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**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

AMERICAN ENVIRONMENTAL SAFETY
INSTITUTE, a non-profit California
corporation,

Plaintiff,

v.

THE PROCTER & GAMBLE
DISTRIBUTING COMPANY, an Ohio
corporation, et al.,

Defendants.

CASE NO. BC 334309

[Hon. Mary Thornton House]

**[PROPOSED] AMENDED REVISED
CONSENT JUDGMENT AS TO THE
PROCTER & GAMBLE DISTRIBUTING
COMPANY, THE PROCTER & GAMBLE
MANUFACTURING COMPANY, THE
GILLETTE COMPANY AND ZOOOTH,
INC. ONLY**

Complaint Filed: June 1, 2005
Location: Department 17, Room 313
Trial Date: None

This Amended Revised Consent Judgment is entered into by and between the plaintiff American Environmental Safety Institute (“AESI”), and defendants The Procter & Gamble Distributing Company, an Ohio corporation; and The Procter & Gamble Manufacturing Company, an Ohio corporation (together “Procter & Gamble”); the Gillette Company, a Delaware corporation (“Gillette”); and Zooth, Inc., a Texas corporation, (“Zooth”) (together and collectively “Settling Defendants”).

1. Background of this Amended Revised Consent Judgment

1.1 The Prior Revised Consent Judgment. On August 9, 2005, this Court entered a Consent Judgment in this case between AESI and the Procter & Gamble defendants (“the prior

1 Consent Judgment"). The Attorney General appealed the prior Consent Judgment. On
2 November 16, 2006, the Court of Appeal affirmed entry of the prior Consent Judgment.

3 **1.2 Corporate Acquisition.** On October 1, 2005, Procter & Gamble acquired The
4 Gillette Company and its assets, including the Oral B® Brand of toothpaste products and
5 Rembrandt, and Zooth.

6 **1.3 Modification of the Prior Consent Judgment Permitted.** Pursuant to section 9.1
7 of the prior Revised Consent Judgment, the prior Revised Consent Judgment may be modified.
8 This Amended Revised Consent Judgment makes such modifications, and thereby supersedes and
9 renders void the prior Revised Consent Judgment.

10 **2. Definitions.** As used in this Amended Revised Consent Judgment, the following
11 definitions shall apply:

12 **2.1. "Toothpaste Products"** includes any toothpaste products previously (i.e., at any
13 time up to or prior to the entry of this consent judgment) sold in California by a Settling
14 Defendant, whether or not such products continue to be sold, as well as all toothpaste products
15 sold by a Settling Defendant in or into California in the future (i.e., at any time after entry of this
16 consent judgment) and includes, without limitation, Rembrandt brand toothpaste.

17 **2.2. "Lead"** means the chemical element lead (Pb) and lead compounds as defined in
18 section 12000 of Title 22 of the California Code of Regulations.

19 **2.3. "Hydrated Silica"** is the naturally-occurring mined material used as a gentle
20 abrasive in the Toothpaste Products.

21 **2.4. "ppm"** means parts per million.

22 **2.5. "Party"** shall mean individually AESI, The Procter & Gamble Distributing
23 Company, The Procter & Gamble Manufacturing Company, The Gillette Company, and Zooth,
24 Inc., and when used in the plural shall mean all of them.

25 **3. Background.**

26 **3.1.** AESI is a non-profit California corporation dedicated to investigating
27 environmental and public health hazards affecting children and adults in their regular daily lives.
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1 AESI is based in Palo Alto, California, and was incorporated under the laws of the State of
2 California in 1998. AESI is a “person” within the meaning of Health & Safety Code
3 § 25249.11(a), and brought this enforcement action in the public interest pursuant to Health &
4 Safety Code § 25249.7(d).

5 **3.2.** AESI served a 60-day “Notice of Violation” (the “Notice”) on Settling Defendants.
6 AESI served the Notice on June 2, 2005, pursuant to California Health and Safety Code section
7 25249.7(d) and section 12903 of Title 22 of the California Code of Regulations.

