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

13 MATEEL ENVIRONMENTAL JUSTICE
14 FOUNDATION,

15 Plaintiff,

16 v.

17 AMSCAN, INC., et al.

18 Defendants.

Case No. 449268

~~PROPOSED~~ (JCR)

CONSENT JUDGMENT AS TO
INNOVAGE, INC.

ENDORSED
FILED
San Francisco County Superior Court

JUN 28 2006

GORDON PARK-LI, Clerk
BY: JOCELYN C. ROQUE
Deputy Clerk

1

2 1. INTRODUCTION

3 1.1 On or about October 17, 2005, Plaintiff Mateel Environmental Justice Foundation
4 ("Mateel") and its attorneys, Klamath Environmental Law Center ("KELC") sent a 60 Day Notice
5 Letter ("Notice") to the Office of the California Attorney General of the State of California
6 ("California Attorney General"), all California counties' District Attorneys and all City Attorneys of
7 California cities with populations exceeding 750,000, (collectively, "Public Enforcers"), charging
8 Defendant Innovage, Inc. ("Defendant") with violating the Safe Drinking Water and Toxic
9 Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq.
10 ("Proposition 65"), in its sale of thermoset/thermoplastic coated wires, cables and/or cords/cord sets,
11 including polyvinyl chloride ("PVC") coated wires, cords/cord sets, plugs and connectors, and both
12 SPT and HPN cords/cord sets ("Cords") or products with Cords, with such products and Cords
13 collectively referred to as "Wire Covered Products." Specifically, Mateel has charged that persons
14 handling the Cords were exposed to certain chemicals listed under Proposition 65, including
15 acrylonitrile, antimony trioxide, arsenic, 1,3 butadiene, carbon tetrachloride, carbon black extracts,
16 chlorinated paraffins, chloroform, ethyl acrylate, ethylene thiourea, nickel, toluene, cadmium,
17 hexavalent chromium, vinyl chloride, lead and lead compounds, lead acetate, lead phosphate, lead
18 subacetate and di(2ethylhexyl) phthalate (collectively referred to as "the Proposition 65 Chemicals").

19 1.2 On or about October 17, 2005, Mateel also sent another Notice to the Public Enforcers
20 identified in Section 1.1 and Defendant, alleging that Defendant, through sales in California of hand
21 tools, the handles of which were coated with thermoplastic ("Tool Covered Products"), was in
22 violation of Proposition 65, by knowingly and intentionally exposing persons to lead and lead
23 compounds ("lead"), known to the State of California to cause cancer and/or birth defects or other
24 reproductive harm, without first providing a clear and reasonable warning. .

25 1.3 On or about February 7, 2006, Mateel, acting in the public interest pursuant to Health
26 and Safety Code section 25249.7(d), filed a Complaint for Civil Penalties and Injunctive Relief in
27 San Francisco County Superior Court, *Mateel Environmental Justice Foundation v. Amscan, Inc., et*
28 *al.*, Case No. 449263 ("Complaint") against Defendant based on the allegations contained in the

1 Notice regarding the Wire Covered Products. By this settlement and Consent Judgment, Mateel and
2 Defendant intend to settle all claims and potential claims arising out of the Wire Covered Products
3 and Tool Covered Products referenced in the Complaint and the Notices identified in Sections 1.1
4 and 1.2 of this Consent Judgment (the "Notices"), although a separate complaint alleging claims
5 involving Tool Covered Products has not been filed.

6 1.4 For purposes of this Consent Judgment, Mateel and Defendant stipulate that this
7 Court has jurisdiction over the allegations of violations contained in the Notices and Complaint and
8 personal jurisdiction over Defendant as to the acts alleged in the Notices and Complaint, that venue is
9 proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent
10 Judgment as a full and final settlement and resolution of the allegations contained in the Notices and
11 Complaint and of all claims which were or could have been raised based on the facts alleged therein
12 or arising therefrom.

13 1.5 Mateel and Defendant (the "Parties") enter into this Consent Judgment pursuant to a
14 full and final settlement of disputed claims between them for the purpose of avoiding prolonged
15 litigation. This Consent Judgment shall not constitute an admission with respect to any allegation
16 made in the Notices or the Complaint, each and every allegation of which Defendant denies, nor may
17 this Consent Judgment or compliance with it be used as evidence of any wrongdoing, misconduct,
18 culpability or liability on the part of Defendant.

19 2. INJUNCTIVE RELIEF-REFORMULATION FOR TOOLS COVERED PRODUCTS

20 2.1 After the Effective Date, Defendant shall cease the shipment or distribution of Tool
21 Covered Products for retail sale in California unless such Tool Covered Products meet the following
22 criteria:

- 23 (a) The formulation of PVC used shall have no intentionally added lead.
- 24 (b) A random sample of the bulk PVC used to manufacture the Tool Covered
25 Products has been tested for lead content and shown lead content by weight of
26 less than 0.02%, or 200 parts per million ("ppm"), using a test method of
27 sufficient sensitivity to establish a limit of quantification (as distinguished
28 from detection) of less than 200 ppm.

1 For purposes of this Section, one hundred eighty days (180) after the entry of this Consent Judgment
2 shall be considered the "Effective Date".

3 2.2 Defendant may comply with the above requirements by relying on information
4 obtained from its suppliers of the tools and/or PVC utilized on the handles thereof, provided such
5 reliance is in good faith.

