

1 Thomas M. Donnelly (State Bar No. 136546)
2 JONES DAY
3 555 California Street, 26th Floor
4 San Francisco, CA 94104
5 Telephone: (415) 626-3939
6 Facsimile: (415) 875-5700
7 Email: tmdonnelly@jonesday.com

8 Attorneys for Defendants
9 Bridgestone Retail Operations, LLC

ENDORSED
FILED
Superior Court of California
County of San Francisco

JUL 02 2015

CLERK OF THE COURT
BY: SEAN KANE
Deputy Clerk

6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF SAN FRANCISCO**

9 MATEEL ENVIRONMENTAL JUSTICE
10 FOUNDATION,

11 Plaintiff,

12 v.

13 BIG O TIRES, LLC.; BRIDGESTONE
14 AMERICAS, INC.; and BRIDGESTONE
15 RETAIL OPERATIONS, LLC

16 Defendants.

CASE NO. CGC-14-543233

CONSENT JUDGMENT AS TO
DEFENDANT BRIDGESTONE
RETAIL OPERATIONS, LLC

17 **1. INTRODUCTION**

18 1.1 **The Parties.** This Consent Judgment is entered into by and between plaintiff
19 Mateel Environmental Justice Foundation acting on behalf of the public interest (“Mateel”), on
20 the one hand, and defendant Bridgestone Retail Operations, LLC (“BSRO”), on the other hand,
21 with Mateel and BSRO collectively referred to as the “Parties” and each of them as a “Party.”
22 Mateel is a non-profit organization, based in Eureka, California, and incorporated under the laws
23 of the State of California. BSRO is a person doing business within the meaning of the Safe
24 Drinking Water and Toxic Enforcement Act of 1986, Cal. Health & Safety Code §§ 25249.5 et
25 seq. (“Proposition 65”).

26 1.2 **General Allegations.** Mateel alleges that BSRO distributes and/or markets, in the
27 State of California, automotive batteries (including, without limitation, Interstate Brand
28 Automotive Batteries), which Mateel alleges utilize terminals that contain lead and lead

1 compounds, and that such distribution and/or marketing has not been accompanied by clear and
2 reasonable Proposition 65 warnings. Lead and lead compounds have been listed under
3 Proposition 65 as chemicals known to the State of California to cause cancer since October 1,
4 1992, and birth defects or other reproductive harm since February 27, 1987.

5 **1.3 Notices of Violation/Complaint.** On or about August 14, 2014, Mateel served
6 BSRO, and various public enforcement agencies, with a document, pursuant to Cal. Health &
7 Safety Code § 25249.7(d), alleging that BSRO was and is in violation of Proposition 65 for
8 failing to warn consumers in California that battery terminals expose users in California to lead
9 and lead compounds (the “Notice”). No public enforcer diligently prosecuted the claims
10 threatened in the Notice within sixty days plus service time. Therefore, Mateel initiated this
11 action by filing its complaint on December 16, 2014 (the “Complaint”).

12 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court
13 has jurisdiction over BSRO as to the allegations contained in the Complaint, that venue is proper
14 in the County of San Francisco, and that this Court has jurisdiction to approve, enter, and enforce
15 this Consent Judgment as a full and final binding resolution of all claims which were or could
16 have been asserted in the Complaint based on the facts or conduct alleged therein and/or in the
17 Notice.

18 **1.5** Mateel and BSRO enter into this Consent Judgment as a full and final settlement
19 of all claims which were or could have been asserted in the Complaint arising out of the facts or
20 conduct alleged therein and/or in the Notice. BSRO denies the material allegations contained in
21 the Notice and Complaint and maintains that it has not violated Proposition 65. Nothing in this
22 Consent Judgment shall be construed as an admission by BSRO of any fact, finding, issue of law,
23 conclusion of law, or violation of law; nor shall compliance with this Consent Judgment
24 constitute or be construed as an admission by BSRO of any fact, finding, conclusion of law, issue
25 of law, or violation of law, such being specifically denied by BSRO. However, this section shall
26 not diminish or otherwise affect the obligations, responsibilities, and duties of BSRO under this
27 Consent Judgment. Nothing in this Consent Judgment shall prejudice, waive or impair any right,
28 remedy, argument or defense the Parties may have in any other pending or future legal

1 proceedings. This Consent Judgment is the product of negotiation and compromise and is
2 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
3 disputed in the Complaint. This Consent Judgment shall not be used for any other purpose or in
4 any other manner.

5 **2. DEFINITIONS**

6 2.1 "Complaint" and "Notice" shall have the meanings given in Section 1.3.

7 2.2 "Covered Product(s)" means automotive batteries, including without limitation
8 Interstate Brand Automotive Batteries, manufactured, distributed or sold by or on behalf of
9 BSRO.

10 2.3 "Effective Date" means the date this Consent Judgment is entered as a Judgment
11 of the Court.

12 2.4 "Listed Chemicals" means lead and lead compounds.

