consent Judgment entered by the Court is a final and binding resolution between and among Plaintiff, his agents, employees, attorneys, successors, and assigns, acting on behalf of the general public, and Dial, its parents, subsidiaries, affiliates, divisions, subdivisions, officers,

directors, shareholders, employees, agents, attorneys, successors, customers, and assigns ("Released Entities"), of any and all claims, known or unknown, that have been or could have been asserted by Plaintiff for violations of Proposition 65 by Dial or by any other entity arising from the presence of Proposition 65 chemicals in the Covered Product. Except for such rights and obligations as have

been created under this Consent Judgment, Plaintiff, on his own behalf and in bringing an action in the public interest pursuant to California Health and Safety Code Section 25249.7(d) with respect to the matters alleged in the complaint, does hereby fully, completely, finally, and forever release,

relinquish and discharge Dial and ("Released Entities") from any and all claims, actions, causes of action, demands, rights, debts, agreements, promises, liabilities, damages, accounts, costs, and expenses, whether known or unknown, suspected or unsuspected, of every nature whatsoever which Plaintiff has or may have against Dial and the Released Parties, arising directly or indirectly out of

the failure to provide clear and reasonable warnings pursuant to Proposition 65 of exposure to 1,4-dioxane in the Covered Product ("Released Claims"). Compliance with the terms of this Consent Judgment shall be deemed to be compliance with Proposition 65 as applied to the Covered Product. It is the intention of the Parties to this release that, upon entry of Consent Judgment and

conclusion of any litigation relating to (i) this Consent Judgment and the Consent Judgment entered by the Court and (ii) and the lawsuit itself, that this Consent Judgment and Consent Judgment entered by the Court shall be effective as a full and final accord and satisfaction and Release of every

released claim up to and including the date of entry of the Consent Judgment. In furtherance of this intention, Plaintiff acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE

CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE

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1 TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
2 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

3 Plaintiff hereby waives and relinquishes all of the rights and benefits that Plaintiff has, or may have,
4 under California Civil Code section 1542 (as well as any similar rights and benefits which they may
5 have by virtue of any statute or rule of law in any other state or territory of the United States). Plaintiff
6 hereby acknowledges that it may hereafter discover facts in addition to, or different from, those which it
7 now knows or believes to be true with respect to the subject matter of this Consent Judgment and the
8 Consent Judgment entered by the Court and the released claims, but that notwithstanding the foregoing,
9 it is Plaintiff's intention hereby to fully, finally, completely and forever settle and release each, every and
10 all Released Claims, and that in furtherance of such intention, the release herein given shall be and
11 remain in effect as a full and complete general release as to Dial and the Released Entities,

12 notwithstanding the discovery or existence of any such additional or different facts. Plaintiff hereby
13 warrants and represents to Dial and the Released Parties that (a) he has not previously assigned any
14 released claim, and (b) he has the right, ability and power to release each released claim.

15 VI. EFFECTIVE DATE

16 As used herein, "Effective Date" shall mean January 31, 2010 or 15 days after this Consent
17 Judgment becomes final, whichever is later.

18 VII. CONTINUING OBLIGATIONS

19 Except as set forth in section V of this Consent Judgment, nothing herein shall be construed as
20 diminishing Dial's continuing obligations to comply with Proposition 65.

21 VIII. SEVERABILITY OF UNENFORCED PROVISIONS

22 In the event that any of the provisions hereof are held by a court to be unenforceable, the
23 validity of the enforceable provisions shall not be adversely affected.

24 IX. ENFORCEMENT OF CONSENT JUDGMENT

25 Plaintiff may, by motion or order to show cause before this Superior Court of the State of
26 California, enforce the terms and conditions contained in the Consent Judgment entered by the Court.
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1 **X. APPLICATION OF CONSENT JUDGMENT**

2 This Consent Judgment entered by the Court shall apply to, be binding upon and inure to the

3 benefit of Dial and the Released Entities, and upon Plaintiff on his own behalf and on behalf of the

4 general public, as well as his employees, agents, successors, attorneys and assigns.

5 **XI. MODIFICATION OF CONSENT JUDGMENT**

6 This Consent Judgment entered by the Court may be modified only upon written agreement of

7 the Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon a regularly-

8 noticed motion of any Party to the Consent Judgment as provided by law and upon entry of a

9 modified Consent Judgment by the Court.

10 **XII. RETENTION OF JURISDICTION**

11 This Court shall retain jurisdiction of this matter to enforce, modify or terminate the Consent

12 Judgment.

13 **XIII. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT**

14 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the

15 Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party

16 represented and legally to bind that party.

