

1 Daniel Bornstein, State Bar No. 181711
Stephen S. Sayad, State Bar No. 104866
2 Laralei S. Paras, State Bar No. 203319
PARAS LAW GROUP
655 Redwood Highway, Suite 216
3 Mill Valley, CA 94941
Tel: (415) 380-9222
4 Fax: (415) 380-9223

5 Clifford A. Chanler, State Bar No. 135534
CHANLER LAW GROUP
6 71 Elm Street, Suite 8
New Canaan, CT 06840
7 Tel: (203) 966-9911
8 Fax: (203) 801-5222

9 Attorneys for Plaintiff
RUSSELL BRIMER

10 Gary F. Wang, Esq., State Bar No. 195656
LAW OFFICES OF ROGER C. HSU
11 201 S. Lake Avenue, Suite 302
12 Pasadena, CA 91101-3004

13 Attorney for Defendants
14 CABLES TO GO,
LASTAR, INC.,
15 TIGERDIRECT, INC.,
and SYSTEMAX INC.

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

18 UNLIMITED CIVIL JURISDICTION

19
20
21 RUSSELL BRIMER,) Case No. CGC-05-438250
22)
23 Plaintiff,)
24)
25 v.)
26)
27 CABLES TO GO; LASTAR INC.;)
TIGERDIRECT, INC.; SYSTEMAX, INC.;)
and DOES 1 through 150,)
28 Defendants.)
_____)

1 **1. INTRODUCTION**

2 **1.1 Plaintiff and Settling Defendants.** This Stipulation and [Proposed] Order re:
3 Consent Judgment (“Consent Judgment”) is entered into by and between plaintiff Russell Brimer
4 (hereafter “Brimer” or “Plaintiff”) and Cables To Go, Lastar, Inc., TigerDirect, Inc., and Systemax
5 Inc. (hereafter “Defendants”), with Brimer and the Defendants collectively referred to as the
6 “Parties” and Brimer and each individual Defendant individually referred to as a “Party”.

7 **1.2 Plaintiff.** Brimer is an individual residing in Alameda County, California who seeks
8 to promote awareness of exposures to toxic chemicals and improve human health by reducing or
9 eliminating hazardous substances contained in consumer and industrial products

10 **1.3 General Allegations.** Brimer alleges that the Defendants have manufactured,
11 distributed and/or sold in the State of California certain solder (containing lead) including that sold
12 in computer tool kits. Lead (and/or lead compounds) is listed pursuant to the Safe Drinking Water
13 and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 et seq.
14 (“Proposition 65”), to cause cancer, birth defects and other reproductive harm. Lead shall be
15 referred to herein as the “Listed Chemical.”

16 **1.4 Product Description.** The product that is covered by this Consent Judgment is
17 defined as follows: CTG Top’s Kit (Computer Repair Tool Kit HT2021; CTG #27371; #7 67120
18 27371 4), manufactured, sold and/or distributed by Defendants. Such product is referred to herein
19 as the “Product.”

20 **1.5 Notices of Violation.** On or about October 18, 2004, Brimer served the Defendants
21 and various public enforcement agencies with a document entitled “60-Day Notice of Violation”
22 (the “Notice”) that provided the Defendants and such public enforcers with notice that the
23 Defendants were in violation of California Health & Safety Code §25249.6 by distributing or
24 otherwise offering for sale products containing lead and for failing to warn purchasers that such
25 products expose users in California to the Listed Chemical.

26 **1.6 Complaint.** On January 31, 2005, Brimer, in the interest of the general public in
27 California, filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in the

1 Superior Court in and for the City and County of San Francisco against Cables To Go, Lastar, Inc.,
2 TigerDirect, Inc., and Systemax Inc., and Does 1 through 150, alleging violations of Health &
3 Safety Code § 25249.6 based on the alleged exposures to the Listed Chemical contained in certain
4 products distributed and/or sold by Defendants.

5 **1.7 No Admission.** The Defendants deny the material factual and legal allegations
6 contained in Brimer's Notice and Complaint and maintain that the Product that they have sold and
7 distributed in California has been and is in compliance with all laws. Nothing in this Agreement
8 shall be construed as an admission by the Defendants of any fact, finding, issue of law, or violation
9 of law, nor shall compliance with this Agreement constitute or be construed as an admission by the
10 Defendants of any fact, finding, conclusion, issue of law or violation of law, such being specifically
11 denied by the Defendants. Nothing in this Consent Judgment shall apply to, or be used as evidence
12 regarding compliance with Proposition 65 or any other statute or regulation for any other product
13 sold or offered for sale by the Defendants. However, this Section shall not diminish or otherwise
14 affect the obligations, responsibilities and duties of the Defendants under this Agreement.