13 **3. INJUNCTIVE RELIEF: PROVIDE WARNINGS**

14 3.1 Covered Products shall be accompanied by a warning as required by Section 3 of
15 the Consent Judgment entered by and between the Parties on December 15, 1999 (*Mateel Ervtl.*
16 *Justice Found. v. A&A Mfg. Co., Inc. et al.*, Case No. 308295) (the "1999 Consent Judgment").
17 BSRO is a "Covered Retailer" under the terms of the 1999 Consent Judgment. The relevant

18 provisions of the 1999 Consent Judgment, which include Section 3.3, Section 3.5 and the exhibits
19 referenced by those sections, are attached to this Consent Judgment as Exhibit 1, and are
20 incorporated by reference herein.

21 3.2 The warning requirements set forth in Section 3.1 shall only apply to Covered
22 Products manufactured by or on behalf of, or distributed or sold by, BSRO in California on or
23 after the Effective Date.

24 3.3 The requirements for warnings set forth in Section 3.1 are imposed pursuant to the
25 terms of this Consent Judgment. The Parties recognize that these are not the exclusive methods
26 of providing a warning under Proposition 65 and its implementing regulations and that they may
27 or may not be appropriate in other circumstances.

28 3.4 In the event that Proposition 65 warnings for lead or lead compounds should no

1 longer be required, either by statutory or regulatory amendments or court order, BSRO shall have
2 no further warning obligations pursuant to this Consent Judgment, and shall provide written
3 notice to Mateel of its intent to cease providing the warnings required under this Consent
4 Judgment.

5 **4. MONETARY TERMS**

6 4.1 **Civil Penalty.** BSRO shall pay a civil penalty of two thousand dollars (\$2,000) to
7 the Office of Environmental Health Hazard Assessment pursuant to Cal. Health & Safety Code §
8 25249.7(b). Mateel waives any portion of the civil penalty that would normally be remitted to
9 Mateel, as provided by Cal. Health & Safety Code §§ 25249.12(c) and 25249.12(d).

10 4.2 **Attorney Fees and Costs.** BSRO shall pay and will not oppose an application
11 made by Mateel's counsel for an award of attorney fees, inclusive of all expenses and costs
12 incurred as a result of investigating, bringing this matter to BSRO's attention, litigating,
13 negotiating and obtaining judicial approval of a settlement in the public interest, in an amount of
14 forty thousand dollars (\$40,000). In addition, as payment in lieu of additional attorneys fees and
15 costs that Mateel may have recovered had it filed a motion for attorney fees and costs pursuant to
16 Cal. Code of Civil Procedure § 1021.5, BSRO shall pay thirteen thousand dollars (\$13,000) to the
17 Ecological Rights Foundation and five thousand dollars (\$5,000) to Californians for Alternatives
18 to Toxics. Other than the payments required herein, each side is to bear its own attorney's fees
19 and costs (including but not limited to expert and consultant fees, if any).

20 4.3 At least five business days prior to the hearing date scheduled for approval of this
21 Consent Judgment, BSRO shall forward the settlement payments scheduled under Sections 4.1
22 and 4.2 to its outside counsel, Jones Day. These payments shall be made in the form of checks
23 made out to the entities and in the respective amounts specified in Sections 4.1 and 4.2. Upon
24 receiving the settlement payments from BSRO, Jones Day shall provide e-mail confirmation to
25 Mateel's counsel, William Verick, at wverick@igc.org, that it has received the settlement
26 payments. Within five business days of the Effective Date, Jones Day shall forward the
27 settlement payments by overnight mail to William Verick, Klamath Environmental Law Center,
28 424 First Street, Eureka, CA 95501.

1 **5. ENFORCEMENT OF JUDGMENT**

2 5.1 In the event that, at any time following ninety (90) days after the Effective Date,
3 Mateel and/or its attorneys, agents, assigns, or any other person acting in the public interest under
4 Cal. Health & Safety Code § 25249.7(d) identifies one or more sale(s) to customers in the State of
5 California for which the warnings for Covered Products required under Section 3 are not being or
6 were not given (hereinafter the “Alleged Default(s)”), Mateel or such person shall notify BSRO in
7 writing of such alleged default(s) (the “Probationary Notice of Default”). The Probationary
8 Notice of Default shall be sent by first class mail, with proof of service, to the person(s) identified
9 in Section 14 to receive notices for BSRO, and must be served within fifteen (15) days of the date
10 the Alleged Default(s) was or were observed. The Probationary Notice of Default shall, at a
11 minimum, set forth the date(s) the Alleged Default(s) was observed, identify the location of the
12 sale in question, and include both a description of the Covered Product(s) giving rise to the
13 Alleged Default(s) and a description of the Alleged Default(s) with sufficient detail to allow
14 BSRO to determine the basis of the claim being asserted. The Probationary Notice of Default
15 may also provide some other form of documentary evidence specifically in support of the
16 allegation that the warnings required by Section 3 have not been given. Such Probationary Notice
17 of Default shall allege all defaults that could have been raised as of the date of the Probationary
18 Notice of Default.

19 5.2 In the event that BSRO corrects the Alleged Default(s) at the retail store from
20 which the Alleged Default arose, and at all other retail stores in California that sell Covered
21 Products distributed and/or marketed by BSRO, within sixty (60) days of receiving the
22 Probationary Notice of Default, Mateel or the notifying person shall take no further enforcement
23 action with respect to such default(s) and shall not recover any damages, or compensation,
24 including (without limitation) any penalties, attorney fees or costs. In the event that BSRO fails
25 to correct such Alleged Default(s) within sixty (60) days following the Probationary Notice of
26 Default from Mateel or the notifying person, Mateel may issue a Notice of Violation to enforce
27 this Consent Judgment or initiate a new lawsuit against BSRO.