8 **3.3.** The Notice alleged, among other things, that Settling Defendants were in violation
9 of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code sections
10 25249.5 *et seq.* (“Proposition 65”) for failing to warn purchasers of Toothpaste Products sold in
11 California that the products allegedly expose users to Lead.

12 **3.4.** For purposes of this Amended Revised Consent Judgment only, the Parties
13 stipulate that this Court has jurisdiction over the allegations of the violations contained in the
14 Notice, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction to
15 enter this Amended Revised Consent Judgment. No public prosecutor has commenced an action
16 regarding the matters raised in the Notice.

17 **3.5.** Settling Defendants deny that any Toothpaste Products have been or are in
18 violation of Proposition 65 or any other law, and further contend that all of their Toothpaste
19 Products have been and are safe for use as directed. Settling Defendants, however, wish to
20 resolve this matter without further litigation or cost.

21 **3.6.** The Parties enter into this Amended Revised Consent Judgment to settle claims
22 alleged in the Notice and AESI’s complaint (the “Complaint”) in this action against the Settling
23 Defendants, to avoid prolonged and costly litigation, and to promote the public interest. By
24 executing and complying with this Amended Revised Consent Judgment, no party admits any
25 facts or conclusions of law including, but not limited to, any facts or conclusions of law regarding
26 any violations of Proposition 65, or any other statutory, common law or equitable claim or
27 requirement relating to or arising from the Toothpaste Products. This Amended Revised Consent
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1 Judgment shall not be construed as an admission by Settling Defendants as to any of the
2 allegations in the Notice and/or the Complaint.

3 **4. Injunctive Relief.**

4 **4.1. Actions as to Hydrated Silica.**

5 (a) Within 60 days of the of the entry of this Amended Revised Consent
6 Judgment by the Court, Settling Defendants shall establish and thereafter maintain a Lead (Pb)
7 specification of 4.5 parts per million ("ppm") for any Hydrated Silica to be used in Settling
8 Defendants' Toothpaste Products that is obtained by a Settling Defendant 60 days after its Lead
9 specification is established.

10 (b) The 4.5 ppm Lead standard shall be demonstrated by the Defendant's
11 hydrated silica supplier using the following testing protocol:

12 (1) once every six months, the hydrated silica supplier shall select five
13 (5) randomly chosen grab samples from a lot of hydrated silica that is ready for
14 shipment to the Defendant, and the supplier shall test a composite of the 5 grab
15 samples;

16 (2) using a sample preparation method that permits recovery of at least
17 that amount of Lead in the sample that is bioavailable to humans, test the prepared
18 sample using Inductively Coupled Plasma/Mass Spectrometry ("ICP/MS") or
19 Inductively Coupled Plasma/Optical Emission Spectrometry ("ICP/OES")
20 laboratory equipment and protocols for Lead detection to demonstrate compliance
21 with the 4.5 ppm specification for Lead in hydrated silica for use in toothpaste;

22 (3) failure of this testing protocol shall require rejection by the supplier
23 of the test lot, with written notice of that rejection provided to the Defendant
24 customer, and a re-review by the supplier of its methods then in use to meet the 4.5
25 ppm Lead specification; and

26 (4) the test protocol set forth above must then be conducted on the next
27 three lots of hydrated silica in succession; if any of these three additional lots fails
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1 this test protocol, then the next five lots must be tested, until all lots in a test group
2 of five demonstrate compliance with the 4.5 ppm Lead specification.

3 (c) Because Hydrated Silica is a mined substance, Settling Defendants cannot
4 ensure that Hydrated Silica with a Lead specification of 4.5 ppm will be commercially feasible at
5 all times. If Hydrated Silica with a Lead specification of 4.5 ppm becomes commercially
6 unfeasible, Settling Defendants will make every reasonable effort to use Hydrated Silica with the
7 lowest level of Lead feasible from the Hydrated Silica suppliers able to meet Settling Defendants'
8 quality and volume requirements. Any Party choosing to use Hydrated Silica that does not meet
9 the Lead specification of 4.5 ppm shall provide prompt notice to AESI of that election.

