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

14
15 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

16 Plaintiff,

17 v.

18 THE BOMBAY COMPANY, INC., et al.

19 Defendants.
20

Case No. CGC-06-456745

[PROPOSED]

CONSENT JUDGMENT AS TO THE
BOMBAY COMPANY, INC.

1 1. INTRODUCTION

2 1.1 On or about April 19, 2006, the Mateel Environmental Justice Foundation (“MEJF”)
3 and its attorneys, Klamath Environmental Law Center (“KELC”) sent a 60 Day Notice Letter to the
4 Office of the California Attorney General of the State of California (“California Attorney General”),
5 all California counties’ District Attorneys and all City Attorneys of California cities with populations
6 exceeding 750,000, (collectively, “Public Enforcers”), alleging that certain businesses, including The
7 Bombay Company, Inc., (“Settling Defendant”) through their sales in California of leaded crystal
8 products that are intended for use in storing and serving food or drink, including, but not limited to,
9 leaded crystal decanters, tumblers, wine glasses, champagne flutes, and cocktail glasses (“Crystal
10 Products”), were in violation of certain provisions of the Safe Drinking Water and Toxic
11 Enforcement Act of 1986, Health and Safety Code Section 25249.5 et seq., (“Proposition 65”), by
12 knowingly and intentionally exposing persons to chemicals, including lead, known to the State of
13 California to cause cancer and/or birth defects or other reproductive harm, without first providing a
14 clear and reasonable warning. In its April 19, 2006 Notice Letter, MEJF claimed that lead would
15 leach from the crystal vessel into the food or beverage stored in or served from the vessel and that
16 the food or beverage would then be consumed and the accompanying lead ingested.

17 1.2 On or about December 31, 2004, MEJF and KELC sent a 60 Day Notice Letter to the
18 Public Enforcers referenced in the preceding paragraph, alleging that certain businesses, including
19 Settling Defendant, were violating certain provisions of Proposition 65 through their sales in
20 California of certain wires, cables, cords/cord sets, plugs and connectors coated with polyvinyl
21 chloride (“PVC”) (“PVC Wire Products”), by knowingly and intentionally exposing persons to
22 chemicals known to the State of California to cause cancer and/or birth defects or other reproductive
23 harm, without first providing a clear and reasonable warning. Specifically, in its December 31, 2004
24 Notice Letter, MEJF charged that persons handling and coming into contact with PVC Wire
25 Products were exposed to certain chemicals listed under Proposition 65 including acrylonitrile,
26 antimony trioxide, arsenic, 1,3 butadiene, carbon tetrachloride, carbon black extracts, chlorinated
27 paraffins, chloroform, ethyl acrylate, ethylene thiourea, nickel, toluene, cadmium, hexavalent
28

1 chromium, vinyl chloride, lead and lead compounds, lead acetate, lead phosphate, lead subacetate
2 and di(2ethylhexyl) phthalate

3 1.3. On or about April 6, 2005, MEJF (“Plaintiff”), acting on behalf of itself, the public
4 interest, and the general public for the matters described in the December 31, 2004 Notice Letter,
5 filed a complaint for civil penalties and injunctive relief in the San Francisco Superior Court,
6 fashioned, *Mateel Environmental Justice Foundation v. The Bombay Company, Inc., et al.*, Case
7 No. CGC-0440164, based on the December 31, 2004 Notice Letter. The complaint in that matter
8 alleged, among other things, that Settling Defendant violated Proposition 65, based on the
9 allegations in the December 31, 2004 Notice Letter, by manufacturing, marketing and/or distributing
10 to California residents PVC Wire Products and failing to provide clear and reasonable warnings to
11 California residents who use such products that the use of those products in their normally intended
12 manner will cause those persons to be exposed to lead, a chemical listed under Proposition 65 .
13 Settlement discussions were conducted and an agreement was reached tolling the statute of
14 limitations for the alleged violations and the matter was dismissed without prejudice.

15 1.4 On or about October 6, 2006, MEJF, acting on behalf of itself, the public interest, and
16 the general public for the matters described in the Notice Letters identified in Sections 1.1 and 1.2
17 filed a complaint for civil penalties and injunctive relief (“Complaint”) in the San Francisco Superior
18 Court, fashioned, *Mateel Environmental Justice Foundation v. The Bombay Company, et al.*, Case
19 No. CGC-06-456745, based on the Notice Letters. The Complaint alleged, among other things, that
20 Settling Defendant violated Proposition 65, based on the allegations in the Notice Letters, by
21 manufacturing, marketing and/or distributing to California residents Crystal Products and PVC Wire
22 Products and failing to provide clear and reasonable warnings to California residents who use such
23 products that the use of those products in their normally intended manner will cause those persons to
24 be exposed to lead, a chemical listed under Proposition 65. .

25 1.5 For purposes of this Consent Judgment, the terms set forth below shall have the
26 meanings specified:

27 a. The term “Covered Products” includes the Crystal Products and PVC Wire
28 Products referenced in Sections 1.1 and 1.2.

1 b. The term “Notice Letters” includes the December 31, 2004 Notice Letter and
2 April 19, 2006 Notice Letter referenced in Sections 1.1 and 1.2.