6 3. INJUNCTIVE RELIEF-REFORMULATION FOR WIRES COVERED PRODUCTS

7 3.1 Wire Covered Products shall be deemed to comply with Proposition 65 and be exempt
8 from any Proposition 65 warning requirements if the Cords that are sold as a part of or in association
9 with those Wire Covered Products meet the following criteria: (a) the surface contact layer of the
10 Cords shall have no lead as an intentionally added constituent; and (b) the surface contact layer of the
11 Cords shall have lead content by weight of no more than 0.03% (300 parts per million, or [300
12 ppm]). Defendant may comply with the above requirements by relying on information obtained from
13 its suppliers regarding the content of the surface contact layer of the Cords, provided such reliance is
14 in good faith. Obtaining test results showing that the lead content is no more than 0.03%, using a
15 method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection)
16 of less than 300 ppm shall be deemed to establish good faith reliance. Provided that the level of
17 quantitation requirement set forth in the preceding sentence is met, the test protocol and methods
18 described on Exhibit A hereto may be relied on. Nothing in the preceding two sentences shall
19 preclude Defendant from establishing good faith reliance by an alternative means.

20 3.2 Wire Covered Products that are shipped by Defendant after the Effective Date for
21 distribution to or sale in California that do not meet the warning exemption standard set forth in
22 Section 3.1 of this Consent Judgment and are not exempt pursuant to Section 3.3 shall be
23 accompanied by a warning as described in Section 3.4 below. For purposes of this Section, one
24 hundred eighty (180) days after the entry of this Consent Judgment shall be considered the "Effective
25 Date."

26 3.3 The following Wire Covered Products are deemed to be exempt from any
27 Proposition 65 warning requirements with respect to Cords: (a) Wire Covered Products which
28 because of their size, weight or function have Cords that are handled only infrequently (such as upon

1 their installation in a setting where they are not typically plugged and unplugged) (“Infrequently
2 Handled Products”); (b) those Wire Covered Products that: (i) are sold at retail before the Effective
3 Date; or (ii) are distributed or shipped for sale outside the State of California; (c) Wire Covered
4 Products that use Cords only as internal components not normally accessible to the consumer during
5 ordinary use; and/or (d) Wire Covered Products which contain Proposition 65 Chemicals only as part
6 of the inner conductor or other component not normally accessible to the consumer during ordinary
7 use. Exhibit B contains a list of Wire Covered Products/Product types that are deemed to meet the
8 criteria for Infrequently Handled Products set forth in this Section 3.3 and are therefore exempt.
9 Mateel has previously provided the California Attorney General’s Office and Defendant with a list of
10 Wire Covered Products/Product types that are deemed not to meet the criteria for Infrequently
11 Handled Products set forth in this Section 3.3 and therefore are not exempt (“Non-Exempt Products
12 List”). Exhibit B and the Non-Exempt Products List may be used as guidance in determining
13 whether other Wire Covered Products meet these criteria. The Parties acknowledge that common
14 usage of the terms “portable” and “non-portable” do not affect the classification of any Wire Covered
15 Products under this Consent Judgment. Wire Covered Products may be considered Infrequently
16 Handled Products regardless of their weight or the likelihood that they may be used while moving,
17 whether that be on a person, in a car, on an airplane or otherwise.

18 3.4 Should Defendant’s Wire Covered Products require Proposition 65 warnings
19 under Section 3.2, Defendant shall, except as otherwise provided in Section 3.5 below, either provide
20 one of the warnings described below or any other Proposition 65 warning that has been reviewed and
21 approved in writing by the California Attorney General for use with Wire Covered Products
22 regarding their thermoset/thermoplastic-coated wires and/or cables:

23 “**WARNING:** This product contains chemicals, including lead, known to the State of
24 California to cause [cancer, and] birth defects or other reproductive harm. *Wash hands after*
25 *handling.*”

26 or

1 “WARNING: Handling the cord on this product will expose you to lead, a chemical known
2 to the State of California to cause [cancer, and] birth defects or other reproductive harm.

3 *Wash hands after handling.*”

4 or

5 “WARNING: The power cord on this product contains lead, a chemical known to the State of
6 California to cause [cancer, and] birth defects or other reproductive harm. *Wash hands after*
7 *handling.*”

8 The word “WARNING” shall be in all capital letters and in bold typeface. The hand-washing
9 admonition shall be in bold typeface and italicized. Inclusion of the bracketed words “cancer, and” in
10 the above warning shall be at Defendant’s option.

11 3.5 Unless otherwise indicated herein, the warning required or authorized in
12 Section 3.4 shall be given by having it: (a) affixed to the Wire Covered Product itself or to the unit
13 package of such Wire Covered Product; (b) printed on the Wire Covered Product itself or on the unit
14 package of such Wire Covered Product; (c) displayed on an internet site for those units of Wire
15 Covered Products sold on the internet; (d) included in the owner’s manual if the conditions set forth
16 in Section 3.7 below are satisfied (“Owner’s Manual Warning”); or, (e) printed on the invoice issued
17 directly to the consumer by Defendant to confirm the sale, where the Defendant sells Wire Covered
18 Products directly to consumers by telephone, mail order, or internet sale, but never has physical
19 possession of the Wire Covered Product or its packaging.

20 3.6 If the warning is printed on the product, package label, or invoice, then the
21 warning shall be contained in the same section of the label that contains other safety warnings, if any,
22 concerning the use of the Wire Covered Product or near its displayed price and/or UPC code. Such
23 warning shall be prominently affixed to or printed on each such Wire Covered Product, its label or
24 package or invoice, and displayed with such conspicuousness, as compared with other words,
25 statements, designs, or devices on such Wire Covered Product, its label, package or display or invoice
26 as to render it likely to be read and understood by an ordinary individual under customary conditions
27 of purchase or use. With respect to the preceding sentence, the type size of any warning required by
28 paragraph 3.4 must be legible, but otherwise need not be larger than any other warning language used

1 in conjunction with the Wire Covered Product in question and its relative size may take into account
2 the nature, immediacy, and acuteness of the risks for which other warnings are given. If the size of a
3 Wire Covered Product and its packaging is such that a warning required by this Consent Judgment
4 cannot physically be printed on its non-transparent portion in a legible size, the warning may be
5 printed on a separate piece of paper or cardstock and inserted into the Wire Covered Product's
6 packaging, provided that i) the cardstock or paper containing the warning is not white or uncolored
7 and contains only the warning language, and ii) a substantial portion of the exterior of the packaging
8 material is transparent. If a warning is provided on the internet pursuant to (c) above, the warning
9 message shall be displayed (or, upon the internet site user's identification as a California resident,
10 such as when the user types in a zip code, automatically appear) either: (a) on the same page on
11 which the Wire Covered Product is displayed, (b) on the same page as the order form for the Wire
12 Covered Product, or (c) on the same page as the price for the Wire Covered Product.