15 **1.8 Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
16 stipulate that the Superior Court of the State of California for the City and County of San Francisco
17 has jurisdiction to enforce the provisions of this Consent Judgment.

18 **1.9 Effective Date.** For purposes of this Agreement, the term "Effective Date" shall
19 mean September 30, 2005.

20 **2. INJUNCTIVE RELIEF**

21 **2.1 Required Warnings.**

22 For all Products manufactured after the Effective Date, Defendants shall not sell or offer for
23 sale in California the Product containing the Listed Chemical unless such Product complies with
24 Sections 2.2 or 2.3 below. Any Product still in the care, custody or control of the Defendants, as of
25 the Effective Date of this Agreement, shall not be sold in California, directly or indirectly, unless
26 such Product complies with Sections 2.2, or 2.3 below.

1 **2.2 Product Warnings.**

2 Subject to Section 2.3, for Products manufactured after September 30, 2005, the Defendants
3 shall not ship or otherwise cause to be distributed, sold or offered for sale any Product in California,
4 unless warnings are provided as set forth below in Section 2.2(a), 2.2(b) or 2.2(c).

5 **2.2(a) Warning on the Product or Product Packaging.**

6 A warning is affixed to the packaging, labeling or directly to or on the Product by the
7 Defendants, the manufacturer, distributor or any retailer of the Product that states:
8

9 **WARNING: The solder in this product contains lead, a chemical**
10 **known to the State of California to cause birth**
11 **defects or other reproductive harm. *Wash hands***
 after use.

12 Warnings issued for the Product pursuant to this subsection shall be prominently placed with
13 such conspicuousness as compared with other words, statements, designs, or devices as to render it
14 likely to be read and understood by an ordinary individual under customary conditions of use or
15 purchase. Any changes to the language or format of the warning required by this subsection shall
16 only be made following: (1) written approval from the California Attorney General's Office,
17 provided that written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to
18 comment; or (2) Court approval..

19 **2.2(b) Point-of-Sale Warnings.** Defendants may satisfy their warning obligations
20 by arranging for signs to be posted at the retail outlets or other locations in the State of California at
21 which the Product is sold directly to individuals, in accordance with the terms specified in
22 subsections 2.2(b)(i) through 2.2(b)(v).

23 (i) Point-of-sale warnings may be provided through a sign posted
24 at each point of sale or product display for the Product that states:

25 **WARNING: The solder in this product contains lead, a chemical**
26 **known to the State of California to cause birth**
27 **defects or other reproductive harm. *Wash hands***
 after use.

1 (ii) A point-of-sale warning provided pursuant to
2 subsection 2.2(b) shall be prominently placed with such conspicuousness as compared with other
3 words, statements, designs or devices as to render it likely to be read and understood by an ordinary
4 individual under customary conditions of purchase and shall be placed among other products
5 (especially when near any Reformulated Product as defined in section 2.3 below) in a manner such
6 that the consumer understands to which *specific* Product the warnings apply so as to minimize if
7 not eliminate the chances that an overwarning situation will arise.

8 (iii) If the Defendants intend to utilize warnings described in
9 section 2.2(b) to comply with this Consent Judgment, it must provide notice as required by this
10 Consent Judgment to each entity to whom Defendants ship the Product for distribution or sale in
11 California and obtain the written consent of such entity that it will transmit the warning to its
12 customers as required in section 2.2(b) herein before shipping the Product. Such notice shall
13 include any required warning materials (including, as appropriate, camera-ready signs and posting
14 instructions).

15 (iv) Defendants shall provide notice to each entity to whom the
16 Defendants ship the Product for distribution or sale in California at least once in each calendar year
17 in which the Defendants transact business with that entity unless such transactions do not concern
18 the Product or exclusively concern Reformulated Products as defined in section 2.3 below. If the
19 Defendants have obtained the written consent of the entity to whom they ship the Product that such
20 entity will provide warnings in the manner required by section 2.2(b) herein, Defendants shall not
21 be found to have violated this Consent Judgment if they have complied with the terms of this
22 Consent Judgment and have proof that they transmitted the requisite warnings in the manner
23 provided herein.

24 (v) Any changes to the language or format of the warning required for
25 the Product by this subsection shall only be made following: (1) written approval from the
26 California Attorney General's Office, provided that written notice of at least fifteen (15) days is
27 given to Plaintiff for the opportunity to comment; or (2) Court approval.