3 c. The term “Parties” includes MEJF and Settling Defendant.

4 d. The term “Effective Date” shall mean ninety (90) days after Settling
5 Defendant has been served with notice of entry of the Consent Judgment.

6 1.6 For purposes of this Consent Judgment, the Parties stipulate that this Court has
7 jurisdiction over the allegations of violations contained in the Notice Letters and Complaint and
8 personal jurisdiction over Settling Defendant as to the acts alleged in the Notice Letters and
9 Complaint, that venue is proper in the County of San Francisco and that this Court has jurisdiction to
10 enter this Consent Judgment as a full and final settlement and resolution of the allegations contained
11 in the Notice Letters and Complaint and of all claims which were or could have been raised based on
12 the facts alleged therein or arising therefrom.

13 1.7 The Parties enter into this Consent Judgment pursuant to a full and final settlement of
14 disputed claims between them for the purpose of avoiding prolonged litigation. This Consent
15 Judgment shall not constitute an admission with respect to any allegation made in the Notice Letters
16 or the Complaint, each and every allegation of which Settling Defendant denies, nor may this
17 Consent Judgment or compliance with it be used as an admission or evidence of any fact,
18 wrongdoing, misconduct, culpability or liability on the part of Settling Defendant.

19
20 2. INJUNCTIVE RELIEF FOR CRYSTAL PRODUCTS

21 2.1 Except as set forth below, by the Effective Date, Settling Defendant shall provide
22 Proposition 65 warnings for those Crystal Products, and only those Crystal Products, that are
23 intended for use in storing and serving food or drink, in the manner provided for in this Section and
24 its subparts. At the sole option of Settling Defendant, warnings may be provided through either: (a)
25 product labeling pursuant to Section 2.2 or (b) point of sale warnings at any retail store as set forth in
26 Section 2.3; or (c) warnings for any mail order or Internet sales as set forth in Section 2.4, or (d) any
27 warnings agreed to by the office of the Attorney General of California.

1 2.2. Product Labeling: Settling Defendant may provide a warning affixed to the packaging
2 or labeling of, or directly to, the Crystal Product. The warning shall contain the same language as
3 that appearing on Exhibit A. The warning must be affixed to the packaging, labeling, or the Crystal
4 Product in the condition the product is given to or chosen by the customer, and displayed in a size
5 and manner that is likely to be read and understood by an ordinary individual under customary
6 conditions of purchase.

7 2.3. Point of Sale Warnings: Settling Defendant may provide a warning by posting signs
8 at every retail outlet it owns or principally operates in the State of California at which Crystal
9 Products are sold. Warning signs shall be displayed in plain view, as follows:

10 2.3.1. Stores with separate check-out for Crystal Products: For a store selling
11 Crystal Products in a physically separate or distinct department or section, which contains sales
12 registers within such department or section that are intended for purchase of items sold in that
13 department or section, the warning may be provided, at the sole option of Settling Defendant,
14 through: (a) a 4-inch by 6-inch warning sign with the language in Exhibit B (or Exhibit C if any of
15 the identified Baccarat products are sold at such store) at, on, or adjacent to each check-out counter,
16 sales register, cash stand, cash wrap or similar check out location in that section or department or on
17 a shelf where the Crystal Product is displayed, in such a position and location so that it may be easily
18 read by a potential purchaser in the customary conditions of selection and purchase; or (b) or at each
19 location where Crystal Products are displayed in the manner provided for in Section 2.3.2

20 2.3.2 Large stores without a separate check-out for Crystal Products. Any store that
21 sells Crystal Products and has more than 7,500 square feet of floor space and that uses one or more
22 check-out stands for all merchandise purchased at the store, shall either (a) post an 8-inch by 10-inch
23 warning sign with the language in Exhibit B (or Exhibit C if any of the identified Baccarat products
24 are sold at such store) at each location where Crystal Products are or may be displayed, in a manner
25 such that any potential purchaser of Crystal Products would be reasonably likely to see a warning
26 sign, and the warning signs may be free-standing, placed on a wall, hung, or displayed in any
27 manner, or (b) post a 4-inch by 6-inch warning sign with the language in Exhibit B (or Exhibit C if
28

1 any of the identified Baccarat products are sold at such store) on a shelf where the Crystal Product is
2 displayed.

3 2.3.3. Small stores without a separate check-out for Crystal Products. Any store that
4 sells Crystal Products and has less than 7,500 square feet of total floor space, and uses one or more
5 check-out stands for all merchandise purchased at the store, shall post signs either: (a) at, on, or
6 adjacent to each check-out counter, sales register, cash stand, cash wrap or similar check out location
7 in the store, or on a shelf where the Crystal Products are displayed, in the manner provided for in
8 Section 2.3.1, or (b) at each location where Crystal Products are displayed in the manner provided
9 for in Section 2.3.2 above.