13 3.7 If the warning is given in the owners manual pursuant to Section 3.8 below, it
14 shall be located in one of the following places in the manual: the outside of the front cover; the
15 inside of the front cover; the first page other than the cover; or the outside of the back cover. The
16 warning shall be printed or stamped in the manual or contained in a durable label or sticker affixed to
17 the manual in a font no smaller than the font used for other safety warnings in the manual.
18 Alternatively, the warning may be included in a safety warning section of the owner's manual
19 consistent with specifications issued by Underwriters Laboratories.

20 3.8 A warning in the owner's manual of a Wire Covered Product may be used to
21 satisfy the warning requirements of this Section 3 only under the following circumstances: the Wire
22 Covered Product (i) may cause serious injury or bodily harm (other than by means of fire or
23 electrocution) unless used as directed; or (ii) is sophisticated, difficult to understand or install, set-up,
24 or assemble; or (iii) has one or more features a consumer must read about in order to know how to
25 program or use the Wire Covered Product. However, a Wire Covered Product may not utilize an
26 owner's manual warning if it meets the following criteria: (a) the Wire Covered Product is unlikely
27 to cause serious injury or bodily harm other than by means of fire or electrocution; (b) the Wire
28 Covered Product is easily assembled or programmed by an ordinary consumer without need to

1 reference instructions; and (c) fundamental operation of the Wire Covered Product is easily
2 understood and commonly performed by an ordinary consumer without training or need to reference
3 operating instructions. Exhibit C contains a list of Wire Covered Products/product types for which
4 Owner's Manual Warnings are deemed to be an allowable method of communicating the warnings
5 required by this Section 2. Mateel has previously provided the California Attorney General's Office
6 and Defendant with a list of Wire Covered Products/product types for which Owner's Manual
7 Warnings are deemed not to be an allowable method of communicating the warnings required by this
8 Section 2 (the "Non-Owner's Manual Product List"). Exhibit C and the Non-Owner's Manual
9 Product List may be used as guidance in determining whether the criteria for use of owner's manual
10 warnings set forth in this Section are satisfied

11 3.9 Defendant may provide an Owner's Manual Warning on any Wire Covered
12 Products/product types that satisfy the criteria in Section 3.8, except for those listed on the Non-
13 Owner's Manual Product List, whether or not that Wire Covered Product or product type is listed on
14 Exhibit C. Products not existing as of the Effective Date that are introduced for sale after July 1,
15 2006 may use a owner's manual warning if use of the owner's manual warning has been approved in
16 writing by the California Attorney General's office, following 60 days prior notice to Mateel.

17 3.10 The requirement for product labeling, set forth herein, is imposed pursuant to
18 the terms of this Consent Judgment. The Parties recognize that product labeling is not the exclusive
19 method of providing a warning under Proposition 65 and its implementing regulations.

20
21 4. MONETARY RELIEF

22 4.1 Within fifteen (15) days after entry of this Consent Judgment by the Court, Defendant
23 shall pay ten thousand dollars (\$10,000) to the Ecological Rights Foundation and seven thousand five
24 hundred dollars (\$7,500) to Californians for Alternatives to Toxics. Both groups are California
25 non-profit organizations that advocate for workers' and consumers' safety and for awareness and
26 reduction of toxic exposures. The foregoing settlement payments shall be mailed to the attention of
27 William Verick, Klamath Environmental Law Center, 424 First Street, Eureka, California 95501,
28 who shall provide them to the respective organizations within fifteen (15) days of receipt.

1 5. ATTORNEYS' FEES

2 5.1 Within fifteen (15) days after entry of this Consent Judgment, Defendant shall pay
3 seventeen thousand five hundred dollars (\$17,500) to the Klamath Environmental Law Center to
4 cover Mateel's attorneys' fees and costs. The above payment shall be mailed to the attention of
5 William Verick, Klamath Environmental Law Center, 424 First Street, Eureka, California 95501.

6 5.2 Except as specifically provided in this Consent Judgment, Mateel and Defendant shall
7 bear their own costs and attorneys' fees.

8 6. ENFORCEMENT OF JUDGMENT/STIPULATED REMEDIES

9 6.1 The terms of this Consent Judgment are enforceable by and among the Parties hereto
10 or, with respect to the injunctive relief provided for herein, by the California Attorney General.

11 7. MATTERS COVERED BY THIS CONSENT JUDGMENT

12 7.1 This Consent Judgment is a full, final and binding resolution between Mateel, acting
13 on behalf of itself and, (as to those matters referenced in the Notices) in the public interest pursuant to
14 Health and Safety Code section 25249.7(d), and Defendant concerning any alleged violation of
15 Proposition 65 and/or the Unfair Competition Act regarding any claims (statutory, common law or
16 other) that were made or that could have been made against Defendant and/or its affiliates, parent or
17 subsidiary corporations, divisions, successors, officers, directors, assigns, distributors, wholesalers,
18 retailers, customers or any other person in the course of doing business who may use, maintain,
19 distribute, market or sell the Tool Covered Products or Wire Covered Products (hereafter referred to
20 as the "Defendant Releasees") for failure to provide clear, reasonable, and lawful warnings of
21 exposure to: (1) lead contained in or otherwise associated with the Tool Covered Products or (2) the
22 Proposition 65 Chemicals contained in or otherwise associated with the Wire Covered Products, that
23 were sold by Defendant. This Consent Judgment shall serve to release and protect from any potential
24 Proposition 65 liability, wholesalers, distributors, retailers and sellers of any Tool Covered Products
25 and Wire Covered Products that were shipped by Defendant before the Effective Date, with such
26 wholesalers, distributors, retailers and sellers not required to comply with the reformulation and/or
27 Proposition 65 warning requirements, set forth in Sections 2 and 3 of this Consent Judgment, for such
28 products so long as such products are sold at retail within 180 days of the Effective Date.