28 5.3 In the event that, after the sixty (60) day period provided for in Section 5.2, Mateel

1 or the notifying person identifies one or more defaults of the same type as that contained in a
2 Probationary Notice of Default previously served under Section 5.1, Mateel may issue a Notice of
3 Violation to enforce this Consent Judgment or initiate a new lawsuit against BSRO, without need
4 for any further notice or opportunity to correct being provided to BSRO.

5 5.4 In the event that two (2) years elapse from the time that Mateel serves BSRO with
6 a Probationary Notice of Default under Section 5.1, during which time BSRO does not commit an
7 additional default, the process set forth in Sections 5.1 through 5.3 shall begin anew. In the event
8 that BSRO defaults within two (2) years after service of a Probationary Notice of Default, Mateel
9 may, in response to that and any subsequent default(s), issue a Notice of Violation or initiate a
10 new lawsuit under Section 5.3.

11 5.5 In the event that BSRO wishes to contest the allegations contained in any
12 Probationary Notice of Default, it shall notify Mateel or the notifying person of such within thirty
13 (30) days of its receipt of the Notice of Default. BSRO may provide any documentary evidence
14 to Mateel or the notifying person in support of its position. In the event that, upon a good faith
15 review of the evidence, Mateel or the notifying person agrees with BSRO's position, it shall take
16 no further action hereunder and not be entitled to nor seek any recovery, damages, or
17 compensation, including (without limitation) any penalties, attorney fees or costs. In the event
18 that BSRO provides documentary evidence, and Mateel or the notifying person disagrees with
19 BSRO's position, it shall, within thirty (30) days, notify BSRO of such and provide BSRO, in
20 writing, with the reasons for its disagreement. Thereafter, the parties shall meet and confer to
21 attempt to resolve their dispute on mutually acceptable terms; if no such resolution results (a)
22 Mateel may by motion or order to show cause before the Superior Court of San Francisco, seek to
23 enforce the terms and conditions contained in this Consent Judgment, or (b) Mateel or the
24 notifying person may initiate an enforcement action for new violations pursuant to Cal. Health &
25 Safety Code § 25249.7(d).

26 5.6 The terms of this Consent Judgment are enforceable by and among the Parties or,
27 with respect to the injunctive relief provided for herein, by the California Attorney General.
28 Enforcement of the injunctive relief provided for in Section 3 by Mateel or any other notifying

1 person shall be exclusively pursuant to the terms of this Section 5; the California Attorney
2 General's enforcement of the injunctive relief provided for in Section 3 shall not be limited by
3 this Section 5.

4 **6. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

5 6.1 This Consent Judgment is a full, final, and binding resolution between Mateel
6 acting in the public interest, and BSRO, Bridgestone Americas, Inc., and their respective parent
7 companies, officers, directors, shareholders, divisions, subdivisions, subsidiaries, partners, sister
8 companies, affiliates, employees, agents, and their respective successors and assigns ("Defendant
9 Releasees"), and all persons and entities from whom they obtain and/or to whom they directly or
10 indirectly distribute or sell Covered Products, including but not limited to manufacturers,
11 suppliers, distributors, wholesalers, customers, licensors, licensees, retailers, franchisees,
12 cooperative members, and all other entities in the distribution chain down to the consumers of any
13 Covered Products, and their respective successors and assigns (collectively referred to as
14 "Downstream Defendant Releasees"), of all claims for alleged violation of Proposition 65 that
15 have been or could have been asserted regarding any alleged exposure to Listed Chemicals in any
16 Covered Products manufactured, distributed or sold by or on behalf of BSRO before the Effective
17 Date (hereinafter, the "Released Claims"). Mateel, acting in the public interest, releases, waives
18 and forever discharges Defendant Releasees and Downstream Defendant Releasees from the
19 Released Claims. Compliance with the terms of this Consent Judgment constitutes compliance
20 with Proposition 65 with regard to the Covered Products.

21 6.2 In addition to the foregoing, Mateel, on behalf of itself, its past and current agents,
22 representatives, attorneys, and successors and assigns, and *not* in its representative capacity,
23 hereby releases, waives and forever discharges Defendant Releasees and Downstream Defendant
24 Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits,
25 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,
26 expenses, and attorney's fees, of any nature whatsoever, known or unknown, in law or equity,
27 fixed or contingent, now or in the future, with respect to any alleged exposure to Listed
28 Chemicals in any Covered Products manufactured, distributed or sold by or on behalf of BSRO

1 before the Effective Date. Mateel, on behalf of itself, its past and current agents, representatives,
2 attorneys, and successors and assigns, also shall not institute or participate in, directly or
3 indirectly, any form of legal action against Defendant Releasees or Downstream Defendant
4 Releasees with regard to the claims released and waived in this Section 6.2, unless such action is
5 to enforce this Consent Judgment. With respect to the foregoing waivers and releases in this
6 Section 6.2, Mateel hereby specifically waives any and all rights and benefits which it now has, or
7 in the future may have, conferred by virtue of the provisions of Cal. Civil Code § 1542, which
8 provides as follows:

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

13 6.3 BSRO hereby releases, waives and forever discharges Mateel, its attorneys and
14 other representatives from any and all manner of actions, causes of action, claims, demands,
15 rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges,
16 losses, costs, expenses, and attorney's fees, of any nature whatsoever, known or unknown, in law
17 or equity, fixed or contingent, now or in the future, with respect to any and all actions taken or
18 statements made by Mateel and its attorneys and other representatives in the course of
19 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
20 and/or with respect to Covered Products.