10 2.3.4. In lieu of the warning signs with the language in Exhibit B or Exhibit C, but
11 displayed in the same manner as set forth in Sections 2.3.1 through 2.3.3., and at its sole option,
12 Settling Defendant may elect to combine any point-of-sale warnings signs required pursuant to this
13 Consent Judgment with any warnings it provides for ceramic tableware (as defined in the Consent
14 Judgment in *People v. Josiah Wedgwood & Sons, Inc.*, San Francisco Superior Court Case No.
15 938430, filed on January 15, 1993, attached hereto as Exhibit D) through use of the warnings signs
16 in the form of Exhibit E or Exhibit F. If Settling Defendant elects to provide combined warnings
17 through use of Exhibit E, then Settling Defendant shall place the Designated Symbol (as defined in
18 the *Wedgwood* Consent Judgment) next to each display of Crystal Product or ceramic tableware for
19 which a warning is given. If Settling Defendant elects to provide combined warnings through use of
20 Exhibit F, the ceramic tableware products for which the warning is given shall be identified by
21 manufacturer and pattern in the warning sign and Designated Symbols need not be displayed.
22 Display of warnings for both ceramic tableware and the Crystal Products in the manner set forth in
23 this Section 2.3.4 shall constitute compliance with Proposition 65 for both products.

24 2.4. Mail Order and Internet Sales. Where Crystal Products are available for sale by mail
25 order or from the Internet to residents of the State of California, a warning shall be included, at
26 Settling Defendant's sole option, either (a) in the mail order catalog (if any) or on the website (if
27 any) pursuant to Sections 2.4.1 or 2.4.2; or (b) with the Crystal Product when it is shipped to
28 California customers pursuant to Sections 2.4.1 or 2.4.2. If Settling Defendant elects to provide

1 warnings in the mail order catalog, then such warnings (at a location designated in Section 2.4.1)
2 shall be included in the galley prints of such catalogs sent to the printer at least (10) business days
3 after notice of entry of this Consent Judgment. Nothing in this Section 2 shall require that Settling
4 Defendant provide warnings for any Crystal Product ordered from a mail order catalog printed prior
5 to the date of notice of entry of this Consent Judgment, or modify any such mail order catalog.

6 2.4.1. Mail Order Catalog. The warning message shall be stated within the catalog,
7 either (a) on the inside front cover of any catalog, (b) on the outside back cover; (c) on the same
8 page as any order form, or (d) on the same page as the price, in the same size type as the
9 surrounding, non-heading text, with the same language as that appearing on Exhibit G (or Exhibit H
10 if any of the identified Baccarat products are sold in such catalog). In lieu of the warning language
11 in Exhibits G or H, and at its sole option, Settling Defendant may elect to combine the warning
12 message required by this Section 2.4 with any warnings its provides for ceramic tableware through
13 use of a warning message with the text of Exhibit E or Exhibit F. If Settling Defendant elects to
14 provide combined warnings through use of the text of Exhibit E, then Settling Defendant shall place
15 the Designated Symbol (the yellow triangle shown in Exhibit D) next to the display in the catalog of
16 Crystal Products or ceramic tableware for which a warning is given. If Settling Defendant elects to
17 provide combined warnings through use of the text of Exhibit F, the ceramic tableware products for
18 which the warning is given shall be identified by manufacturer and patter in the warning sign, and
19 Designated Symbols need not be displayed. If Settling Defendant elects to combine its ceramic
20 tableware and leaded crystal warnings under this Paragraph 2.4.1, display of warnings for both
21 ceramic tableware and the Crystal Products in the manner set forth in this Section 2.4.1 shall
22 constitute compliance with Proposition 65 for both products.

23 2.4.2. Internet Web Sites. The warning message, or a link to a page containing the
24 warning message, shall be displayed either (a) on the same page on which a Crystal Product is
25 displayed, (b) on the same page as any order form for a Covered Product or on any page that appears
26 during the check-out process, (c) on the same page as the price for any Crystal Product, or (d) in any
27 manner such that it is likely to be read and understood by an ordinary individual under customary
28 conditions of purchase of a Crystal Product, including the same language as that appearing on

1 Exhibit G (or Exhibit H if any of the identified Baccarat products are sold on such website). If a link
2 is used, it shall state “California residents” and shall be of a size equal to the size of other links on
3 the page. In lieu of the warning language in Exhibits G or H, and at its sole option, Settling
4 Defendant may elect to combine the warning message required by this Section 2.4 with any
5 warnings it provides for ceramic tableware through use of a warning message with the text of
6 Exhibit E or Exhibit F. If Settling Defendant elects to provide combined warnings through use of
7 the text of Exhibit E, then Settling Defendant shall place the Designated Symbol (the yellow triangle
8 shown in Exhibit D) next to each display on the website of Crystal Products or ceramic tableware for
9 which a warning is given. If Settling Defendant elects to provide combined warnings through use of
10 the text of Exhibit F, the ceramic tableware products for which the warning is given shall be
11 identified by manufacturer and pattern in the warning sign, and Designated Symbols need not be
12 displayed. If Settling Defendant elects to combine its ceramic tableware and leaded crystal warnings
13 under this Section 2.4.2, display of the warnings for both ceramic tableware and the Crystal Products
14 in the manner set forth in this Section 2.4.2 shall constitute compliance with Proposition 65 for both
15 products.