10 **4.2. Feasibility.** The term "feasible" as used in this Amended Revised Consent
11 Judgment means "reasonable" considering: (1) the availability and reliability of a supply to
12 Settling Defendants of Hydrated Silica meeting a Lead specification not to exceed 4.5 ppm; (2)
13 the cost to Settling Defendants of using such Hydrated Silica; (3) the performance characteristics,
14 including, but not limited to, formulation compatibility, performance, safety, taste, efficacy and
15 stability, of an ingredient in any Toothpaste Product or the Toothpaste Products as a whole; (4)
16 the lawfulness of the alternative (for example, no such alternative can be allowed to render any
17 Settling Defendants' Toothpaste Products unlawful under state or federal law); and (5) other
18 reasonable considerations. Notwithstanding any other provision in this Amended Revised
19 Consent Judgment, Settling Defendants shall be required to fulfill only those obligations
20 respecting Lead in their Toothpaste Products that are feasible as described in this paragraph.

21 **4.3. Naturally Occurring Lead.** Any Lead remaining in Settling Defendants'
22 Toothpaste Products after Settling Defendants have undertaken those actions required by
23 Paragraphs 4.1 and 4.2, above, is deemed "naturally occurring" within the meaning of section
24 12501 of Title 22 of the California Code of Regulations.

25 **4.4. Confirmation of Compliance.** AESI, at its sole expense, shall have the right for
26 three (3) years after the date of the entry of this Amended Revised Consent Judgment to request
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1 samples of the Hydrated Silica manufactured to the specification level of 4.5 ppm and perform
2 independent testing of the material.

3 **4.5. Injunctive Relief Applies Only in California.** All of the foregoing injunctive
4 relief shall apply only to Toothpaste Products sold for use within California.

5 **4.6. Full and Complete Compliance.** Compliance by a Settling Defendant with the
6 terms of this Amended Revised Consent Judgment shall be deemed to constitute its full and
7 complete compliance with Proposition 65 with respect to the provision of warnings for chemicals
8 contained in or otherwise associated with its Toothpaste Products.

9 **5. Settlement Payments.**

10 **5.1.** In keeping with the concept of, but in lieu of, statutory penalties and/or restitution,
11 under the statutes set forth in the Complaint, Settling Defendants shall collectively pay to the
12 Trust Account of the Carrick Law Group, P.C., in immediately available funds \$95,000.00 (the
13 "Settlement Proceeds") within five (5) days from the entry of this Amended Revised Consent
14 Judgment. Carrick Law Group P.C. shall disburse these funds to AESI (a) to pay its attorneys'
15 fees of \$45,600.00 pursuant to those parties' written contingent fee agreement; and (b) to further
16 the remedial purposes established under Proposition 65 by providing funds for AESI's ongoing
17 costs of monitoring compliance with this Amended Revised Consent Judgment, as well as for its
18 future investigational and enforcement activities regarding toxic chemicals and Proposition 65, in
19 a manner that is consistent with the private enforcement mechanism and funds allocation scheme
20 established by Health & Safety Code §§ 25249.7(d) and 25249.12(d) and AESI's non-profit
21 mission.

22 **5.2. Attorney's Fees and Costs.** Apart from the payments to be made pursuant to
23 paragraph 5.1 above, each party shall bear its own attorneys' fees and costs.

24 **6. Termination of All Claims; Claims Covered and Released.**

25 **6.1.** This Amended Revised Consent Judgment includes the resolution of all claims
26 asserted in the Notice and the Complaint, as well as all potential claims that were considered or
27 could have been brought by AESI on behalf of the public interest and the general public
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1 regarding Lead in any Settling Defendants' Toothpaste Products. This Amended Revised
2 Consent Judgment is a final and binding resolution between AESI, on behalf of the public interest
3 and the general public, and Settling Defendants, of any and all alleged violations of Proposition
4 65 and any other statutory or common law claims that were or could have been asserted by AESI
5 against Settling Defendants or purchasers or sellers of Settling Defendants' Toothpaste Products
6 arising from or related to Lead in Settling Defendants' Toothpaste Products up through the date
7 of entry of this Amended Revised Consent Judgment, including, but not limited to, any claims for
8 attorneys' fees and costs. AESI hereby releases Settling Defendants, their affiliated companies,
9 officers, directors and employees and their suppliers, distributors, wholesales, and retailers from
10 and against the claims described in this paragraph relating to Settling Defendants' Toothpaste
11 Products; however, AESI expressly does not release any claims which AESI does not have the
12 authority to release, including specifically and without limitation any personal injury claims (or
13 claims directly related to personal injuries).