1 Compliance with the terms of this Consent Judgment resolves any issue, now and in the future,
2 concerning compliance by Defendant Releasees with the requirements of Proposition 65 and the
3 Unfair Competition Act with respect to the lead contained in or otherwise associated with the Tool
4 Covered Products and the Proposition 65 Chemicals contained in or otherwise associated with the
5 Wire Covered Products.

6 7.2 As to any claims, violations (except violations of this Consent Judgment), actions,
7 damages, costs, penalties or causes of action which may arise or have arisen after the original date of
8 entry of this Consent Judgment, compliance by Defendant with the terms of this consent judgment
9 shall be deemed to be full and complete compliance with Proposition 65 and the Unfair Competition
10 Act as to claims regarding exposure to lead in Tool Covered Products and the Proposition 65
11 Chemicals in Wire Covered Products.

12 7.3 In furtherance of the foregoing, Mateel hereby waives any and all rights and benefits
13 which it now has, or in the future may have, conferred upon it with respect to the Tool Covered
14 Products and Wire Covered Products by virtue of the provisions of Section 1542 of the California
15 Civil Code, which provides as follows:

16 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
17 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
18 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
19 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
20 DEBTOR."

21 Mateel understands and acknowledges that the significance and consequence of this waiver of
22 California Civil Code Section 1542 is that even if Mateel suffers future damages arising out of or
23 resulting from, or related directly or indirectly to, in whole or in part from the Tool Covered Products
24 or Wire Covered Products, Mateel will not be able to make any claim for those damages against the
25 Defendant Releasees. Furthermore, Mateel acknowledges that it intends these consequences for any
26 such claims which may exist as of the date of this release but which Mateel does not know exist, and
27 which, if known, would materially affect its decision to enter into this Consent Judgment, regardless
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1 of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other
2 cause.

3 8. SERVICE ON THE CALIFORNIA ATTORNEY GENERAL

4 8.1 Mateel shall serve a copy of this Consent Judgment, signed by both Parties, on the
5 California Attorney General on behalf of the Parties so that the California Attorney General may
6 review this Consent Judgment at least forty five (45) days prior to its submittal to the Court for
7 approval. As soon as is feasible following the forty-fifth (45th) day after the date on which the
8 California Attorney General has been served with the aforementioned copy of this Consent Judgment,
9 and in the absence of any written objection by the California Attorney General to the terms of this
10 Consent Judgment or written request by the California Attorney General for additional time, the
11 Parties shall then submit promptly this Consent Judgment to the Court for approval. Prior to
12 submittal to the Court for approval, Mateel shall attach a proof of service attesting that this Consent
13 Judgment has been served on the California Attorney General and the manner and date on which that
14 service was made.

15 9. APPLICATION OF JUDGMENT

16 9.1 The obligations of this Consent Judgment shall apply to and be binding upon Mateel
17 and any and all plaintiffs, acting in the public interest pursuant to Health and Safety Code section
18 25249.7(d) and on behalf of the general public pursuant to Business and Professions Code section
19 17204, and Defendant and the successors or assigns of any of them.

20 10. MODIFICATION OF JUDGMENT

21 10.1 This Consent Judgment may be modified only upon written agreement of the Parties
22 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as
23 provided by law and upon entry of a modified Consent Judgment by the Court.

24 11. NOTICE

25 11.1 When any party is entitled to receive any notice or report under this Consent
26 Judgment, the notice or report shall be sent by U.S. mail or overnight courier service to:

27 (a) For Mateel: William Verick, Esq., Klamath Environmental Law Center, 424
28 First Street, Eureka, California 95501; and

1 (b) For Innovage, Inc.:

2 Lewis P. Janowsky
3 Rynn & Janowsky LLP
4 4100 Newport Place Drive, Suite 700
5 Newport Beach, CA 92660
6 Tel: 949.752.2911
7 Fax: 949.752.0953

8 11.2 Any party may modify the person and address to whom notice is to be sent by sending
9 each other party notice in accordance with this Paragraph.

10 12. AUTHORITY TO STIPULATE

11 12.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
12 the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the
13 party represented and legally to bind that party.

14 13. RETENTION OF JURISDICTION

15 13.1 This Court shall retain jurisdiction over the matters covered herein and the
16 enforcement and/or application of this Consent Judgment.

17 14. ENTIRE AGREEMENT

18 14.1 This Consent Judgment contains the sole and entire, agreement and understanding of
19 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
20 negotiations, commitments and understandings related hereto. No representations, oral or otherwise,
21 express or implied, other than those contained herein have been made by any party hereto. No other
22 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
23 any of the Parties.

24 15. GOVERNING LAW

25 15.1 The validity, construction and performance of this Consent Judgment shall be
26 governed by the laws of the State of California.

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16. COURT APPROVAL

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

IT IS SO STIPULATED:

DATED: By: _____
Defendant Innovage, Inc.

DATED: By: _____
William Verick
Plaintiff Mateel Environmental Justice Foundation

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____
JUDGE OF THE SUPERIOR COURT

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16. COURT APPROVAL

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

IT IS SO STIPULATED:

DATED:

By: 
Defendant Innovage, Inc.

DATED:

By: _____
William Verick
Plaintiff Mateel Environmental Justice Foundation

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated:

JUDGE OF THE SUPERIOR COURT

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IT IS SO STIPULATED.