16 2.4.3. Package Insert or Label. Alternatively, a warning may be provided with the
17 Crystal Product when it is shipped, by (a) product labeling pursuant to Section 2.2 above, (b)
18 inserting a card or slip of paper measuring at least 4” by 6” in the shipping carton, or (c) including
19 the warning on the packing slip or customer invoice identifying the Crystal Product in lettering of
20 the same size as the description of the Crystal Product. The warning shall include the language
21 appearing on Exhibit A or Exhibit F, and shall inform the customer that he or she may return the
22 product for a full refund within 30 days of receipt.

23 2.5. Any changes to the language, format, size, or posting location of the warning required
24 by this paragraph shall only be made following receipt of written approval from the California
25 Attorney General’s office.

26 2.6. The obligations of this Section 2 shall not apply to any retail outlet that Settling
27 Defendant owns or operates in the State of California which does not offer Crystal Products for sale
28

1 or to any retail store that Settling Defendant owns or operates which is not located in the State of
2 California.

3 2.7. The warning requirements contained in this Consent Judgment shall have no effect on
4 Crystal Products sold or shipped by Settling Defendant to a customer outside the State of California.

5
6 3. INJUNCTIVE RELIEF FOR PVC WIRE PRODUCTS

7 3.1 Warnings as described in Section 3.4 below are required for PVC Wire Products
8 unless: (1) the reformulation conditions set forth in Section 3.2 (a) and (b) are both met; (2) the PVC
9 Wire Product is an “Infrequently Handled Product” as defined in Section 3.3; (3) the PVC Wire
10 Product is distributed for retail sale before the Effective Date, (4) the PVC Wire Product is
11 distributed for retail sale outside of the State of California; (5) the PVC Wire Product uses cables,
12 wires, cords/cord sets, plugs or connectors only as internal components not normally accessible to
13 the consumer during ordinary use; or (6) the PVC Wire Product contains a chemical listed under
14 Proposition 65 only as part of the inner conductor or other component not normally accessible to the
15 consumer during ordinary use.

16 3.2 Reformulation conditions include both of the following: (a) the PVC used in the
17 surface contact layer of the coating on the PVC Wire Products shall have no lead as an intentionally
18 added constituent; and (b) a representative sample of the bulk PVC used to manufacture the surface
19 contact layer of the coatings of the PVC Wire Products has shown lead content by weight of no more
20 than 0.03% (300 parts per million “300 ppm”), using a test method of sufficient sensitivity to
21 establish a limit of quantification (as distinguished from detection) of less than 300 ppm.
22 Compliance may be met by relying on information obtained from suppliers of the PVC Wire
23 Products, provided such reliance is in good faith. Nothing in the preceding sentences shall preclude
24 Settling Defendant from establishing good faith reliance by an alternative means.

25 3.3 Infrequently Handled Products. Warnings shall not be required for a PVC Wire
26 Product, which because of its size, weight or function has wires, cables, cords/cord sets, plugs or
27 connectors that are handled only infrequently (such as upon their installation in a setting where they
28 are not typically plugged and unplugged) (“Infrequently Handled Products”). Exhibit F to the

1 Consent Judgment entered on September 3, 2002 in *Mateel v. Sprint Communications*, San Francisco
2 Superior Court, Case No. 312962 contains a list of PVC wire products/product types that are deemed
3 to meet the criteria for Infrequently Handled Products set forth in this Section 3.3 and are therefore
4 exempt. A list of PVC wire products/product types that are deemed not to meet the criteria for
5 Infrequently Handled Products set forth in this Section 3.3, was previously provided to the California
6 Attorney General’s Office (“Non-Exempt Products List”) and a copy is attached hereto as Exhibit I.
7 These lists may be used as guidance in determining whether a PVC Wire Product should be
8 considered sufficiently “infrequently handled” to not require a warning under Section 3.4. A PVC
9 Wire Product not appearing on the Non-Exempt Products List is exempt from warnings if it meets
10 the criteria of this section whether or not it appears on Exhibit F to the *Mateel v. Sprint*
11 *Communications* consent judgment.

12 3.4 Warnings: If a warning is required, Settling Defendant shall provide a Proposition 65
13 warning for PVC Wire Products as described in subsections (a) – (d) below, or according to any
14 warning agreed to by the California Attorney General’s Office:

15 (a) Settling Defendant shall provide the following warning statement for all PVC
16 Wire Products that: (i) are distributed, marketed, sold or shipped by Settling Defendant for retail sale
17 to take place in California after the Effective Date and (ii) do not meet the requirements of Section
18 3.1.