14 **7. Covenant Not To Sue.** AESI and Settling Defendants agree that with regard to those
15 matters that AESI has herein released and that are described above, neither AESI nor Settling
16 Defendants will ever institute a lawsuit or administrative proceedings against any other Party, nor
17 shall any Party assert any claim of any nature against any person or entity hereby released, with
18 regard to any such matters which have been released.

19 **8. Application of this Amended Revised Consent Judgment.** Paragraphs 6 and 7 of this
20 Amended Revised Consent Judgment shall apply to, be binding upon, and inure to the benefit of,
21 the Parties, their divisions, subdivisions, subsidiaries, affiliates, merged entities, acquired entities,
22 successors, predecessors and assigns, and the directors, officers, employees, counsel, and agents
23 of each of them, as applicable, and will inure to the benefit of the Parties' parent companies, and
24 all of their suppliers, distributors, wholesalers, retailers and contract manufacturers, and all of
25 their respective directors, officers, employees, counsel, and agents.

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1 **9. Modification of this Amended Revised Consent Judgment.**

2 **9.1.** This Amended Revised Consent Judgment may be modified or terminated upon
3 written agreement of Settling Defendants and AESI, with approval of the Court, or upon noticed
4 motion for good cause shown. The grounds for modification of this Amended Revised Consent
5 Judgment include, but are not limited to, the infeasibility of obtaining or using Hydrated Silica
6 with a lead specification of 4.5 ppm in Settling Defendants' Toothpaste Products as outlined in
7 Paragraphs 4.1(b) and 4.2; provided that, in such case of infeasibility, Settling Defendants are
8 permitted, but not required, to seek modification of this Amended Revised Consent Judgment.
9 Any party seeking to modify this Amended Revised Consent Judgment must first give notice to
10 each other Party in writing of any proposed modification of this Amended Revised Consent
11 Judgment with the basis for the proposed modification. The Parties shall meet and confer in
12 good faith and attempt to reach agreement on proposed modification of the Amended Revised
13 Consent Judgment. If a resolution is not reached within forty-five (45) days of the notice, the
14 Party seeking modification may move the Court to modify this Amended Revised Consent
15 Judgment.

16 **9.2.** The Parties agree that if AESI enters into a settlement agreement with another
17 toothpaste manufacturer or distributor in the future that imposes injunctive relief that is less
18 burdensome from the provisions contained in this Amended Revised Consent Judgment and the
19 settlement agreement is entered as a Amended Revised Consent Judgment, Settling Defendants
20 have the right to seek modification of the Amended Revised Consent Judgment pursuant to
21 Paragraph 8.1 to allow Settling Defendants to modify this Amended Revised Consent Judgment
22 to provide for the same injunctive relief imposed on the other toothpaste manufacturer or
23 distributor.

24 **10. Publicity.** If any Party wants to make any public announcements to the press or otherwise
25 about this Amended Revised Consent Judgment, that Party shall notify the other Parties
26 reasonably in advance of any such announcement. Each Party shall have a right to review any
27 proposed written public announcement by any other Party a reasonable amount of time in
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1 advance of such announcement being made public, but thereafter no Party may veto or stop any
2 such announcement by any other.

3 **11. Governing Law.** This Amended Revised Consent Judgment shall be governed by, and
4 construed in accordance with, the laws of the State of California, without regard to conflict of
5 laws principles.

