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

18 MATEEL ENVIRONMENTAL JUSTICE
19 FOUNDATION,

20 Plaintiff,

21 v.

22 HARLEY DAVIDSON, INC.

23 Defendant.

Case No. 07-460934

**[PROPOSED] CONSENT
JUDGMENT**

1 **1. INTRODUCTION**

2 1.1 On or about October 19, 2006, the Mateel Environmental Justice Foundation
3 (“MEJF”) and its attorneys, Klamath Environmental Law Center (“KELC”), sent 60 Day
4 Notice Letters (“Notice Letter”) to the Office of the California Attorney General of the State
5 of California (“California Attorney General”), all California counties’ District Attorneys and
6 all City Attorneys of California cities with populations exceeding 750,000, (collectively,
7 “Public Enforcers”), charging certain businesses with violating the Safe Drinking Water and
8 Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq.
9 (“Proposition 65”), in their manufacture, distribution and/or sale of devices that incorporate
10 wires and cables coated with polyvinyl chloride (“PVC”). Specifically, MEJF charged that
11 persons handling the PVC-coated, thermoset-coated and/or thermoplastic-coated wires and
12 cables (hereinafter sometimes referred to as the “Cords”) were exposed to certain chemicals,
13 listed under Proposition 65, including, cadmium, hexavalent chromium, vinyl chloride, lead
14 and lead compounds, lead acetate, lead phosphate, lead subacetate, di(2ethylhexyl)
15 phthalate, acrylonitrile, antimony trioxide, arsenic, 1,3 butadiene, carbon tetrachloride,
16 carbon black extracts, chlorinated paraffins, chloroform, ethyl acrylate, ethylene thiourea,
17 nickel, and toluene (the “Proposition 65 Chemicals”).

18 1.2 On or about March 2, 2007, MEJF (“Plaintiff”), acting on behalf of itself, the
19 public interest, and the general public for the matters described in the Notice Letter, filed a
20 Complaint for civil penalties and injunctive relief (“Complaint”) in the San Francisco
21 Superior Court, entitled *MATEEL ENVIRONMENTAL JUSTICE FOUNDATION v.*
22 *HARLEY DAVIDSON, INC.*, Case No. 460934, based on the Notice Letter. The Complaint
23 alleged, among other things, that Harley-Davidson, Inc., (hereinafter “Harley-Davidson”)
24 violated Proposition 65 by manufacturing, marketing and/or distributing to California
25 residents products that are themselves or that incorporate wires and cables that are
26 PVC-coated and failing to provide clear and reasonable warnings to California residents
27 who handle and use such products that the handling and use of those products in their
28 normally intended manner will cause those persons to be exposed to certain of the

1 Proposition 65 Chemicals, namely, lead and lead compounds, lead acetate, lead phosphate,
2 and lead subacetate. Upon entry of this Consent Judgment, the Complaint shall be deemed
3 to have been amended to allege that persons handling the Cords were exposed to cadmium,
4 hexavalent chromium, vinyl chloride, lead and lead compounds, lead acetate, lead
5 phosphate, lead subacetate, di(2ethylhexyl) phthalate, acrylonitrile, antimony trioxide,
6 arsenic, 1,3 butadiene, carbon tetrachloride, carbon black extracts, chlorinated paraffins,
7 chloroform, ethyl acrylate, ethylene thiourea, nickel, and toluene (i.e., the Proposition 65
8 Chemicals) without Proposition 65 warnings.

9 1.3 Plaintiff and Harley-Davidson are, for purposes of this Consent Judgment,
10 collectively referred to as the “Parties,” with each of them a “Party”.

11 1.4 For purposes of this Consent Judgment, the term “Covered Products” means
12 motorcycle battery chargers, motorcycle battery tenders, and motorcycle battery accessories
13 that are themselves, or that incorporate, utilize, or have appended to them, Cords, and that
14 are manufactured, distributed, marketed or sold by Harley-Davidson. The term Covered
15 Products includes both such products that are subject to the Warning Requirements of
16 Section 7, and those that are not, including those products that are exempted from the
17 warning requirements of this Consent Judgment pursuant to Sections 7.1 or 7.3. The term
18 “Covered Products” also includes products that are manufactured, distributed, marketed
19 and/or sold by Harley-Davidson either under its own name or brand or under the name or
20 brand of another (e.g., privately labeled products).