21 **7. INTEGRATION**

22 7.1 This Consent Judgment contains the sole and entire agreement of the Parties and
23 any and all prior negotiations and understandings related hereto shall be deemed to have been
24 merged within it. No representations or terms of agreement other than those contained herein
25 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

26 **8. GOVERNING LAW**

27 8.1 The terms of this Consent Judgment shall be governed by the laws of the State of
28 California and apply within the State of California.

1 **9. COMPLIANCE WITH CAL. HEALTH & SAFETY CODE § 25249.7(f); COURT**
2 **APPROVAL**

3 9.1 Mateel shall comply with the requirements set forth in Cal. Health & Safety Code
4 § 25249.7(f) and promptly bring a Motion for Approval and Entry of this Consent Judgment.
5 BSRO shall support approval of such Motion.

6 9.2 This Consent Judgment shall not be effective until it is approved and entered by
7 the Court and shall be null and void if, for any reason, it is not approved and entered by the Court.

8 9.3 Both Parties shall support fully entry of this Consent Judgment and shall waive
9 any right to appeal if entered. If the Court approves and enters this Consent Judgment, but such
10 order is reversed or vacated by an appellate court, the Parties shall meet and confer as to whether
11 to modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of
12 action to take, this action shall proceed on its normal course on the trial court's calendar.

13 **10. RETENTION OF JURISDICTION**

14 10.1 This Court shall retain jurisdiction of this matter to implement, modify and enforce
15 this Consent Judgment.

16 **11. MODIFICATION; CONSTRUCTION; SEVERABILITY**

17 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
18 and the approval of the Court, or upon the granting of a motion brought to the Court by either
19 Party.

20 11.2 The terms and conditions of this Consent Judgment have been reviewed by the
21 Parties' respective counsel, and each Party has had the opportunity to fully discuss the terms and
22 conditions with its counsel. In any subsequent interpretation or construction of this Consent
23 Judgment, the terms and conditions shall not be construed against any Party based on any role it
24 or its counsel may have played in drafting this Consent Judgment.

25 **12. ATTORNEY'S FEES**

26 12.1 Except as provided in Section 12.2, a Party who unsuccessfully brings or contests
27 an action arising out of this Consent Judgment shall be required to pay the prevailing party's
28 reasonable attorney's fees and costs, unless the unsuccessful party has acted with substantial

1 justification. For purposes of this Consent Judgment, the term “substantial justification” shall
2 carry the same meaning as used in the Civil Discovery Act of 1986, Cal. Code of Civil Procedure
3 § 2016, et seq.

4 12.2 In the event that Mateel prevails in enforcement of this Consent Judgment or in a
5 new lawsuit against BSRO, as provided in Section 5.3, Mateel shall be entitled to attorney’s fees
6 to the extent authorized by Cal. Code of Civil Procedure § 1021.5.

7 12.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions
8 pursuant to law with respect to any alleged violation of this Consent Judgment.

9 12.4 Except as explicitly provided herein, each Party is to bear its own attorney’s fees
10 and costs.

11 **13. AUTHORIZATION**

12 13.1 The undersigned are authorized to execute this Consent Judgment on behalf of the
13 Party they represent, and to legally bind that Party to all terms and conditions of this Consent
14 Judgment. The undersigned have read, understood and agree to all of the terms and conditions of
15 this Consent Judgment.

16 **14. NOTICES**

17 14.1 Unless specified herein, all correspondence and notices required by this Consent
18 Judgment shall be in writing and personally delivered or sent by: (i) first-class, registered or
19 certified mail, return receipt requested; or (ii) overnight courier, to the following addresses:

20 For Bridgestone Retail Operations, LLC:

21 Environmental Manager
22 Bridgestone Retail Operations, LLC
333 E. Lake Street
Bloomington, IL 60108

23 Senior Counsel, Environmental
24 Bridgestone Retail Operations, LLC
535 Marriott Drive
25 Nashville, TN 37214

26 With a copy to:

27 Thomas M. Donnelly, Esq.
Jones Day
555 California Street, 26th Floor
28 San Francisco, California 94104

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:

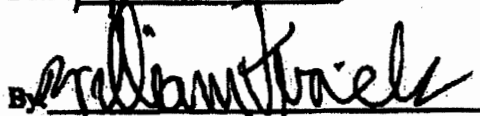
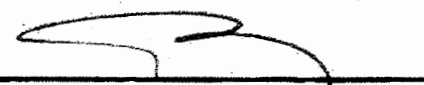
William Verick, Esq.
Klamath Environmental Law Center
424 First Street
Eureka, CA 95501

Any Party, from time to time, may specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

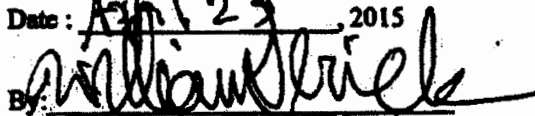
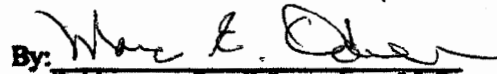
15. COUNTERPARTS, FACSIMILE SIGNATURES