6 **12. Entire Agreement.** The Parties declare and represent that no promise, inducement or
7 other agreement has been made conferring any benefit upon any party except those contained
8 herein and that this Amended Revised Consent Judgment contains the entire agreement
9 pertaining to the subject matter hereof. This Amended Revised Consent Judgment supersedes
10 any prior or contemporaneous negotiations, representations, agreements and understandings of
11 the Parties with respect to such matters, whether written or oral. Parol evidence shall be
12 inadmissible to show agreement by, between, or among the Parties to any term or condition
13 contrary to or in addition to the terms and conditions contained in this Amended Revised Consent
14 Judgment. The Parties acknowledge that each has not relied on any promise, representation or
15 warranty, expressed or implied, not contained in this Amended Revised Consent Judgment.

16 **13. Challenges.** Subject to their rights to apply for a modification of this Amended Revised
17 Consent Judgment for good cause shown under Paragraph 8 hereof, the Parties agree that they,
18 individually or collectively, will not seek to challenge or to have determined invalid, void or
19 unenforceable any provision of this Amended Revised Consent Judgment or this Amended
20 Revised Consent Judgment itself. The Parties understand that this Amended Revised Consent
21 Judgment contains the relinquishment of legal rights and each Party has, as each has deemed
22 appropriate, sought the advice of legal counsel, which each of the Parties has encouraged the
23 other to seek. Further, no Party has reposed trust or confidence in any other Party so as to create
24 a fiduciary, agency, or confidential relationship.

25 **14. Construction.** This Amended Revised Consent Judgment has been jointly negotiated and
26 drafted. The language of this Amended Revised Consent Judgment shall be construed as a whole
27 according to its fair meaning and not strictly for or against any Party.

1 **15. Authority to Stipulate to Amended Revised Consent Judgment.** Each signatory to this
2 Amended Revised Consent Judgment represents and warrants that the signatory has all requisite
3 authorization, power, and legal right necessary to execute and deliver this Amended Revised
4 Consent Judgment and to perform and carry out the transactions contemplated by this Amended
5 Revised Consent Judgment. No other or further authorization or approval from any person will
6 be required for the validity and enforceability of the provisions of this Amended Revised Consent
7 Judgment.

8 **16. Cooperation and Further Assurances.** The Parties hereby will execute such other
9 documents and take such other actions as may be necessary to further the purposes and fulfill the
10 terms of this Amended Revised Consent Judgment.

11 **17. Counterparts.** This Amended Revised Consent Judgment may be executed in
12 counterparts and has the same force and effect as if all the signatures were obtained in one
13 document.

14 **18. Notices.**

15 **18.1.** All correspondence and notices required by this Amended Revised Consent
16 Judgment to AESI shall be sent to:

Roger Lane Carrick
The Carrick Law Group, P.C.
350 S. Grand Avenue, Suite 2930
Los Angeles, CA 90071-3406
Tel: (213) 346-7930
Fax: (213) 346-7931
E-mail: roger@carricklawgroup.com

21 **18.2.** All correspondence and notices required by this Amended Revised Consent
22 Judgment to Settling Defendants shall be sent to all Settling Defendants as follows:

23 Paul Franz
24 GO, C-2 MS 7
25 One Procter & Gamble Plaza
26 Cincinnati, OH 45201
27 Phone: (513) 983-1100
28 Fax: (513) 983-4274

With a copy to:
Norman C. Hile, Esq.
Orrick, Herrington & Sutcliffe,
LLP
400 Capitol Mall, Suite 3000
Sacramento, CA 95814-4497
Phone: (916) 329-7900
Fax: (916) 329-4900
E-mail: nhile@orrick.com

1 **19. Motion for Approval of Amended Revised Consent Judgment.** Following the
2 execution of this Amended Revised Consent Judgment by the Parties, counsel for AESI shall
3 promptly prepare and submit to the Court a motion seeking the Court's approval of this Amended
4 Revised Consent Judgment.

5 **20. Entry of Stipulation For Entry of Amended Revised Consent Judgment Required.**

6 This Amended Revised Consent Judgment shall be null and void, and without any force or effect,
7 unless fully approved as required by law and entered by the Court. If the Court does not enter
8 this Amended Revised Consent Judgment, the execution thereof by Settling Defendants or AESI
9 shall not be construed as an admission by Settling Defendants or AESI of any fact, issue of law
10 or violation of law.

11 **21. Jurisdiction.** This Court shall retain jurisdiction of this matter to implement this
12 Amended Revised Consent Judgment.