21 1.5 For purposes of this Consent Judgment only, Harley-Davidson acknowledges
22 that: (a) it is a business that employs more than ten persons and manufactures, distributes
23 and/or sells Covered Products into the State of California; (b) the Covered Products contain
24 one or more Proposition 65 Chemicals; and (c) Proposition 65 Chemicals are chemicals
25 listed under Proposition 65 as being known to the State of California to cause cancer and/or
26 reproductive toxicity.

27 1.6 For purposes of this Consent Judgment only, the Parties stipulate that this
28 Court has jurisdiction over the allegations of violations contained in the Complaints and

1 personal jurisdiction over Harley-Davidson as to the acts alleged in the Complaints, that
2 venue is proper in the County of San Francisco and that this Court has jurisdiction to enter
3 this Consent Judgment as a full settlement and resolution of the allegations contained in the
4 Complaint and Notice Letters and of all claims which were or could have been raised by any
5 person or entity based in whole or in part, directly or indirectly, on the facts alleged therein,
6 arising therefrom or related thereto.

7 1.7 The Parties enter into this Consent Judgment pursuant to a full and final
8 settlement of any and all claims between the Parties for the purpose of avoiding prolonged
9 litigation. This Consent Judgment shall not constitute an admission with respect to any
10 material allegation of the Complaints, each and every allegation of which Harley-Davidson
11 denies; nor may this Consent Judgment or compliance with it be used as evidence of any
12 wrongdoing, misconduct, culpability or liability on the part of Harley-Davidson.
13 Harley-Davidson maintains that its Covered Products have at all times complied with all
14 applicable laws, including Proposition 65.

15 **2. SETTLEMENT PAYMENT**

16 2.1 In settlement of all of Plaintiff's claims referred to in this Consent Judgment
17 against Harley-Davidson:

18 (a) Within ten (10) days of entry by the court of this Consent Judgment,
19 Harley-Davidson shall pay Forty Thousand Dollars (\$40,000) to KELC. Payment shall be
20 made in immediately negotiable funds and sent to KELC, 424 First Street, Eureka, CA
21 95501. The payment set forth in this paragraph shall be made payable to "KELC". KELC
22 shall hold these funds in its trust account until entry of this Consent Judgment by the Court,
23 after which KELC shall distribute the payments as follows:

24 (i) Twenty Thousand Dollars (\$20,000) shall be paid to KELC for
25 attorneys fees and costs incurred by KELC on behalf of Plaintiff in investigating this matter
26 and negotiating this Consent Judgment on behalf of itself and the general public,

27 (ii) Ten Thousand Dollars (\$10,000) shall be paid to Californians for
28 Alternatives to Toxics, a California non-profit corporation; and Ten Thousand Dollars

1 (\$10,000) shall be paid to the Ecological Rights Foundation, also a California non-profit
2 corporation. These payments shall be sent care of William Verick, Klamath Environmental
3 Law Center, 424 First Street, Eureka, California, 95501. KELC shall forward these
4 payments to the respective non-profit organizations.

5 2.2 MEJF and KELC represent and warrant that each of the organizations
6 identified in Paragraph 2.1(a)(ii) above is a tax exempt, section 501(c)(3) non-profit
7 organization and that funds distributed to these organizations pursuant to this Consent
8 Judgment may only be spent to reduce harm from toxic chemicals, or to increase consumer,
9 worker and community awareness of health hazards posed by lead and other toxic
10 chemicals.

11 2.3 Except as specifically provided in this Consent Judgment, each side shall
12 bear its own costs and attorney's fees.

13 **3. ENTRY OF CONSENT JUDGMENT**

14 The Parties request that the Court promptly enter this Consent Judgment and waive their
15 respective rights to a hearing or trial on the allegations of the Complaint.