DATED:

By: _____

Defendant Innovage, Inc.

DATED:



William Verick
Mateel Environmental Justice Foundation

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: JUN 28 2006

PAUL H. ALVARADO

JUDGE OF THE SUPERIOR COURT

EXHIBIT A
(Exemplar of Optional Testing Protocol)

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3 Step 1: Cut 3-inch section of a cable that has not previously been used or
4 wiped.

5 Step 2. On multiconductor cables, remove the insulated conductors and any
6 other inner components from the 3-inch section of the cable. On single insulated
7 conductors, remove the metallic conductor from the 3-inch section of the cable.
8 Place the outer nonmetallic covering into a lead free receptacle (such as a
pre-labeled resealable plastic food storage bag).

9 Step 3. Repeat steps 1 and 2 above for two additional cables such that a
total of three samples are produced for laboratory analysis.

10 Step 4. Prepare samples for laboratory analysis according to EPA Method
11 160.4 or 3050. Samples must be completely digested before proceeding to step 5.

12 Step 5. Analyze samples for total lead by EPA Method 7420 (AA Flame).

13 Step 6. Compute the arithmetic mean from the three samples.
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Klamath

October 17, 2003

EDWARD G. WEIL
DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 70550
OAKLAND CA 94612-9550

Greetings:

This office and the Mated Environmental Justice Foundation ("Mated") hereby give you notice that the private businesses on the attached service list are in violation of Cal. Health & Safety Code § 25249.6. This office and Mated are both private enforcers of Proposition 65, both organizations may be reached at the below listed address and telephone number, I may be considered a "responsible individual" at both organizations, and I may be contacted at the same address and telephone number. The above referenced violations occur when California residents come into contact with thermoseal/thermoelastic-coated wires, cables, and/or cords/cord sets, including PVC-coated wires, cords/cord sets, plugs and connectors, and both SPT and HFN cords/cord sets (hereinafter collectively "Cords"). These businesses market products with, or that are themselves, Cords. Some examples of the products that incorporate Cords are those listed in the attached Product List. Through a specific model or SKU or product number is given as an example, this notice pertains to all variations of the specific type of product of which the named model is an example. Handling of, and contact with, these Cords exposes people to acrylonitrile, antimony trioxide, arsenic, 1,3-butadiene, carbon tetrachloride, carbon black extracts, chlorinated paraffins, chloroform, ethyl acrylate, ethylene thiourea, nickel, toluene, cadmium, hexavalent chromium, vinyl chloride, lead and lead compounds, lead acetate, lead phosphate, lead subacetate, and di(2-ethylhexyl) phthalate. Handling Cords causes these chemicals to come off the coating of the Cords and to be transferred to the skin of the person handling the Cords. These chemicals are then ingested through hand-to-mouth contact and hand-to-food-to-mouth and hand-to-cigarette-to-mouth behavior. These chemicals are also absorbed through the skin, through mucous membranes and enter the body through cuts, punctures and abrasions. Smokers also inhale these chemicals transferred from hands to cigarettes when they smoke the cigarettes. People are thus exposed to these chemicals via the ingestion, inhalation, dermal absorption, mucous membrane absorption and subcutaneous routes. The listed companies did not and do not provide people with clear and reasonable warnings before they expose them to lead. The above referenced violations have occurred every day since at least October 17, 2002 and will continue every day until the lead is taken out of these products or until warnings are given. These violations are alleged for occupational exposures as well as for consumer and environmental exposures. We do not, however, allege occupational exposure violations as to any of these products the listed businesses make outside of California, except as to workplaces the businesses themselves maintain in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off the property of the businesses and in each of California's 58 counties.

Cordially,

William Verick

SERVICE LIST

EDWARD W. WELLS
COUNTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY
GENERAL
P.O. BOX 7000
OAKLAND, CA 94617-0000

OFFICE OF THE CITY ATTORNEY
CITY OF OAKLAND
205 HASTING STREET, SUITE 2000
OAKLAND, CA 94612

OFFICE OF THE CITY ATTORNEY
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COUNTY OF BUTTE
22 COUNTY CENTER DR.
DUNSMITH, CA 95943

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701 MONTE CALAVERAS ROAD
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OFFICE OF THE DISTRICT
ATTORNEY
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COUNTY ADMINISTRATION
MILBURN
701 NEWADA ST.
MILBURN, CA 94558

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF LOS ANGELES
1000 CROWN COURT
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STEVE FELDMAN, PRESIDENT
AHOH INTERNATIONAL, U.S.A. INC.
621 S. ANDREWS AVE
FORT LAUDERDALE, FL 33301

NEIGHAN DAVENPORT
HAWAII INC.
19141 PALM RD
FOOTBALL RANCH, CA 94510

THOMAS L. ROBERTS, CEO
INTERDYNAMICS INC
501 WHITE PLAINS RD
TARRYTOWN, NEW YORK 10591-
5100

JUD. WERCHAMPER,
PRESIDENT/CEO
NATIONAL ENTERTAINMENT
COLLECTIBLES ASSOCIATION, INC.
P.O. BOX 9411
GLANA, NJ 07030

CERTIFICATE OF MERIT

I, William Verick, hereby declare: This Certificate of Merit accompanies the attached 60-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.4 by failing to provide clear and reasonable warnings. I am the attorney for the notifying party. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(a)(2), i.e., (1) the identity of the person(s) controlled with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 19, 2005


William Verick

This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1987. This approval specifically placed certain conditions on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

CERTIFICATE OF SERVICE

I, Alison Nichols, declare:

If called, I could and would testify as follows: I am over eighteen. My business address is 424 First Street, Eureka, California, 95501. On October 19, 2005, I caused the attached 60-DAY NOTICE LETTER, or a letter identical in substance, to be served by U.S. Mail on those public enforcement agencies listed on the attached SERVICE LIST; in addition on the same date and by U.S. Mail I caused the attached 60-DAY NOTICE LETTER and PROPOSITION 65: A SUMMARY to be sent by Certified U.S. Mail to the private business entities also listed on the attached SERVICE LIST. I deposited copies of these documents in envelopes, postage pre-paid, with the U.S. Postal Service on the day on which the mail is collected. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 19, 2005, at Eureka, California.