15.1 This Consent Judgment may be executed in counterparts and by facsimile or portable document format (.pdf) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

1 **APPROVED AS TO FORM:**

2 Date: <u>April 23</u> , 2015	Date: <u>April 23</u> , 2015
3 By: <u></u>	By: <u></u>
4 On Behalf of Mateel Environmental Justice 5 Foundation 6 William Verick 7 Klamath Environmental Law Center	On Behalf of Bridgestone Retail Operations, 8 LLC 9 Thomas M. Donnelly 10 Jones Day

11 **IT IS HEREBY SO STIPULATED:**

12 Date: <u>April 23</u> , 2015	Date: <u>April 29</u> , 2015
13 By: <u></u> 14 <u>Mateel Environmental Justice</u> 15 <u>Foundation</u>	By: <u></u> 16 <u>Bridgestone Retail Operations, LLC</u>

17 **IT IS SO ORDERED:**

18 Date: JUL 02 2015
19 By: ERNEST H. GOLDSMITH
20 Judge of the San Francisco Superior Court

EXHIBIT 1

1 WILLIAM VERICI JB# 140972
2 KLAMATH ENVIRONMENTAL LAW CENTER
3 424 FIRST STREET
4 EUREKA, CA 95501
5 TELEPHONE: (707) 268-8900

4 FREDRIC EVENSON CSB# 198059
5 PUBLIC INTEREST LAWYERS GROUP
6 2070 ALLSTON WAY, SUITE 300
7 BERKELEY, CA 94712-3157
8 TELEPHONE: (510) 647-1900

7 Attorneys for Plaintiff
8 MATEEL ENVIRONMENTAL JUSTICE
9 FOUNDATION

ENDORSED
FILED
San Francisco County Superior Court

DEC 15 1999

ALAN CARLSON, Clerk
BY: MANUELITA ECHEVERRIA
Deputy Clerk

COPY

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

14 MATEEL ENVIRONMENTAL JUSTICE
15 FOUNDATION,

16 Plaintiff,

17 v.

18 A&A MANUFACTURING COMPANY,
19 INC. et al.,

20 Defendants.

No. 308295

~~PROPOSED~~ CONSENT
JUDGMENT

Date: N/A
Time: N/A
Dept: 301
Judge: Hon. David Garcia

Action Filed: June 24 1999
Trial Date: None Set

21 **1. Introduction**

22 1.1 On or about February 2, 1999, MATEEL ENVIRONMENTAL
23 JUSTICE FOUNDATION ("Mateel" or "Plaintiff") served, via certified mail, a
24 notification to the California Attorney General, District and all City Attorneys
25 throughout California, and certain private businesses pursuant to Health and
26 Safety Code section 25249.7 (d) alleging that such businesses were in violation of
27 California Health and Safety Code section 25249.6 because they, through the
28

21
~~PROPOSED~~ CONSENT JUDGMENT

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

3.3 Covered Products Sold for Replacement Use in Automobiles: By no later than one hundred and eighty (180) days after the date of service of notice of entry of this Consent Judgment by the Court ("Effective Date"), Covered Battery Manufacturers which manufacture Covered Products sold for replacement use in automobiles, or an entity, including, but not limited to a distributor acting on their

1 behalf, shall mail to the central purchasing office for retail stores, battery
2 specialists, or others who sell such Covered Products to end users in California
3 ("Retailers"), a letter containing the exact text or text that is not materially
4 different in content or appearance than that shown in Exhibit C. A copy of this
5 letter shall also be mailed to the office of the General Counsel for each Retailer,
6 or, if no such office exists, to the Chief Operating Officer of the Retailer in
7 question. A Covered Battery Manufacturer that has directly or through executing
8 an agreement with an entity acting on their behalf, complied with the terms of this
9 Paragraph and Paragraphs 3.3.1, 3.3.2, and 3.3.3 below in good faith, shall be
10 deemed to have fulfilled its obligations under this Consent Judgment with respect
11 to batteries sold for replacement use in automobiles and all related Battery
12 Accessories and shall be released from liability arising from Proposition 65 claims
13 concerning such Covered Products pursuant to Section 13 hereunder.

14 **3.3.1 Provision of Warnings Through Signs: Covered Battery**
15 Manufacturers which manufacture Covered Products for replacement use in
16 automobiles, or an entity including, but not limited to, a distributor acting on their
17 behalf, shall by no later than one hundred and eighty (180) days after the Effective
18 Date, mail to the central purchasing office for each of their Retailers in California
19 at least twenty-five (25) copies, or such number as each Retailer subsequently
20 requests, whichever is greater, of the sign contained in Exhibit D (hereinafter
21 "Warning Sign"), printed on 65 pound cover stock. The Warning Sign shall be 8
22 1/2" by 11" in size and shall have the exact content, form, and print style as
23 Exhibit D.