16 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

17 4.1 For purposes of Section 4 of this Consent Judgment, Harley-Davidson shall
18 include Harley-Davidson and its past, present and future parents, divisions, subdivisions,
19 brands, subsidiaries and affiliates and the predecessors, successors and assigns of any of
20 them as well as their past, present and future officers, directors, employees, agents,
21 attorneys, representatives, shareholders and assigns. For purposes of Section 4,
22 Harley-Davidson shall also be deemed to include its supplier of Covered Products, but only
23 with respect to those Covered Products that such supplier manufactures for
24 Harley-Davidson. The preceding sentence shall not apply with respect to a supplier who
25 ships Covered Products directly to a consumer at the request of Harley-Davidson, where a
26 warning is provided to address the obligations of this Consent Judgment solely pursuant to
27 Section 7.5(e) below. A list of the Covered Products in existence on or before the date of
28 the execution of this Consent Judgment is attached hereto as Exhibit C.

1 4.2 As to the Covered Products, Plaintiff, for itself, its past and current agents,
2 representatives, attorneys, successors and/or assignees and, and as to matters referenced in
3 the Notice Letter, acting on behalf of the public interest pursuant to Health and Safety Code
4 § 25249.7(d), hereby waives all rights to institute or participate in, directly or indirectly, any
5 form of legal action and releases and forever discharges any and all claims, including
6 without limitation, all actions, and causes of action, suits, liabilities, demands, obligations,
7 damages, costs, fines, penalties, losses or expenses (including, but not limited to,
8 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether
9 known or unknown, fixed or contingent (collectively "Claims"), against Harley-Davidson
10 and its customers, distributors, wholesalers, resellers, licensors, licensees, auctioneers,
11 retailers, purchasers and their respective officers, directors, attorneys, representatives,
12 shareholders, agents, and employees (collectively, "Releasees") arising from (a) any
13 violation of Proposition 65, or any other statutory, common law or other Claim, that was or
14 could have been asserted against any of the Releasees based on the facts alleged in the
15 Complaint, or facts similar to those alleged, and (b) any exposure to the Proposition 65
16 Chemicals associated with the use of Covered Products that was or could have been alleged
17 by Plaintiff against any of the Releasees; provided however, nothing in this section shall
18 preclude or limit Plaintiff from enforcing the terms of the Consent Judgment as provided
19 herein.

20 4.3 As to any Claims (except violations of this Consent Judgment) that may arise
21 or have arisen after the original date of entry of this Consent Judgment, compliance by
22 Harley-Davidson with the terms of this Consent Judgment shall be deemed to constitute its
23 full and complete compliance with Proposition 65 with respect to the provision of warnings
24 for chemicals contained in or otherwise associated with the use of Covered Products,
25 provided that the concentrations of those chemicals other than lead are materially similar to
26 those associated with the Covered Products with respect to Proposition 65 at the time this
27 Consent Judgment is entered.

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1 4.4 In furtherance of the foregoing, Plaintiff hereby waives any and all rights and
2 benefits which it now has, or in the future may have, conferred upon it by virtue of the
3 provisions of Section 1542 of the California Civil Code, which provides as follows:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
5 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
6 EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
7 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
8 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

9 Plaintiff understands and acknowledges that the significance and consequence of its waiver of
10 California Civil Code Section 1542 is that even if Plaintiff and/or, with respect to the matters
11 alleged in the Complaint, any person or entity on whose behalf they purport to act or could act,
12 suffers future damages or harm arising out of, resulting from, or related directly or indirectly to,
13 in whole or in part, the matters covered in Sections 4.2 and 4.3 above (“Damages”), Plaintiff and
14 any person or entity on whose behalf they purport to act or could act, will not be able to make
15 any claim for such Damages against any Releasee who may use, maintain, distribute or sell the
16 Covered Products. Furthermore, Plaintiff acknowledges that it intends these consequences for
17 any such Damages which may exist as of the date of this release but which Plaintiff does not
18 know exist, and which, if known, would materially affect its decision to enter into this Consent
19 Judgment, regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
20 negligence, or any other cause, no matter how justifiable such cause may be.