1 **2.2(c) Mail Order and Internet Sales.** Defendants shall satisfy their warning
2 obligations for any Product that is sold by mail order catalog or from the internet to California
3 residents, by arranging for the provision of a warning containing the language in subsection 2.2(a) to
4 be included: (a) in the mail order catalog (if any) and on the website (if any). Any warnings given
5 in the mail order catalog or on the website shall identify the *specific* Product to which the warning
6 applies as well as comply with subsections (i), and/or (ii):

7 **(i) Mail Order Catalog.** The warning shall be provided within the
8 catalog, either (a) on the inside front cover of any catalog, provided that it is also referenced on the
9 page on which the Product is displayed; (b) on the same page as any order form, provided that the
10 Product to which the warning applies is also specifically referenced on that page; or (c) on the same
11 page and in the same location as the price for the Product, in the same type size as the product
12 description text, with the same language and specificity requirements found in subsection 2.2(a). If
13 the seller elects to provide warnings in the mail order catalog, then the warnings must be included in
14 all catalogs sent to the printer after September 30, 2005 for all first, subsequent or additional
15 printings;

16 **(ii) Internet Web Sites and Pages.** The warning shall be provided either
17 (a) on the same web page on which the Product is displayed; (b) on the same web page as the order
18 form for the Product; (c) on the same page as the price for the Product; or (d) on one or more web
19 pages displayed to a purchaser during the checkout and order confirmation process for sale of the
20 Product. The warning shall be displayed in one or more of these locations in a manner such that is
21 calculated to ensure that it will be read and understood by an ordinary individual under customary
22 conditions of purchase of the Product prior to purchase, including through the use of the same
23 language and adherence to the specificity requirements that appear in subsection 2.2(a)

24 **2.3 Reformulated Product.**

25 The Product shall be deemed to comply with Proposition 65 and be exempt from any
26 Proposition 65 warning requirements under Sections 2.2, if the Product contains less than 0.1% lead
27 by weight in the solder, such Product is a Reformulated Product.

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2 **3. MONETARY PAYMENTS**

3 **3.1 Penalties Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to Health &
4 Safety Code Section 25249.7(b), Defendants shall pay \$2,000 in civil penalties. The penalty
5 payment shall be made payable to the "Chanler Law Group in Trust For Russell Brimer," and shall
6 be delivered to Plaintiff's counsel on or before October 14, 2005, at the following address:

7
8 CHANLER LAW GROUP
9 Attn: Clifford A. Chanler
10 71 Elm Street, Suite 8
11 New Canaan, CT 06840

12 (a) In the event that Defendants pay any penalty and the Consent Judgment is not
13 thereafter approved and entered by the Court, Brimer shall return any penalty funds paid under this
14 agreement within fifteen (15) days of receipt of a written request from Defendants following notice
15 of the issuance of the Court's decision.

16 (b) The Parties agree that Defendants' potential interest in and ability to acquire
17 and market Reformulated Products is to be accounted for in this section and, since it is not a remedy
18 provided for by law, the absence of Defendants previously acquiring, manufacturing, marketing or
19 selling Reformulated Products is not relevant to the establishment of a penalty amount pursuant to
20 section 3.1 above.

21 (c) **Apportionment of Penalties Received.** After Court approval of this
22 Consent Judgment pursuant to section 6, all penalty monies received shall be apportioned by
23 Plaintiff in accordance with Health & Safety Code § 25192, with 75% of these funds remitted to the
24 State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of
25 these penalty monies retained by Plaintiff as provided by Health & Safety Code § 25249.12(d).
26 Plaintiff shall bear all responsibility for apportioning and paying to the State of California the
27 appropriate civil penalties paid in accordance with this section.

28 **4. REIMBURSEMENT OF FEES AND COSTS**

1 (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature
2 whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against the
3 Defendants and each of its wholesalers, licensors, licensees, auctioneers, retailers, franchisees,
4 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries,
5 and their respective officers, directors, attorneys, representatives, shareholders, agents, and
6 employees (collectively, "Releasees") arising under Proposition 65, related to the Defendants'
7 alleged failures to warn about exposures to or identification of the Listed Chemical contained in the
8 Product subject to this Agreement.

9 In addition, Brimer, on behalf of himself, his attorneys, and his agents, waives all rights to
10 institute or participate in, directly or indirectly, any form of legal action and releases all Claims
11 against any Releasee arising under Proposition 65. This waiver and release is null and void if the
12 Defendants do not comply with any of the terms of this Agreement, and Brimer shall remain free to
13 institute any form of legal action to enforce the provisions of this Agreement and to seek damages
14 for the breach of this Agreement by the Defendants.