24 **3.3.2 Provision of Warnings Through Shelf Stickers: Covered Battery**
25 Manufacturers which manufacture Covered Products for replacement use in
26 automobiles, or an entity including, but not limited to, a distributor acting on their
27 behalf, shall, by no later than one hundred and eighty (180) days the Effective
28 Date, mail to the central purchasing office for each of their Retailers in California

1 at least twenty-five (25) copies, or such number as each Retailer subsequently
2 requests, whichever is greater, of a label ("Shelf Sticker) printed on adhesive-
3 backed stock. Each Shelf Sticker shall be at least 1" by 3" in size and have the
4 exact content as that set forth in Exhibit D.

5 3.3.3 Provision of Warnings Through Battery Replacement Guides:

6 By no later than their first regularly scheduled printing cycle for new models
7 occurring one hundred and eighty (180) or more days after the Effective Date,
8 Covered Battery Manufacturers which manufacture Covered Products for
9 replacement use in automobiles, or an entity including, but not limited to, a
10 distributor acting on their behalf, shall, at least annually, mail to the central
11 purchasing office for each of their Retailers in California at least twenty-five (25)
12 battery replacement guides, or such number as each Retailer subsequently
13 requests, containing the same warning language as that specified in Exhibit D.
14 Battery replacement guides are books provided by battery manufacturers to assist
15 the selection of an appropriately-sized product for use in particular models. The
16 warning may be printed in or affixed to the guide by means of an adhesive-backed
17 sticker and must be placed either: 1) on the front cover of the battery replacement
18 guide, or 2) on the footer of each page of the guide that contains listings of
19 replacement models for particular vehicles. If placed on the cover of the guide,
20 the applicable warning language shall appear in a type size and style that is at
21 least as conspicuous as, but not necessarily any more prominent than, other
22 warning information contained in the battery replacement guide. If placed on the
23 footer, the applicable warning language shall appear in a type size and style that is
24 consistent with other information placed in the footer.

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

3.5 Warnings for Occupational Exposures:

3.5.1 To address any occupational exposures that may arise from the use or handling of Covered Products in workplaces in California, Covered Battery Manufacturers, or an entity acting on their behalf, shall include the warning language specified in Exhibit D above in the Material Safety Data Sheet ("MSDS") pertaining to each Covered Product they manufacture. Covered Battery Manufacturers shall make available MSDSs containing the warning language required by this Paragraph within one hundred and eighty (180) days of the Effective Date. The warnings issued pursuant to this Paragraph shall be deemed to satisfy any obligation a Settling Defendant or purchaser of its Covered Products, including a Covered Vehicle Manufacturer or a Covered Retailer, may have to provide Proposition 65 warnings for occupational exposures associated with such a Covered Battery Manufacturer's Covered Products, provided that such Settling Defendant or purchaser otherwise complies with its other obligations, if any, to provide occupational warnings regarding Covered Products as may be required by California or federal occupational safety and health laws and regulations.

1 **3.5.2 Workplace Signs: A Covered Battery Manufacturer which**
2 **manufactures Covered Products for replacement use in automobiles, or an entity**
3 **including, but not limited to, a distributor acting on its behalf, shall, in**
4 **conjunction with fulfilling its obligations under Paragraph 3.3 above, by no later**
5 **than one hundred and eighty (180) days after the Effective Date, mail to the**
6 **central purchasing office of each of their Retailers in California which provide**
7 **battery installation services at least five (5) copies of workplace signs**
8 **("Workplace Signs") designed to educate installers about minimizing their**
9 **exposure to lead from the handling of batteries and related accessories. The**
10 **Workplace Signs shall be at least 8-1/2" by 11" in size and shall have the same**
11 **content or content that is not materially different than that shown in Exhibit E.**


12 **3.5.3. A Covered Vehicle Manufacturer's compliance with the**
13 **requirements of Paragraph 3.2 of this Consent Judgment shall be deemed to**
14 **address any independent responsibility it may have for occupational exposures that**
15 **may arise from the use or handling of Covered Products in Covered Vehicles in**
16 **occupational settings other than its own workplaces, if any, in California.**

17
18
19
20
21
22
23
24
25
26
27
28

1 This signature sheet applicable solely in conjunction with the Proposed
 2 Consent Judgment in the litigation encaptioned, Mateel Environmental
 3 Justice Foundation v. A & A Manufacturing Company, Inc., et al.,
 4 No. 303601, Superior Court of the State of California, County of
 5 San Francisco.

6 IT IS SO STIPULATED.

7 Dated: Nov. 18 '99


 8 By: (Authorized Official)
 9 NOBUO ARAKI

10 NISSAN NORTH AMERICA Inc.
 11 For: (Name of Company/Party)

12
13 *Received and approved*

14
15
16 *12/15/99* *William Cochil*
 17 *Judge of the*
 18 *Superior Court*

EXHIBIT D
Warning Sign

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
WARNING SIGN

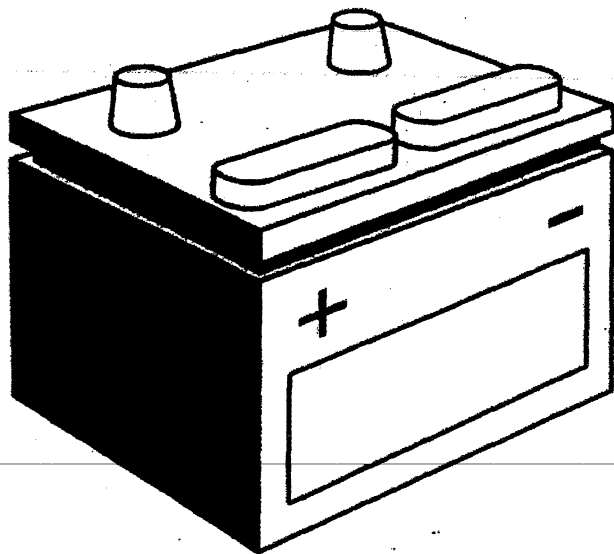
PROPOSITION 65
WARNING

Battery posts, terminals, and related accessories contain lead and lead compounds, chemicals known to the State of California to cause cancer and reproductive harm.
Wash hands after handling.