17 **XIV. COURT APPROVAL**

18 Pursuant to Health & Safety code section 25249.7, Plaintiff shall prepare and file a motion to

19 approve the Consent Judgment, together with all supporting papers, within 15 days of execution by

20 all parties. The Consent Judgment shall be effective only after it has been executed by the Court.

21 Otherwise, it shall be of no force or effect and cannot be used in any proceeding for any purpose.

22 **XV. EXECUTION IN COUNTERPARTS**

23 This Consent Judgment may be executed in counterparts and/or by facsimile, which taken

24 together shall be deemed to constitute one document.

25 **XVI. NOTICES**

26 All notices required to be given to either Party to this Consent Judgment by the other shall be

27 sent to the following agents, which may be changed from time to time following written notice to all

28 parties:

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For Plaintiff David Steinman:

David Steinman
Freedom Press, Inc.
120 N. Topanga Canyon, Suite 107
Topanga, CA 90290

Michael Bruce Freund
Law Offices of Michael Freund
1915 Addison Street
Berkeley, CA 94704

For Defendant The Dial Corporation:

Brad Gazaway
The Dial Corporation
19001 N. Scottsdale Road
Scottsdale, AZ 85255

Michelle Corash
Morrison & Forester LLP
425 Market Street
San Francisco, CA 94105-2482

XVII. GOVERNING LAW

The validity, construction and performance of this Consent Judgment shall be governed by the

laws of the State of California.

XVIII. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for the

Parties to this Settlement prior to its signing, and each Party has had an opportunity to fully discuss

the terms with counsel. The Parties agree that, in any subsequent interpretation and construction of

this Consent Judgment entered thereon, the terms and provisions shall not be construed against either

Party.

XIX. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

In the event a dispute arises with respect to either Party's compliance with the terms of this

Consent Judgment entered by the Court, the Parties shall meet either in person or by telephone and

endeavor to resolve the dispute in an amicable manner. No action may be filed in the absence of such

a good faith attempt to resolve the dispute beforehand. In the event an action is filed, however, the

prevailing party may seek to recover costs and reasonable attorney's fees. As used in the preceding

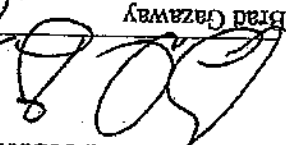
sentence, the term "prevailing party" means a party who is successful in obtaining relief more

1 favorable to it than the relief that the other party was amenable to providing during the parties' good
2 faith attempt to resolve the dispute that is the subject of such enforcement action.

3 **XX. ENTIRE AGREEMENT**

4 This Consent Judgment contains the sole and entire agreement and understanding of the
5 Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
6 commitments and understandings related hereto. Except as set forth herein, no representations, oral
7 or otherwise, express or implied, have been made by any party hereto. No other agreements not
8 specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

9 **IT IS SO STIPULATED:**

10
11 *Dated: Apr. 22, 2010*
12 
13 *Brad Gazaway*
14 *VP & Corporate Counsel SVP*
15 *Rich Sheilar*
16 *2010*

14 Dated: _____, 2010

15 **APPROVED AS TO FORM:**

16
17 *Dated: _____, 2010*
18 **MORRISON & FOERSTER LLP**
19 *David Steinman*

16 Dated: _____, 2010

20 Dated: _____, 2010

21
22 *Dated: _____, 2010*
23 **LAW OFFICE OF MICHAEL FREUND**
24 *Michelle B. Corash*
25 *Attorney for Defendant*
26 *The Dial Corporation*

27 Dated: _____, 2010

28
29 *Dated: _____, 2010*
30 **JUDGE, SUPERIOR COURT**
31 *Michael Freund*
32 *Attorney for Plaintiff*
33 *David Steinman*

34 **IT IS SO ORDERED:**

1 favorable to it than the relief that the other party was amenable to providing during the parties' good
2 faith attempt to resolve the dispute that is the subject of such enforcement action.