19
20 **PROP 65 WARNING: This product contains lead, a chemical known to the State**
21 **of California to cause, [cancer, and] birth defects or other reproductive harm.**

22 ***Wash your hands after handling this product.***

23 or

24 **PROP 65 WARNING: Handling the cords on this product exposes you to lead, a**
25 **chemical known to the State of California to cause [cancer, and] birth defects and**
26 **other reproductive harm. *Wash hands after use.***

27 or

1 **PROP 65 WARNING: Handling the coated electrical wires of this product**
2 **exposes you to lead, a chemical known to the State of California to cause [cancer,**
3 **and] birth defects or other reproductive harm. *Wash hands after use.***
4

5 The phrase "PROP 65" may be excluded at the Settling Defendant's
6 discretion. If included, the phrase "PROP 65" shall be in capitals. The word "WARNING"
7 shall be in capitals. The words "*Wash hands after handling this product*" or "*Wash hands*
8 *after use,*" shall be italicized or underlined. Inclusion of the bracketed words "cancer, and"
9 in the above warning shall be at Settling Defendant's option. The foregoing does not
10 preclude Settling Defendant from adding a warning for additional Proposition 65 listed
11 chemicals unless the California Attorney General's Office takes the position that such a
12 warning would be misleading or an overwarning. Such warning shall be prominently affixed
13 to or printed on each PVC Wire Product, its label, or package and contained in the same
14 section of the label that contains other safety warnings, if any, concerning the use of the PVC
15 Wire Product or near its displayed price and/or UPC code, and with such conspicuousness, as
16 compared with other words, statements, designs, or devices on the PVC Wire Product, its
17 label, package or display as to render it likely to be read and understood by an ordinary
18 individual under customary conditions of purchase or use. The warning shall be at least the
19 same size as the largest of any other safety warnings, if any.

20 (b) A warning, using the language in section (a) placed in the owner's
21 manual of a PVC Wire Product may be used to satisfy the warning requirements of this
22 Section only if: the PVC Wire Product (a) may cause serious injury or bodily harm (other
23 than by means of fire or electrocution) unless used as directed; or (ii) is sophisticated,
24 difficult to understand or install, set-up, or assemble; or (iii) has one or more features a
25 consumer must read about in order to know how to program or use the PVC Wire Product.
26 However, a PVC Wire Product may not utilize an owner's manual warning if it meets the
27 following criteria: (a) the PVC Wire Product is unlikely to cause serious injury or bodily
28 harm other than by means of fire or electrocution; (b) the PVC Wire Product is easily

1 assembled or programmed by an ordinary consumer without need to reference instructions;
2 and (c) fundamental operation of the PVC Wire Product is easily understood and commonly
3 performed by an ordinary consumer without training or need to reference operating
4 instructions. Exhibit G to the Consent Judgment entered on September 3, 2002 in *Mateel v.*
5 *Sprint Communications*, San Francisco Superior Court, Case No. 312962 contains a list of
6 PVC wire products /product types for which owner's manual warnings are deemed to be an
7 allowable method of communicating the warnings. A list of PVC wire products was
8 previously provided to the California Attorney General's Office for which owner's manual
9 warnings are deemed not to be an allowable method of communicating the required
10 warnings, with a copy of that list attached hereto as Exhibit J. These owner manual lists may
11 be used, in combination, as guidance in determining whether the criteria for use of owner's
12 manual warnings set forth in this Section are satisfied for any particular PVC Wire Product.

13 (i) If the warning is given in the owners manual, it shall be placed
14 in one of the following places in the manual: (1) the outside of the front cover; (2) the inside
15 of the front cover; (3) the first page other than the cover; or (4) the outside of the back cover.
16 The warning shall be printed or stamped in the manual or contained in a durable label or
17 sticker affixed to the manual in a font no smaller than the font used for other safety warnings
18 in the manual. Alternatively, the warning may be included in a safety warning section of the
19 owner's manual consistent with specifications issued by Underwriters Laboratories.

20 (c) The requirement for product labeling set forth in subparagraphs (a) and
21 (b) above is imposed pursuant to the terms of this Consent Judgment. The parties recognize
22 that product labeling is not the exclusive method of providing a warning under Proposition
23 65 and its implementing regulations.

24 (d) As to any PVC Wire Products, if Proposition 65 warnings for lead or lead
25 compounds no longer should be required, or if warning language different from that set forth in this
26 Consent Judgment is required, because of a change or changes in law, or based on a California
27 Attorney General opinion letter specific as to the PVC Wire Products, Settling Defendant shall have
28 no further warning obligations pursuant to this Consent Judgment. In the event that Settling

1 Defendant ceases to implement or modifies the warnings required under this Consent Judgment,
2 Settling Defendant shall provide written notice to MEJF of its intent to do so, and of the basis for its
3 intent, no less than thirty (30) days in advance. MEJF shall notify Settling Defendant in writing of
4 any objection within thirty (30) days of its receipt of such notice, or such objection by the Plaintiff
5 shall be waived.

6
7 4. MONETARY RELIEF

8 4.1 Because of Settling Defendant's financial condition, MEJF has agreed to a resolution
9 that involves no direct payment of civil penalties and no direct payment to a non profit organization
10 in lieu of a civil penalty.

11 4.2 Within ten (10) days of signing this proposed Consent Judgment, Settling Defendant
12 shall pay to KELC, attention William Verick, 424 First Street, Eureka, California 95501, the sum of
13 fifty thousand dollars (\$50,000) to cover a portion of MEJF's attorneys' fees and costs.