Exhibit E
Workplace Sign

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

BATTERIES AND RELATED PARTS CONTAIN LEAD



WASH HANDS AFTER HANDLING!

WARNING: Battery posts, terminals and related accessories contain lead and lead compounds, chemicals known to the State of California to cause cancer and reproductive harm.

EXHIBIT B

Attorney	Description	F Evenson	B Acree	W Verick	D Williams
CATEGORY I - INVESTIGATION and SERVICE OF 60 DAY NOTICE					
FE	Investigation Santa Cruz Wheelworks - no warnings, batteries displayed for sale; email investigator	3			
FE	Correspond with co counsel re possible lead(Pb) exposures without warnings, despite prior consent judgments re batteries; east bay investigations	0.2			
DHW	Investigate San Ramon and Walnut Creek Wheelworks stores, thorough investigation of warnings, both posted and in invoices or receipts for work done, including travel; write up report on investigation				6
FE	Travel and investigations at Los gatos and San Jose Wheelworks retail stores	9			
BA	Research re corporate structure of Wheelworks and franchises		3		
FE	Investigation of Wheel Works stores in Cupertino, Saratoga, Campbell - including travel to/from stores. investigation of brands of batteries sold, look for posted warnings.	6			
WLV	Review investigation materials for SF store, organize into evidence			1.5	
WLV	Review investigation materials for San Mateo store, organize into evidence			1.1	
WLV	Review investigation materials for Belmont store, organize into evidence			1	
WLV	Review investigation materials for Redwood City store, organize into evidence			1.2	
WLV	Review investigation materials for SJKiely Blvd store, organize into evidence			1.1	
WLV	Confer with investigator			1	
All cnsl	New area of investigation - all counsel conference	1.5	1.5	1.5	1.5
	Investigation of Southern California stores, including travel, inspection of warning signs at various locations in Southern California; write up report on investigation to co counsel; investigate prior consent judgments covering batteries, including warning schemes under such C.Js, notice and cure rights, application to retail sales				
BA			16		
WLV	Review investigation materials for Sunnyvale store, organize into evidence			1	
WLV	Review investigation materials for Santa Clara store, organize into evidence			1.2	
WLV	Review investigation materials for SJ Pearl Ave store, organize into evidence			1.2	
WLV	Review investigation materials for Mtn View store, organize into evidence			1	
WLV	Review investigation materials for SJ Winfld Ave store, organize into evidence			1.4	
WLV	Confer with investigator			0.8	
WLV	Review investigation materials for Hayward store, organize into evidence			0.9	
WLV	Review investigation materials for San Lorenzo store, organize into evidence			1.1	
WLV	Review investigation materials for San Leandro store, organize into evidence			0.9	
WLV	Review investigation materials for Milpitas store, organize into evidence			0.5	
WLV	Review investigation materials for Albrae St Fmt store, organize into evidence			0.7	
WLV	Review investigation materials for Frm Blvd Fmt store, organize into evidence			0.6	
WLV	Review investigation materials for Neward store, organize into evidence			0.7	
WLV	Confer with Investigator			0.5	
WLV	Review investigation materials for SJ Capitol store, organize into evidence			0.7	
WLV	Review investigation materials for SJ Tully Rd store, organize into evidence			0.6	
WLV	Review investigation materials for SJ 1st St Store, organize into evidence			0.5	
WLV	Review investigation materials for SJ the Alameda store, organize into evidence			0.7	
WLV	Review investigation materials for Los Gatos store, organize into evidence			0.7	
WLV	Review investigation materials for Campbell store, organize into evidence			0.6	
WLV	Review investigation materials for SJ King Rd store, organize into evidence			0.6	
WLV	Review investigation materials for Saratoga store, organize into evidence			0.7	
WLV	Confer with Investigator			0.5	
WLV	Review investigation materials for Santa Rosa store, organize into evidence			0.7	
WLV	Review investigation materials for Rohnert Pk store, organize into evidence			0.6	
WLV	Review investigation materials for Petaluma store, organize into evidence			0.7	
WLV	Review investigation materials for Vallejo store, organize into evidence			0.9	
WLV	Review investigation materials for Pinole store, organize into evidence			0.5	
WLV	Review investigation materials for Concord store, organize into evidence			0.7	
WLV	Review investigation materials for San Ramon store, organize into evidence			0.6	
WLV	Review investigation materials for Dublin store, organize into evidence			0.7	
WLV	Confer with Investigator			0.3	
All Cnsl	Conf Call all counsel re status of investigation and further research needed	0.3	0.3	0.3	0.3
All Cnsl	Conf Call review evidence northern and southern California, review prior consent judgments re Interstate Batteries	1	1	1	1
WLV	T/C with investigator			0.8	
All Cnsl	Review investigator spreadsheet of results of all investigations; discussion re going forward; decision to conduct second round of discovery after notice is sent	0.7	0.7	0.7	0.7
WLV	Draft Notice of Violation			0.9	
WLV	Supervise legal assistant in getting notice assembled and mailed			1.5	
WLV	Review file to determine status of service			0.3	
WLV	T/C with investigator			0.5	
WLV	Review investigation materials for Campbell store, organize into evidence			0.7	
WLV	Review investigation materials for Los Gatos store, organize into evidence			0.8	
WLV	Review investigation materials for SJ the Alameda store, organize into evidence			0.5	
WLV	Review investigation materials for SJ 1st Street store, organize into evidence			0.7	
WLV	Review investigation materials for SJ King St. store, organize into evidence			0.6	
WLV	Review investigation materials for SJ Tully Rd store, organize into evidence			0.7	
WLV	Review investigation materials for SJ Capitol store, organize into evidence			0.6	
WLV	Confer with Investigator			0.5	
WLV	Review investigation materials for Daly City store, organize into evidence			0.6	