ALISON NICHOLS

PRODUCT LIST

AMSCAN, INC.

PARTY LIGHTS NO. 24995 This product description pertains not only to the specific model of the product listed, but also for all units of all models of party lights.

ATICO INTERNATIONAL U.S.A., INC.

HomeCenter 15 FT. EXTENSION CORD, ITEM # 836174, HomeCenter 9 FT. EXTENSION CORD, ITEM # 806259, HomeCenter DELUXE GLUE GUN, ITEM # 834061, HomeCenter GLUEGUN, ITEM # 833303 and TOZAJ ELECTRONIC TELEPHONE WITH TONE/PULSE DIALING, ITEM # 810151 This product description pertains not only to the specific model models of the product listed, but also for all units of all models of .

INNOVAGE, INC.

LCD TOUCHPANEL PHONE WITH 12 DIGIT CALCULATOR, UPC #894302101261 This product description pertains not only to the specific model of the product listed, but also for all units of all models of phones.

INTERDYNAMICS INC.

INTERDYNAMICS POWERAIR AIR COMPRESSOR MODELS #PA-110 and PA-120T This product description pertains not only to the specific model or models of the product listed, but also for all units of all models of air compressors.

NATIONAL ENTERTAINMENT COLLECTIBLES ASSOCIATION, INC.

"THE SIMPSONS" HOMER DECORATIVE LIGHT SET This product description pertains not only to the specific model of the product listed, but also for all units of all models of light sets.

EXHIBIT B
(Infrequently Handled Products)

1	208- and 220-volt appliances (unless appliance is portable)
2	AC Adapters for foreign outlets and other voltage converters
3	Adjustable beds
4	Air Conditioner
5	Air Purifier
6	Amplifier for home stereo systems (including associated power and interconnector cords, but not including interconnector cords for microphones or musical instruments)
7	Answering machine
8	Audio mixer and associated power cords for in-studio, non-portable mixer units
9	Audio or video cable and adapter cords
10	Audio switcher power cords, unless designed to plug into front of audio/video appliance
11	Audio/video equipment and associated power and patch/pin cords (if A/V equipment is (i) not portable, e.g., no handle or carrying case, (ii) is not designed to plug into front of audio/video appliance, and (iii) is otherwise designed for long term installation)
12	Auto power adapters and cord, unless designed to plug into cigarette lighter or similar in-dash power source
13	Automotive wires and cables (installed)
14	Back cushion massager
15	Bathtub bubble mat
16	Bathtub spas
17	Battery Connection Cords (internal)
18	Battery charger units (except those used for automobiles)
19	Beard Trimmer (cordless models only)
20	Blender (not including hand-held models)
21	Bread Machine
22	Broadcast Equipment, and associated power and interconnector cords (if designed for in-studio or other non-portable installation)
23	Building wire (installed)
24	Calculator
25	Caller ID Unit
26	Can Opener
27	Carafes/Decanters, if cord attaches to separate base unit
28	Carbon Monoxide Detectors
29	Cash Registers
30	CATV Receiver Power Cords
31	CB radio/antenna cords (not handsets)
32	CD Player/changer (non-portable units only)
33	CD/DVD Home Theater Systems
34	Cielo Bath
35	Circuit Cable
36	Clock
37	Coffee Maker
38	Color Imaging System Power Cord & Cable (non-portable and not for use with portable computer system)
39	Combo Wash/Dryer

1	40	Compactor
2	41	Computer Adapter Cords (not for laptops, and not designed to plug into front of system)
3	42	Computer Cables (in walls)
4	43	Computer CD/DVD Drives (installed, not used with laptops)
5	44	Computer docking system
6	45	Computer Keyboard
7	46	Computer modem line (data and power)
8	47	Computer monitor cable
9	48	Computer Mouse (cordless)
10	49	Computer Peripheral AC Adaptor cord and I/F cable (not including those for portable computers or portable peripheral devices)
11	50	Computer Peripheral PCMCIA Card Cord (not including those for portable computers)
12	51	Computer Peripheral Wires & Cables (not including those for portable computers and those designed to plug into front of desktop computer (e.g., USB cords))
13	52	Computer Scanners (not including those designed for portable computers)
14	53	Computer Servers and External Storage Units
15	54	Computer Speaker Cords (not including those used with portable computers)
16	55	Computer Tape Drives
17	56	Controller/Tuner Power Cord
18	57	Convactor Power Cords
19	58	Cooktop Power Cords (not including those used with small portable hot plates)
20	59	Copier
21	60	Cordless Toothbrush
22	61	Data Logger Cable (unless included with portable device)
23	62	Deep fryer
24	63	Desktop computer power/patch/pin cords (unless designed to plug into front of computer (e.g., USB cords))
25	64	Digital imaging equipment (non-portable and not for use with portable computer system)
26	65	Digital media editor power cords/connecting cables (for installed, non-portable media editor units)
27	66	Digital Sender (digitizes and transmits images), for installed, non-portable units
28	67	Digital Tuner (non-portable units only)
	68	Dishwasher
	69	Drink Mixer (not hand-held)
	70	Dryer
	71	DVD (non-portable units only)
	72	DVD Audio/Video Cable (unless designed to plug into front of system)
	73	DVD Recorder Power/Interconnector Cords (non-portable units only)
	74	Egg Cooker
	75	Electric Bedding
	76	Electric Grill - Indoor or Outdoor
	77	Electric Recliners/Massage Chairs
	78	Electric Sewing Machine (non-portable units only, i.e., those which have no handle or case)
	79	Electric Thermos Pot (if cord attaches to separate base unit)
	80	Electric/Digital Pianos, Organs (non-portable units only)
	81	Electrolysis Water System (corded base unit only)
	82	Electronic Musical instruments, including associated power and adaptor cords (non-portable units only)
	83	Electronic White Board/Print Board Power Cords and Cables