14 4.3 Except as specifically provided in this Consent Judgment, the Parties shall each bear
15 their own costs and attorneys' fees.

16
17 5. ENFORCEMENT OF JUDGMENT/STIPULATED REMEDIES

18 5.1 The terms of this Consent Judgment are enforceable by and among the Parties hereto
19 or, with respect to the injunctive relief provided for herein, by the California Attorney General.
20 Enforcement of the injunctive relief shall be exclusively pursuant to the terms of Section 5.

21 5.2 In the event that, at any time following ninety (90) days after entry of this Consent
22 Judgment by the Court, MEJF and/or its attorneys, agents, assigns, or any other person acting in the
23 public interest under Health & Safety Code § 25249.7(d) identifies one or more retail stores owned
24 or operated by Settling Defendant in the State of California, one or more catalog sales to customers
25 in the State of California, or one or more web site sales to customers in the State of California
26 (hereinafter "retail outlet") for which the warnings for Crystal Products required under Section 2 or
27 the warnings for PVC Wire Products under Section 3 are not being or were not given, MEJF or such
28 person shall notify Settling Defendant in writing of such alleged failure(s) to warn (the

1 “Probationary Notice of Default”). The Probationary Notice of Default shall be sent by first class
2 mail, with proof of service, to the person(s) identified in Section 11 to receive notices for Settling
3 Defendant, and must be served within fifteen (15) days of the date the alleged violation(s) was or
4 were observed. The Probationary Notice of Default shall, at a minimum, set forth the date(s) the
5 alleged violation(s) was observed, the retail outlet(s) in question, and shall include both a description
6 of the Covered Product(s) giving rise to the alleged violation(s) and a description of the alleged
7 violation(s) with sufficient detail to allow Settling Defendant to determine the basis of the claim
8 being asserted. The Probationary Notice of Default may also provide some other form of
9 documentary evidence specifically in support of the allegation that the warnings required by
10 Sections 2 or 3 above have not been posted or given as required herein. Such Probationary Notice of
11 Default shall allege all violations that could have been raised with respect to each retail outlet in
12 question as of the date of the Probationary Notice of Default.

13 5.3 In the event Settling Defendant corrects the alleged default(s) within sixty (60) days
14 of receiving the Probationary Notice of Default, MEJF or the notifying person shall take no further
15 enforcement action with respect to such violation(s). In the event Settling Defendant fails to correct
16 such alleged default(s) within sixty (60) days following the Probationary Notice of Default from
17 MEJF or the notifying person, and subject to the provisions of Section 5.5, Settling Defendant shall
18 pay to MEJF or the notifying person, as a stipulated penalty for failure to remedy the alleged
19 default(s), the amount of One Thousand Six Hundred (\$1,600) for each retail outlet which was the
20 subject of the Probationary Notice of Default, and where Settling Defendant failed to remedy such
21 alleged default(s).

22 5.4 In the event MEJF or the notifying person identifies one or more possible defaults of
23 the same type (but not necessarily at the same retail outlet) as that contained in a Probationary
24 Notice of Default previously served under Section 5.2 at any retail outlet owned or principally
25 operated by Settling Defendant that received such Probationary Notice of Default within a six month
26 period following the termination of a sixty (60) day period referred to in Section 5.3, MEJF or the
27 notifying person shall, within 15 days, provide Settling Defendant with a Notice of Default (which
28 shall contain the same information required in the Probationary Notice of Default referenced in

1 Section 5.2). Subject to the provisions of Section 5.6, upon receipt of such Notice of Default,
2 Settling Defendant shall be liable for a stipulated penalty in the amount of One Thousand (\$1,000)
3 per retail outlet at which MEJF or the notifying person identifies the default(s) described in the
4 previous sentence, without need for any further notice or opportunity to correct being provided to
5 Settling Defendant.

6 5.5 Once the six month period set forth in Section 5.4 expires, then the provisions of
7 Sections 5.2 and 5.3 for a Probationary Notice of Default and a 60-day opportunity to cure any
8 alleged default(s) without payment of a stipulated penalty again are effective until another
9 Probationary Notice of Default is served and the 60-day opportunity to cure any alleged default(s)
10 contained in such Probationary Notice of Default terminates. Upon termination of such 60-day
11 period, then a new six month period as referenced in Section 5.4 begins again. Each time the six
12 month period referenced in Section 5.4 ends, then a new period for a Probationary Notice of Default
13 and 60-day opportunity to cure any alleged default(s) under Sections 5.2 and 5.3 is available to
14 Settling Defendant receiving a Notice of Default. Each time a new period for Probationary Notice of
15 Default and 60-day opportunity to cure any default(s) ends, then a new six month period as
16 referenced in Section 5.4 begins. This process shall repeat itself indefinitely.