15 The Parties further agree and acknowledge that this Agreement is a full, final, and binding
16 resolution of any violation of Proposition 65 that have been or could have been asserted against the
17 Defendants for their alleged failure to provide clear and reasonable warnings of exposure to the
18 Listed Chemical in the Product which is the subject of this Agreement. Provided however, Brimer
19 shall remain free to institute any form of legal action to enforce the provisions of this Agreement.

20 It is specifically understood and agreed that the Parties intend that the Defendants'
21 compliance with the terms of this Agreement resolves all issues and liability, now and in the future
22 (so long as Defendant comply with the terms of the Agreement) concerning the Defendants'
23 compliance with the requirements of Proposition 65, as to the Listed Chemical in the Product which
24 is the subject of this Agreement.

25 **5.2 The Defendants' Release of Brimer.**

26 The Defendants waive all rights to institute any form of legal action against Brimer, his
27 attorneys or representatives, for all actions taken or statements made by Brimer and his attorneys or
28

1 representatives, in the course of seeking enforcement of Proposition 65.

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3 **6. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and
5 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
6 after it has been fully executed by all Parties, in which event any monies that have been provided to
7 Plaintiff or his counsel pursuant to section 3 and/or section 4 above, shall be refunded within fifteen
8 (15) days.

9 **7. SEVERABILITY**

10 If any of the provisions of this Agreement are held by a court to be unenforceable, the
11 validity of the enforceable provisions remaining shall not be adversely affected.

12 **8. ATTORNEYS' FEES**

13 In the event that a dispute arises with respect to any provision(s) of this Agreement, the
14 prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable and
15 necessary costs and reasonable attorneys' fees incurred from the resolution of such dispute.

16 **9. GOVERNING LAW**

17 The terms of this Agreement shall be governed by the laws of the State of California and
18 apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
19 rendered inapplicable by reason of law generally, or as to the Product subject to this Agreement,
20 then Brimer and the Defendants shall have no further obligations pursuant to this Agreement with
21 respect to, and to the extent that, the Product is so affected.

22 **10. NOTICES**

23 Unless specified herein, all correspondence and notices required to be provided pursuant to
24 this Agreement shall be in writing and personally delivered or sent by: (1) first-class, registered,
25 certified mail, return receipt requested or (ii) overnight courier on any Party by the others at the
26 following addresses:

27 To Cables To Go, Lastar, Inc., TigerDirect, Inc. or Systemax Inc.:

1 Gary F. Wang, Esq.
2 LAW OFFICES OF ROGER C. HSU
3 201 S. Lake Avenue, Suite 302
4 Pasadena, CA 91101-3004

To Russell Brimer:

5 Clifford A. Chanler, Esq.
6 CHANLER LAW GROUP
7 71 Elm Street, Suite 8
8 New Canaan, CT 06840

9 Laralei S. Paras
10 PARAS LAW GROUP
11 655 Redwood Highway, Suite 216
12 Mill Valley, CA 94941

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

15 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

16 This Agreement may be executed in counterparts and by facsimile, each of which shall be
17 deemed an original, and all of which, when taken together, shall constitute one and the same
18 document.

19 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

20 Plaintiff agrees to comply with the reporting form requirements referenced in Health &
21 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall
22 present this Consent Judgment to the California Attorney General's Office within five (5) days after
23 receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment will then
24 be served on the Attorney General's Office at least forty-five (45) days prior to the date a hearing is
25 scheduled on such motion in the Superior Court in and for the City and County of San Francisco
26 unless the Court allows a shorter period of time.

27 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

28 The Parties shall mutually employ their best efforts to support the entry of this Agreement as
a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.

1 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion is
2 required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties agree to file
3 a Joint Motion to Approve the Agreement (“Joint Motion”), the first draft of which Defendants’
4 counsel shall prepare, within a reasonable period of time after the Execution Date (*i.e.*, not to exceed
5 thirty (30) days unless otherwise agreed to by the Parties’ counsel based on unanticipated
6 circumstances). Plaintiff’s counsel shall prepare a declaration in support of the Joint Motion which
7 shall, *inter alia*, set forth support for the fees and costs to be reimbursed pursuant to Section 4.
8 Defendants shall have no additional responsibility to Plaintiff’s counsel pursuant to C.C.P. § 1021.5
9 or otherwise with regard to reimbursement of any fees and costs incurred with respect to the
10 preparation and filing of the Joint Motion and its supporting declaration or with regard to Plaintiff’s
11 counsel appearing for a hearing or related proceedings thereon.