3 **XX. ENTIRE AGREEMENT**

4 This Consent Judgment contains the sole and entire agreement and understanding of the
5 Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
6 commitments and understandings related hereto. Except as set forth herein, no representations, oral
7 or otherwise, express or implied, have been made by any party hereto. No other agreements not
8 specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

9 **IT IS SO STIPULATED:**

THE DIAL CORPORATION

10 Dated: _____, 2010

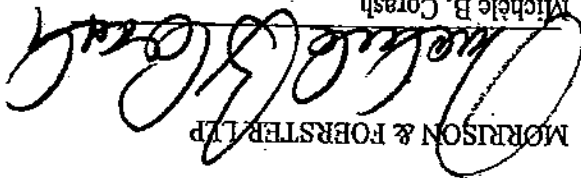
11 Brad Gazzaway
The Dial Corporation

12 Dated: _____, 2010

13 David Steinman

14 **APPROVED AS TO FORM:**

15 Dated: April 22, 2010

16 MORRISON & FOERSTER LLP

Michelle B. Cornish
Attorney for Defendant
The Dial Corporation

17 Dated: _____, 2010

18 LAW OFFICE OF MICHAEL FREUND

19 Michael Freund

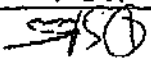
20 Attorney for Plaintiff
David Steinman

21 **IT IS SO ORDERED:**

22 Dated: _____, 2010

23 JUDGE, SUPERIOR COURT

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1 favorable to it than the relief that the other party was amenable to providing during the parties' good
 2 faith attempt to resolve the dispute that is the subject of such enforcement action.
 3 **XXX ENTIRE AGREEMENT**
 4 This Consent Judgment contains the sole and entire agreement and understanding of the
 5 Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
 6 commitments and understandings related hereto. Except as set forth herein, no representations, oral
 7 or otherwise, express or implied, have been made by any party hereto. No other agreements not
 8 specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.
 9 **IT IS SO STIPULATED:**
 10 **THE DIAL CORPORATION**
 11 Dated: _____, 2010
 12 Brad Gazaway
 13 The Dial Corporation
 14 
 15 David Steinman
 16 **MORRISON & FOERSTER LLP**
 17 Dated: _____, 2010
 18 **Michele B. Corash**
 19 Attorney for Defendant
 20 The Dial Corporation
 21 **LAW OFFICE OF MICHAEL FREUND**
 22 Dated: _____, 2010
 23 Michael Freund
 24 Attorney for Plaintiff
 25 David Steinman
 26 **IT IS SO ORDERED:**
 27 Dated: _____, 2010
 28 **JUDGE, SUPERIOR COURT**

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1 favorable to it than the relief that the other party was amenable to providing during the parties' good
2 faith attempt to resolve the dispute that is the subject of such enforcement action.

3 **XX. ENTIRE AGREEMENT**

4 This Consent Judgment contains the sole and entire agreement and understanding of the
5 Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
6 commitments and understandings related hereto. Except as set forth herein, no representations, oral
7 or otherwise, express or implied, have been made by any party hereto. No other agreements not
8 specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.
9 **THE DIAL CORPORATION**

9 IT IS SO STIPULATED:

11 Dated: _____ 2010

11 Brad Gazaway
The Dial Corporation

14 Dated: _____ 2010

14 David Steinman

15 APPROVED AS TO FORM:

16 Dated: _____ 2010

16 MORRISON & FOERSTER LLP

20 Dated: 4/27/ 2010

20 Michele B. Corash
Attorney for Defendant
The Dial Corporation

26 IT IS SO ORDERED:

26 Dated: 4/16/ 2010

23 Michael Freund
Attorney for Plaintiff
David Steinman

28 JUDGE, SUPERIOR COURT

[Handwritten signature]

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, David Steinman gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to Mr. Steinman from information now available to us. Mr. Steinman is continuing his investigation that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. The Dial Corporation is in violation of Proposition 65 because it failed to provide a warning to persons using their products that they are being exposed to 1,4 Dioxane. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to these chemicals, without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A).

The Dial Corporation is exposing people to 1,4 Dioxane from the following product: Dial Clean & Soft Aloe Antibacterial Hand Soap.

In particular, this company has manufactured and distributed a product which has exposed and continues to expose numerous individuals within California to 1,4 Dioxane. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on January 1, 1988. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been through dermal contact with the product. Additional exposures may occur through oral exposure.

This letter constitutes notification that The Dial Corporation has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

I represent David Steinman, a committed environmentalist, journalist, consumer health advocate, publisher and author. His major books include Diet for a Poisoned Planet (1990, 2007); The Safe Shopper's Bible (1995); Living Healthy in a Toxic World (1996); and Safe Trip to Eden: Ten Steps to Save the Planet Earth from Global Warming Meltdown (2007). Through this Notice of Violation, Mr. Steinman seeks to reduce exposure to 1,4 Dioxane.

Dear Prosecutors:

Re: Notice of Violation Against The Dial Corporation for Violation of California Health & Safety Code Section 25249.6

March 5, 2009

TEL 510/540-1892
FAX 510/540-5549
EMAIL: FREUND@AOL.COM

BERKELEY, CALIFORNIA 94704-1101

1918 ADLISON STREET
ATTORNEY AT LAW

MICHAEL FREUND

cc: David Steinman

Michael Freund

M. Freund
Sincerely,

If you have any questions, please contact my office at your earliest convenience.
referenced as Appendix A, has been provided to the noticed party.