1	84	Espresso & Cappuccino Makers
2	85	Facial Spas
3	86	Factory Automation Equipment (industrial systems, not for home use)
4	87	Fan/Heater Products (non-portable models only; i.e., in excess of 10 pounds, as packaged, or having blade diameter 9 inches or greater (rounded to the nearest whole inch) or smaller units which otherwise are regularly installed, or not typically moved from place to place).
5	88	Fax Machines
6	89	Fire Alarm cable
7	90	Fish Roaster
8	91	Flatbread Maker
9	92	Food Processor/Chopper (not including hand-held models)
10	93	Fountain, Decorative
11	94	Freezer
12	95	Garbage Disposals and associated cords (whether sold separately or with product)
13	96	Generators (large systems with only grounding wire)
14	97	Hair Clippers (cordless models only)
15	98	Hair Dryer (only models with retractable cord)
16	99	Hair setter (rollers only, not curling irons)
17	100	Ham and Two-Way Radio and Accessories and Adapters (not handset cords, unless microphone is designed on stand with switch)
18	101	Hard Disk Recorder peripheral and power cords (not including those for portable computers)
19	102	Headphones (cordless models only)
20	103	Headset with Earphone and Microphone (cordless models only)
21	104	Hole punch
22	105	Hot Lather Machine
23	106	Hot Lotion dispenser
24	107	Hot Pot/Kettle/Tea Brewer (if cord attaches to separate base unit)
25	108	Hot Water Dispenser
26	109	Humidifier/Dehumidifier
27	110	Ice Cream Maker
28	111	Ice Maker
	112	Indoor and outdoor phone cable (if designed for permanent installation)
	113	Intercoms (non-hand-held models only)
	114	Inverters/other power supplies (non-automotive uses)
	115	Iron (cordless only)
	116	Juicer/Juice extractor (non-hand-held models only)
	117	LCD Projector (CRT Monitor, receives data from computer) (except for use with portable computer)
	118	Letter opener
	119	Lighting (including tabletop and floor lamps, spotlights, or ceiling lighting, not holiday string lights or clip-on lights)
	120	Magnetic Card Reader/Writer including associated power cord and cable
	121	Meat Grinder (not hand-held models)
	122	Meat Slicer (not hand-held Electric Knives)
	123	Microphone (only including cords powering base unit of cordless microphone system)
	124	Microwave Oven
	125	Mini Speaker System including associated connection cords (not including those for use with laptop computers or other portable devices)
	126	Mixer (non-hand-held models only)

1	127	Mobil telephone battery cables (internal wires and cords only)
2	128	Mobile telephone accessories (only those using corded base charging unit or permanently installed in automobiles)
3	129	Mobile video screens designed for permanent installation (such as for use in automobiles or boats)
4	130	Multi-function office support device (combines functions such as copier, printer, fax machine, PBX, voice mail into one)
5	131	Neon sign & oil burner ignition cable
6	132	NIC/Modem cables
7	133	Optical Cable/Stereo Optical Cords (unless designed to plug into front of system)
8	134	Optical Disc AC Adapter (non-portable and not for use with portable computer systems)
9	135	Optical Disc Power Cords (non-portable and not for use with portable computer systems)
10	136	Ovens
11	137	Over-Range Microwave Ovens/Hoods
12	138	Paper shredder
13	139	Parrafin/wax Bath for Hands
14	140	Patch/pin cords, and cables, adapter cord, coaxial cable, A/V cord, S-VHS cord (when sold with device otherwise excluded)
15	141	Pencil sharpener
16	142	Personal Hygiene System and assoicated power cord
17	143	Pest Repeller
18	144	Pet Cage Dryers
19	145	Portable Dishwasher
20	146	Portable heater (only if designed for permanent installation)
21	147	Portable Washer
22	148	Postage meters
23	149	Postal scales
24	150	Potpourri heater
25	151	Power bases for charging wireless devices (if designed for long term installation)
26	152	Power tools (corded, cordless, stationary, or portable)
27	153	Power/control/instrumentation tray cable (except for non-permanently-installed public address systems)
28	154	Pressure Cooker
	155	Printer cables
	156	Printer power cord
	157	Projector, non-portable (no handle or carrying case)
	158	Public Address Amplifier and Accessories (non-portable or otherwise designed for permanent or long term installation)
	159	Radiator
	160	Radios with attached cord and without handles (including clock radios)
	161	Range
	162	Range Hoods/Vent
	163	Rechargeable Flashlights
	164	Rechargeable Lanterns
	165	Refrigerator
	166	Rice Cake Maker
	167	Rice Cooker
	168	Riser/Plenum cable (if designed for permanent/long term installation)