17 5.6 In the event that Settling Defendant wishes to contest the allegations contained in any
18 Probationary Notice of Default served pursuant to Section 5.2 or a Notice of Default served pursuant
19 to Section 5.4, it shall notify MEJF or the notifying person of such in writing within thirty (30) days
20 of its receipt of the Notice of Default. Settling Defendant may provide any documentary evidence to
21 MEJF or the notifying person in support of its position. In the event that, upon a good faith review
22 of the evidence, MEJF or the notifying person agrees with Settling Defendant's position, it shall take
23 no further action hereunder. In the event that Settling Defendant provides documentary evidence,
24 and MEJF or the notifying person disagrees with Settling Defendant's position, it shall, within thirty
25 (30) days notify Settling Defendant of such and provide Settling Defendant, in writing, with the
26 reasons for its disagreement. Thereafter, the parties shall meet and confer to attempt to resolve their
27 dispute on mutually acceptable terms; if no such resolution results, (a) MEJF may by motion or
28 order to show cause before the Superior Court of San Francisco, seek to enforce the terms and

1 conditions contained in this Consent Judgment, or (b) MEJF or the notifying person may initiate an
2 enforcement action for new violations pursuant to Health & Safety Code § 25249.7(d) without
3 regard to the stipulated penalties provided for by Sections 5.3 or 5.4.

4 5.7 In the event that MEJF and/or its attorneys agree to settle another actual or potential
5 claim concerning the alleged failure of a retail outlet to provide adequate Proposition 65 warnings
6 concerning its sale of Covered Products in California and the amount of any stipulated penalty
7 specified for future violations is less than that specified in Sections 5.3 and 5.4 above, the amounts
8 specified in Sections 5.3 and 5.4 above shall automatically be deemed to have been reduced to the
9 amount of the stipulated penalty provided for in the settlement in question.

10
11 6. MATTERS COVERED BY THIS CONSENT JUDGMENT

12 6.1 This Consent Judgment is a full, final and binding resolution between MEJF, acting
13 on behalf of itself and, (as to those matters referenced in the Notice Letters) in the public interest
14 pursuant to Health and Safety Code Section 25249.7(d), and Settling Defendant concerning any
15 alleged violation of Proposition 65 and/or any claims (statutory, common law or other) that were
16 made or that could have been made against Settling Defendant and/or its past, present and future
17 affiliates, parents or subsidiary corporations, divisions, predecessors, successors, officers, directors,
18 assigns, distributors, wholesalers, retailers, customers or any other person in the course of doing
19 business who may use, maintain, distribute, market or sell the Covered Products (hereafter referred
20 to as the “Defendant Releasees”) for failure to provide clear, reasonable, and lawful warnings of
21 exposure to lead contained in or otherwise associated with the Covered Products that were sold or
22 distributed by, for or on behalf of Settling Defendant. This Consent Judgment shall serve to release
23 and protect from any potential Proposition 65 liability, wholesalers, distributors, retailers and sellers
24 of any Covered Products that were sold or shipped by Settling Defendant before the date of notice of
25 entry of this Consent Judgment, with such wholesalers, distributors, retailers and sellers not required
26 to comply with Proposition 65 warning requirements, set forth in Section 2 of this Consent
27 Judgment, for such products so long as such products are sold at retail within sixty (60) days of the
28 entry of this Consent Judgment. Compliance with the terms of this Consent Judgment resolves any

1 issue, now and in the future, concerning compliance by Defendant Releasees with the requirements
2 of Proposition 65 with respect to the lead contained in or otherwise associated with the Covered
3 Products.

4 6.2 As to any claims, violations (except violations of this Consent Judgment), actions,
5 damages, costs, penalties or causes of action which may arise or have arisen after the original date of
6 entry of this Consent Judgment, compliance by Settling Defendant with the terms of this Consent
7 Judgment shall be deemed to be full and complete compliance with Proposition 65 as to claims
8 regarding exposure to lead in or from the Covered Products.

9
10 7. COMPREHENSIVE AND GLOBAL RELEASE

11 7.1 As to Covered Products, MEJF, for itself and, and as to matters referenced in the
12 Notice Letters, acting on behalf of the public interest pursuant to Health and Safety Code §
13 25249.7(d) and the general public, releases and forever discharges any and all claims against
14 Defendant Releasees arising from any violation of Proposition 65 or any other statutory, common
15 law or other claim, that was or could have been asserted against Settling Defendant based on the
16 facts alleged in the Notice Letters or Complaint, or facts similar to those alleged.

17 7.2 In furtherance of the Parties' intention that this Consent Judgment shall serve as a full
18 and final accord, satisfaction and release as to the Defendant Releasees of and from any and all
19 matters released hereunder, MEJF, on its own and on behalf of the public interest pursuant to Health
20 and Safety Code § 25249.7(d), hereby waives and relinquishes any and all rights and benefits which
21 it now has, or in the future may have, conferred upon it with respect to the Covered Products by
22 virtue of the provisions of Section 1542 of the California Civil Code or under the laws of any other
23 jurisdiction to the same or similar effect, with MEJF acknowledging familiarity and understanding of
24 Civil Code section 1542 which provides:

25 A general release does not extend to claims which the creditor does not
26 know or suspect to exist in his favor at the time of executing the
27 release, which if known by him must have materially affected his
28 settlement with the debtor.