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (b)

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the attorney for the noticing party David Steinman. Mr. Steinman is a committed environmentalist, journalist, consumer health advocate, publisher and author. The Notice of Violation alleges that the party identified has exposed persons in California to 1,4 Dioxane from a consumer product that it manufactures and distributes. Please refer to the Notice of Violation for additional details regarding the alleged violations.

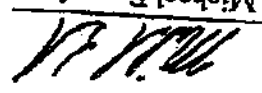
3. I have consulted with the primary chemist who conducted the laboratory testing for 1,4 Dioxane of this consumer product and I have relied on the testing results. The testing was conducted by a reputable testing laboratory by experienced scientists. These consultants have reviewed facts, studies or other data regarding the exposure to the listed chemical that is the subject of this action. These facts, studies or other data overwhelmingly demonstrate that the party identified in the Notice exposes persons to 1,4 Dioxane through dermal contact. There may be additional exposures through oral exposure.

4. Based on my consultation with experienced scientists in this field and especially the results of laboratory testing, it is clear that there is sufficient evidence that human exposures exist from exposure to the products from the noticed party. Furthermore, as a result of the above, I have concluded that 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 plaintiff's 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.

5. The copy of this Certificate of Merit served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 25249.7 (b) (2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies or other data reviewed by those persons.

Dated: March 5, 2009



Michael Freund

Attorney for Center for David Steinman

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On March 5, 2009 I served the within:

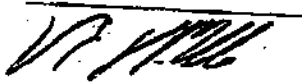
Notice of Violation and Certificate of Merit (Supporting documentation pursuant to 11 CCR section 3102 sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Oakland, California to said parties addressed as follows:

See Attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on March 5, 2009 at Berkeley, California.



Michael Freund

SERVICE LIST

- District Attorney of Alameda County
1225 Fallon Street, Room 900
Oakland, CA 94612
- District Attorney of Colusa County
547 Market Street
Colusa, CA 95932
- District Attorney of Contra Costa County
627 Ferry Street
Martinez, CA 94553
- District Attorney of Alpine County
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Protocols

Protocol A

Method Summary
An aliquot of sample (~1g) is accurately weighed into a vial with internal standard (1,4-dioxane-d8), water (5ml), and sodium sulfate (1g). The vial is capped and heated to 95°C for 60 minutes. An aliquot of the sample headspace is analyzed by direct injection using the following GC/MS conditions or equivalent.

GC/MS Conditions

1. GC Column - USP G43-type phase
2. GC Oven Profile - Temperature programmed from a starting temperature of 40°C to a final temperature of 180°C
3. MS Conditions - SIM Mode (masses 43, 58, and 88 for dioxane - masses 64 and 96 for dioxane-d8)

Quality Control (minimum requirements)

1. Calibration using a blank and 5 standards covering the range of 0.2 to 20.0ppm. The linear regression coefficient of determination must be greater than or equal to 0.995.
2. A method blank will be analyzed prior to the samples and must be free of 1,4-dioxane (less than 0.2ppm).
3. Continuing calibration standards should be run after every 10 or fewer samples. The result must be within 10% of the corresponding initial calibration value.
4. A sample duplicate and a spiked sample will be run with each sample type. QC limits for duplicates which exceed 5ppm is less than 25% relative. QC limits for spiked samples is 75-125% recovery when the amount spiked is greater than or equal to the background in the unspiked sample.

Protocol B

Method Summary

Aliquots of sample (~1g) are accurately weighed into a series of vials with standard addition solutions and an internal standard (1,3-dioxane). The vial is capped, mixed, and heated to 80°C for 60 minutes. An aliquot of each sample headspace is analyzed by direct injection using the following GC/MS conditions or equivalent. Quantitation is achieved by using the method of standard additions with an internal standard.

GC/MS Conditions

1. GC Column - USP G27-type phase
2. GC Oven Profile - Temperature programmed from a starting temperature of 35°C to a final temperature of 240°C
3. MS Conditions - SIM Mode (masses 58, 87, and 88)

Quality Control (minimum requirements)

1. Calibration using at least three standard additions with an accompanying internal standard. The linear regression coefficient of determination using standard weighting and no forced zero must be greater than or equal to 0.995.
2. A method blank will be analyzed prior to the samples and must be free of 1,4-dioxane.
3. Each sample will be analyzed in duplicate as a minimum. Sample spiking is covered by using method of standard additions.