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2	169 Roaster Oven
3	170 Rope Lights (other than holiday string lights) if designed for permanent/long term installation
4	171 Satellite dish
5	172 Scales
6	173 Scanner antenna
7	174 Shavers - Cordless w/Corded Recharger Base only
8	175 Sink Top Switch for Disposer or Hot Water Dispenser (air activated switch mounted to sink or countertop, designed for permanent/long term installation)
9	176 Smoke detector (internal wires or if designed for permanent/long term installation)
10	177 Speaker wire (designed for use with components designed for long term/permanent installation; speaker wire associated with portable equipment with attached handle or carrying case not excluded)
11	178 Stapler
12	179 Steam cooker
13	180 Stereo and audio power/patch/pin cords (for use with non-portable components and except where designed to plug into front of system)
14	181 Surge protector
15	182 Telecom Data Cable (installed)
16	183 Telecom Power Cable (installed)
17	184 Tele-Homecare System (power cords)
18	185 Telephone power and data cord (phone to wall cords only)
19	186 Television (except small mobile models with attached/built in handle or carrying case)
20	187 Television Antenna
21	188 Television distribution system/swapper
22	189 Television Monitor (including computer monitors except small mobile models with attached/built in handle or carrying case)
23	190 Television peripheral cords (unless designed for use with devices that plug into the front of the set)
24	191 Thermostat Cable
25	192 Toaster
26	193 Toaster Oven
27	194 Towel Warmer
28	195 Transcriber and foot pedal and associated power and interconnecting cords
	196 Underground Low-Energy Cable (exclusion applies to consumer uses only)
	197 Vanity/lighted makeup mirror
	198 VCR (unless portable with attached handle or carrying case)
	199 Video mixer and switcher (if component of desktop system with no separate mice)
	200 Video printer power cords/connecting cables (unless used with laptop)
	201 Warming drawer
	202 Washer/Dryer
	203 Water distiller
	204 Water filter units designed for permanent/long term installation
	205 Water heater designed for permanent/long term installation
	206 Water jet - Dental
	207 Waxers - hair removal (corded base unit only)
	208 Wine cellars
	209 Diesel Locomotive and Motor Cable

1	210	Ignition Cable for Gas Tube Signage
2	211	Hook-Up Wire (intended for permanent or long-term installation)
3	212	Telephone Switching Station Cable
4	213	Loop Detector Wire Used in Traffic Counting
5	214	Utility Cable and Wire (Power and Communications)
6	215	Signal Cable
7	216	Power/Control/Instrumentation/Signal CableUtility Cable and Wire (Power and Communications)

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EXHIBIT C
(Examples of Products For Which Warnings May Be Given In Owner's Manual)

1	Patch/pin cords, and cables, adapter cord, coaxial cable, A/V cord, S-VHS cord (when sold concurrently with equipment that also appears on this list)
2	AC adaptor cords (when sold concurrently with equipment that also appears on this list)
3	Air Pumps
4	Power and patch cords for professional/commercial audio/video equipment used in field (when sold concurrently with the equipment)
5	Interconnection or patchcables for portable audio/video/computer components or peripheral devices (when sold concurrently with equipment that also appears on this list)
6	Power adapters and cord for use with automotive cigarette lighter or similar power outlet (when sold concurrently with equipment that also appears on this list)
7	Power and interconnector cords for broadcast equipment used in field (when sold concurrently with the broadcast equipment)
8	Coffee warmer/urn (party-size)
9	Adapter and power cords for laptop and desktop computers/peripherals (when sold concurrently with computer or peripheral device)
10	Computer Joystick (owner's manual warning authorized only where reference to the owners manual is necessary to program or install software for use; alternatively, warning that otherwise would be placed in owner's manual must appear as part of on-screen programming/installation instructions)
11	Computer Mouse (when sold concurrently with equipment that also appears on this list)
12	Digital camera cords and cables (when sold concurrently with digital camera)
13	Portable DVD Player (e.g., with handles/carrying case)
14	Power and adaptor cords for portable electronic musical instruments and keyboards (when sold concurrently with the electronic musical instrument or keyboard)
15	Foot Massagers (wet)
16	Laptop Computer
17	Sandwich Maker
18	Telephone handset cord (handset-to-phone portion only where sold concurrently with telephone with programmable features)
19	Thermoelectric coolers
20	Travel Steamer
21	Vacuum cleaner, deep cleaner/extractor and/or carpet shampoo machine (both regular or retractable cord models)
22	Vaporizer
23	Video Camera power cords, adaptor cords (e.g., AC, auto), charger cords, connecting cables (when sold concurrently with video camera)
24	Video game accessories (owner's manual warning authorized where: i) accessory is sold with another product for which owners manual warnings are allowed; or ii) reference to the owners manual is necessary to program or install software for use). Warning that would otherwise be placed in owner's manual may alternatively be displayed as part of on-screen programming/installation instructions where use of such are necessary for initial product use.

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25	Stand alone video mixer or switcher with non-integrated mouse
26	Portable warming tray
27	Cord of handheld waxers used for hair removal
28	Mobile telephones
29	Camera Cords and cables (only if sold concurrently with camera)
30	Telephones with programmable features

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16
17 COUNTY OF SAN FRANCISCO

18 MATEEL ENVIRONMENTAL JUSTICE
19 FOUNDATION,

20 Plaintiff,

21 vs.

22 AMSCAN, INC., et al.,

23 Defendants.

CASE NO. 449268

~~Proposed~~ ORDER
APPROVING SETTLEMENT
(Innovage, Inc.)

Date: June 28, 2006
Time: 9:30 a.m.
Dept. No.: 302

24 Plaintiff's motion for approval of settlement and entry of Consent Judgment as to
25 Defendant Innovage, Inc., was heard on regular noticed motion on June 28, 2006, at 9:30 a.m. in
26 Department No. 302. Having reviewed the pleadings and the moving papers, having reviewed
27 the terms of the proposed consent judgment and having considered the arguments of counsel, the
28 Court finds as follows:

1. The warnings and reformulation the Consent Judgment requires comply with the

ENDORSED
FILED
San Francisco County Superior Court

JUN 28 2006

GORDON PARK-LI, Clerk
BY: JOCELYN C. ROQUE
Deputy Clerk

1 requirements of Proposition 65.

2 2. The payments in lieu of civil penalties specified in the Consent Judgment are
3 reasonable and conform to the criteria of Health and Safety Code § 25249.7(b)(2).

4 3. The attorneys fees awarded under the Consent Judgment and the underlying
5 hourly rates, time expended, and costs incurred are reasonable.

6
7 IT IS SO ORDERED.

8
9 Dated: JUN 28 2006

PAUL H. ALVARADO
Judge of the Superior Court