13 **22. Compliance with Reporting Requirements.** AESI shall comply with the reporting form
14 requirements referred to in Health and Safety Code section 25249.7(f) and established in Title 11
15 of the California Code of Regulations sections 3000-3008. Copies of all such reports shall be
16 supplied to Settling Defendants as provided in Paragraph 18.2.

17 **23. Non-Interference in Settlement Approval Process.** The Parties will cooperate, as well
18 as use their respective best efforts, to secure the Attorney General's approval of this Amended
19 Revised Consent Judgment, and not to seek his disapproval of any portion of this Amended
20 Revised Consent Judgment.

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22 **IT IS SO STIPULATED:**

23 DATED: 11/19/07

24 AMERICAN ENVIRONMENTAL SAFETY
INSTITUTE, a non-profit California corporation

25 By: Dullin Sora

26 Title: President

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DATED: 11/15/07

THE GILLETTE COMPANY

By: Paul Fry

Title: Assoc. Gen Counsel

DATED: 11/16/07

ZOOOTH, INC.

By: Paul Fry

Title: Assoc. Gen Counsel

DATED: 11/16/07

PROCTER & GAMBLE MANUFACTURING COMPANY

By: Paul Fry

Title: Assoc. Gen Counsel

DATED: 11/16/07

PROCTER & GAMBLE DISTRIBUTING COMPANY

By: Paul Fry

Title: Assoc. Gen Counsel

1 **THE COURT HEREBY FINDS AND ORDERS:**

2 1. In light of the findings below, and based upon the Court's review of the proposed
3 Amended Revised Consent Judgment executed by the Plaintiff and The Procter & Gamble
4 Distributing Company, The Procter & Gamble Manufacturing Company, the Gillette Company,
5 and Zooth, Inc. (together and collectively "Settling Defendants"), and the papers filed in support
6 of this Motion to Enter the proposed Amended Revised Consent Judgment, and in a manner
7 consistent with Code of Civil Procedure § 664.6, the Court finds that this settlement agreement is
8 just, and serves and will serve the public interest, as follows:

9 2. Because no warnings are required by the foregoing stipulated Amended Revised
10 Consent Judgment, this Court does not have to make any finding regarding compliance with
11 warnings under the provisions of Health & Safety Code §§ 25249.5-25249.13.

12 3. The Parties' agreement that no civil penalties are warranted is in accord with the
13 criteria set forth in Health & Safety Code §§ 25249.7(b)(2) and 25249.7(f)(4)(C), in that
14 payments as set forth in section 5 of the Amended Revised Consent Judgment totaling
15 \$95,000.00, in lieu of such penalties, to Plaintiff (a) to pay its attorneys' fees of \$45,600.00, and
16 (b) to further the remedial purposes established under Proposition 65 by providing funds for
17 Plaintiff's ongoing costs of monitoring compliance with this Amended Revised Consent
18 Judgment, as well as for its future investigational and enforcement activities regarding toxic
19 chemicals and Proposition 65, are consistent with the private enforcement mechanism and funds
20 allocation scheme established by Health & Safety Code §§ 25249.7(d) and 25249.12(d) and
21 AESI's non-profit mission.

22 4. Pursuant to Health & Safety Code §25249.7(f)(4)(B) and Code of Civil Procedure
23 §1033.5, the Court finds that the Amended Revised Consent Judgment's contractual provision at
24 section 5 for the Plaintiff to pay, pursuant to its written contingent fee agreement, to Carrick Law
25 Group, P.C., attorneys' fees of \$45,600.00 from the financial relief set forth in section 4 of the
26 Amended Revised Consent Judgment, as well as the amount of these fees and costs, are
27 reasonable under California law.
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1 5. In light of the findings made above, and based upon the Court's review of the
2 proposed stipulated Amended Revised Consent Judgment executed among the Parties, the Court
3 finds that this Amended Revised Consent Judgment is just, and serves and will serve the public
4 interest.

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6 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

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8 DATED: _____

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11 _____
12 HON. MARY THORNTON HOUSE
13 JUDGE OF THE SUPERIOR COURT
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