12 **14. MODIFICATION**

13 This Consent Judgment may be modified only by: (1) written agreement of the Parties and
14 upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party as
15 provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney
16 General shall be served with notice of any proposed modification to this Consent Judgment at least
17 fifteen (15) days in advance of its consideration by the Court.
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4 **15. AUTHORIZATION**

5 The undersigned are authorized to execute this Agreement on behalf of their respective
6 Parties and have read, understood and agree to all of the terms and conditions of this Agreement.

7 **AGREED TO:**

8 DATE: 12-7-05

9 

10 Russell Brimer

AGREED TO:

DATE: _____

Cables To Go

11 **AGREED TO:**

12 DATE: _____

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15 Lastar, Inc.

16 **AGREED TO:**

17 DATE: _____

18
19 Systemax Inc.

AGREED TO:

DATE: _____

TigerDirect, Inc.

20 **APPROVED AS TO FORM:**

21 DATE: 10/12/05

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23 

24 Daniel Bornstein, Esq.
25 PARAS LAW GROUP
26 Attorneys for Russell Brimer

APPROVED AS TO FORM:

DATE: _____

27 Gary F. Wang, Esq.
28 LAW OFFICES OF ROGER C. HSU
Attorneys for Cables To Go, Lastar, Inc.,
TigerDirect, Inc. and Systemax Inc.

1 **15. AUTHORIZATION**

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3 Parties and have read, understood and agree to all of the terms and conditions of this Agreement.

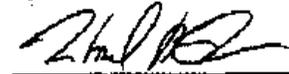
4 **AGREED TO:**

5 **DATE:** _____

6 _____
7 Russell Brimer

AGREED TO:

8 **DATE:** 10/3/2005

9 , *Chairman*

10 Cables To Go

11 **AGREED TO:**

12 **DATE:** 10/3/2005

13 , *Chairman*

14 Lastar, Inc.

AGREED TO:

DATE: _____

TigerDirect, Inc.

15 **AGREED TO:**

16 **DATE:** _____

17 _____
18 Systemax Inc.

19 **APPROVED AS TO FORM:**

20 **DATE:** _____

21 _____
22 Daniel Bornstein, Esq.
23 PARAS LAW GROUP
24 Attorneys for Russell Brimer

APPROVED AS TO FORM:

DATE: _____

25 _____
26 Gary F. Wang, Esq.
27 LAW OFFICES OF ROGER C. HSU
28 Attorneys for Cables To Go, Lastar, Inc.,
TigerDirect, Inc. and Systemax Inc.

29 **IT IS SO ORDERED.**

30 **Date:** _____

JUDGE OF THE SUPERIOR COURT

15. **AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:

AGREED TO:

DATE: _____

DATE: _____

Russell Brimer

Cables To Go

AGREED TO:

AGREED TO:

DATE: _____

DATE: 10/3/05

Lastar, Inc.

TigerDirect, Inc.

AGREED TO:

DATE: 10/3/05

Systemax Inc.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: _____

DATE: _____

Daniel Bornstein, Esq.
PARAS LAW GROUP
Attorneys for Russell Brimer

Gary F. Wang, Esq.
LAW OFFICES OF ROGER C. HSU
Attorneys for Cables To Go, Lastar, Inc.,
TigerDirect, Inc. and Systemax Inc.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

15. **AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:

AGREED TO:

DATE: _____

DATE: _____

Russell Brimer

Cables To Go

AGREED TO:

AGREED TO:

DATE: _____

DATE: _____

Lastar, Inc.

TigerDirect, Inc.

AGREED TO:

DATE: _____

Systemax Inc.

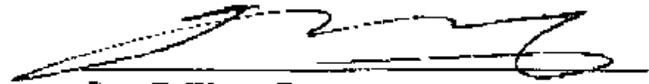
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APPROVED AS TO FORM:

DATE: _____

DATE: 10/4/05

Daniel Bornstein, Esq.
PARAS LAW GROUP
Attorneys for Russell Brimer


Gary F. Wang, Esq.
LAW OFFICES OF ROGER C. HSU
Attorneys for Cables To Go, Lastar, Inc.,
TigerDirect, Inc. and Systemax Inc.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

1 **IT IS SO ORDERED.**

2
3 Date: _____

4 JUDGE OF THE SUPERIOR COURT

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