WLV	Review investigation materials for San Mateo store, organize into evidence				0.5
WLV	Review investigation materials for Belmont store, organize into evidence				0.7
WLV	Review investigation materials for Mtn View store, organize into evidence				0.7
WLV	Review investigation materials for Sunnyvale store, organize into evidence				0.6
WLV	Review investigation materials for Santa Clara store, organize into evidence				0.6
WLV	Review investigation materials for SJ Pearl Ave store, organize into evidence				0.7
WLV	Review investigation materials for Winfield store, organize into evidence				0.6
WLV	Review investigation materials for Milpitas store, organize into evidence				0.4
WLV	Review investigation materials for Newark store, organize into evidence				0.3
WLV	Review investigation materials for Hayward store, organize into evidence				0.4
WLV	Review investigation materials for San Lorenzo store, organize into evidence				0.5
WLV	Review investigation materials for San Leandro store, organize into evidence				0.3
WLV	confer with investigator				0.2
WLV	Review investigation materials for Dublin store, organize into evidence				0.5
WLV	Review investigation materials for San Ramon store, organize into evidence				0.5
WLV	Review investigation materials for Concord store, organize into evidence				0.6
WLV	Review investigation materials for Pinole store, organize into evidence				0.3
WLV	Review investigation materials for Vallejo store, organize into evidence				0.5
WLV	Review investigation materials for Petaluma store, organize into evidence				0.4
WLV	Review investigation materials for Rhonert Park store, organize into evidence				0.4
WLV	Review investigation materials for Santa Rosa store, organize into evidence				0.3
WLV	confer with investigator				0.5
WLV	T/C opposing counsel				0.4
WLV	T/C investigator, send email				0.2
TOTALS		550 rate	44.2	630 rate	64.5
CATEGORY II - PROSECUTION OF CASE					
WLV	Review evidence and correspondence, draft complaint				1.1
WLV	Supervise compilation of complaint preparation for filing and service				1.5
	Review final draft of complaint, summons and civil cover sheet; coordinator with legal assistant;				
DHW	supervise filing and issuance of summons				2.5
DHW	Coordinate with legal assistant re service of summons and complaint				0.3
WLV	Review correspondence and settlement offer form opp counsel				0.5
all cnsl	discussion regarding settlement communications	0.2	0.2		0.2
WLV	Review file to determine the status of service				0.5
WLV	Research discovery, draft initial round of written discovery				6.4
WLV	Begin work on draft CRC statement				5.7
WLV	Response to opp cnsl re settlement				0.5
WLV	Circulate draft discovery to co counsel				0.3
DHW	Review and revise draft discovery				
WLV	TC w now opposing counsel, draft email, prepare attachments				0.9
WLV	Review correspondence from opposing counsel				1.3
WLV	TC/w opposing counsel				0.3
DHW	Review proposed settlement language				
WLV	Research, redraft section of settlement document				1.5
WLV	TC w opposing counsel re settlement issues				0.4
all cnsl	Discussion of proposed notice and cure provision	1	1		1
WLV	Review revisions to settlement; revise again				1
WLV	Review correspondence from opposing counsel				0.1
WLV	Review correspondence from opposing counsel				0.8
WLV	Review document, research AG position on Notice and Cure				0.9
WLV	TC w opposing counsel				0.2
WLV	review and revise settlement document				1
WLV	confer with DHW re settlement terms				0.2
WLV	Review draft CMC statement, approve				0.3
WLV	Correspond w opposing counsel				0.4
WLV	Review final draft of consent judgment				1.1
WLV	Review revised CMC statement				0.1
TOTALS		rate \$550	2.4	rate 630	36.2
CATEGORY III - Motion to Approve					
DHW	Secure executed consent judgment and supporting materials				
FE	Review records, d/w DHW re time records				1
BA	Review records, d/w DHW re time records	0.5			
DHW	M/W other counsel, review hours and time records		0.5		
WLV	Review records, d/w DHW re time records				1.5
DHW	Prepare motion to approve settlement, including expected time for appearance, including travel				8
TOTALS		rate \$550	1	rate 630	10.5
GRAND TOTALS			47.6		111.2

EXHIBIT C