1 MEJF further acknowledges that, subsequent to the execution of this Consent
2 Judgment, it may discover claims that were unsuspected at the time this Consent Judgment was
3 executed, and which might have materially affected its decision to execute this Consent Judgment,
4 but nevertheless, as to the Covered Products, MEJF releases the Defendant Releasees of and from
5 any and all such claims whether known or unknown, suspected or unsuspected, at the time of the
6 execution of this Consent Judgment.

7 MEJF understands and acknowledges that the significance and consequence of this
8 waiver of California Civil Code Section 1542 is that even if MEJF suffers future damages arising out
9 of or resulting from, or related directly or indirectly to, in whole or in part from the Covered
10 Products, MEJF will not be able to make any claim for those damages against the Defendant
11 Releasees. Furthermore, MEJF acknowledges that it intends these consequences for any such claims
12 which may exist as of the date of this release but which MEJF does not know exist, and which, if
13 known, would materially affect its decision to enter into this Consent Judgment, regardless of
14 whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other
15 cause.

16
17 8. SERVICE ON THE CALIFORNIA ATTORNEY GENERAL

18 8.1 MEJF shall serve a copy of this Consent Judgment, signed by both Parties on the
19 California Attorney General on behalf of the parties so that the California Attorney General may
20 review this Consent Judgment at least forty five (45) days prior to any hearing on any motion for
21 approval by the Court.

22
23 9. APPLICATION OF JUDGMENT

24 9.1 The obligations of this Consent Judgment shall apply to and be binding upon MEJF
25 and any and all plaintiffs acting in the public interest pursuant to Health and Safety Code Section
26 25249.7(d), and Settling Defendant and the successors or assigns of any of them.

1 10. MODIFICATION OF JUDGMENT

2 10.1 This Consent Judgment may be modified only upon written agreement of the Parties
3 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party
4 as provided by law and upon entry of a modified Consent Judgment by the Court. Notwithstanding
5 any other provision of law, or the refusal to consent thereto by MEJF, the warning provisions of
6 Section 2 may be modified upon a showing that the California Attorney General consents in writing
7 to such modification. Any request to the California Attorney General to modify this Consent
8 Judgment must be simultaneously served on MEJF with an opportunity for MEJF to provide its
9 views on any proposed modification to the California Attorney General and to Settling Defendant.

10
11 11. NOTICE

12 11.1 When any party is entitled to receive any notice or report under this Consent
13 Judgment, the notice or report shall be sent by first class mail, with proof of services, to:

14 (a) For MEJF: William Verick, Esq., Klamath Environmental Law Center, 424
15 First Street, Eureka, California 95501; and

16 (b) For The Bombay Company, Inc., Michael J. Veitenheimer, Senior Vice
17 President and General Counsel, The Bombay Company, Inc., 550 Bailey Ave, Fort Worth, Texas
18 76107-2111. With a copy to: John E. Dittoe, Reed Smith LLP, 1999 Harrison Street, Suite 2400
19 Oakland, CA 94611

20 11.2 Any party may modify the person and address to whom notice is to be sent by
21 sending each other party notice in accordance with this Section.

22
23 12. AUTHORITY TO STIPULATE

24 12.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
25 the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the
26 party represented and legally to bind that party.

1 13. RETENTION OF JURISDICTION

2 13.1 This Court shall retain jurisdiction over the matters covered herein and the
3 enforcement and/or application of this Consent Judgment.

4
5 14. GOVERNING LAW

6 14.1 The validity, construction and performance of this Consent Judgment shall be
7 governed by the laws of the State of California.

8
9 15. EXECUTION IN COUNTERPARTS

10 15.1 This Consent Judgment may be executed in counterparts and/or by facsimile, which
11 taken together shall be deemed to constitute one original document.

12
13 16. COURT APPROVAL

14 16.1 This settlement shall be binding upon the parties unless and until it is disapproved by
15 a court of competent jurisdiction,, in which case it shall be deemed void and of no force or effect,
16 and any monetary payment shall be returned to Settling Defendant.

17
18 IT IS SO STIPULATED:

19 DATED:

By: _____
Michael J. Veitenheimer.
Senior Vice President and General Counsel
Defendant The Bombay Company, Inc.

20
21
22 DATED:

By: _____
William Verick
Plaintiff Mateel Environmental Justice Foundation

23
24
25 IT IS SO ORDERED, ADJUDGED AND DECREED:

26 Dated:

27 _____
JUDGE OF THE SUPERIOR COURT

1 13. RETENTION OF JURISDICTION

2 13.1 This Court shall retain jurisdiction over the matters covered herein and the
3 enforcement and/or application of this Consent Judgment.

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15 a court of competent jurisdiction,, in which case it shall be deemed void and of no force or effect,
16 and any monetary payment shall be returned to Settling Defendant.

17
18 IT IS SO STIPULATED:

19 DATED: 6/5/07

20
21
22 DATED: 7/5/07

By: 
Michael J. Veitcheimer.
Senior Vice President and General Counsel
Defendant The Bombay Company, Inc.

By: 
William Verick
Plaintiff Mateel Environmental Justice Foundation

23
24
25 IT IS SO ORDERED, ADJUDGED AND DECREED:

26 Dated:

27 JUDGE OF THE SUPERIOR COURT
28