21 4.5 Harley-Davidson waives all rights to institute any form of legal action against
22 Plaintiff, its officers, directors, attorneys, consultants and representatives for any and all
23 actions taken or statements made (or those that could have been taken or made) by Plaintiff,
24 its officers, directors, attorneys, consultants or representatives in this action.

25 **5. ENFORCEMENT OF JUDGMENT**

26 5.1 The terms of this Consent Judgment shall be enforced exclusively by the
27 Parties hereto by means of noticed motion or order to show cause before the Superior Court
28 of San Francisco County.

1 **6. MODIFICATION OF JUDGMENT**

2 6.1 This Consent Judgment may be modified only upon written agreement of the
3 Parties and upon entry of a modified amended Consent Judgment by the Court, or upon
4 motion of any Party as provided by law and upon entry of a modified amended Consent
5 Judgment by the Court. Notwithstanding the immediately preceding sentence or any other
6 term or provision of this Consent Judgment, if Plaintiff or any affiliated entity, or the
7 California Attorney General, enters into, or agrees to in writing, or is otherwise bound by
8 injunctive relief terms or provisions relating to the provision of Proposition 65 warnings for
9 Covered Products, with regard to their Cords, which, taken together, are more favorable to
10 the defendant(s) than the terms or provisions that this Consent Judgment provide for a
11 Covered Product of like kind and characteristics with respect to its Cords and use, the terms
12 of injunctive relief provided for in Section 7 of this Consent Judgment shall automatically be
13 deemed to have been modified to add such more favorable terms or provisions as an option
14 which Harley-Davidson may elect for compliance with this Consent Judgment.

15 **7. INJUNCTIVE RELIEF**

16 7.1 Covered Products shall be deemed to comply with Proposition 65 and be
17 exempt from any Proposition 65 warning requirements if the Cords that are sold as a part of
18 or in association with those Covered Products meet the following criteria: (a) the surface
19 contact layer of the Cords shall have no lead as an intentionally added constituent; and
20 (b) the surface contact layer of the Cords shall have lead content by weight of no more than
21 0.03% (300 parts per million, or “300 ppm”). Harley-Davidson may comply with the above
22 requirements by relying on information obtained from its suppliers regarding the content of
23 the surface contact layer of the Cords, provided such reliance is in good faith. Obtaining test
24 results showing that the lead content is no more than 0.03%, using a method of sufficient
25 sensitivity to establish a limit of quantification (as distinguished from detection) of less than
26 300 ppm shall be deemed to establish good faith reliance. Provided that the level of
27 quantitation requirement set forth in the preceding sentence is met, the test protocol and
28 methods described on Exhibit D hereto may be relied on. Nothing in the preceding two

1 sentences shall preclude Harley-Davidson from establishing good faith reliance by an
2 alternative means.

3 7.2 Covered Products manufactured and shipped for distribution to or sale in
4 California on or after the Effective Date that do not meet the warning exemption standard set
5 forth in Section 7.1 of this Consent Judgment and are not exempt pursuant to Section 7.3
6 shall be accompanied by a warning as described in Section 7.4 below. For purposes of this
7 Section, 90 days after the entry of this Consent Judgment shall be considered the “Effective
8 Date.”

9 7.3 The following Covered Products are deemed to be exempt from any
10 Proposition 65 warning requirements with respect to Cords: (a) Covered Products which
11 because of their size, weight or function have Cords that are handled only infrequently (such
12 as upon their installation in a setting where they are not typically plugged and unplugged)
13 (“Infrequently Handled Products”); (b) those Covered Products that: (i) are sold at retail
14 before the Effective Date; or (ii) are distributed or shipped for sale outside the State of
15 California; (c) Covered Products that use Cords only as internal components not normally
16 accessible to the consumer during ordinary use; and/or (d) Covered Products which contain
17 the Proposition 65 Chemical only as part of the inner conductor or other component not
18 normally accessible to the consumer during ordinary use. Exhibit E contains a list of
19 Covered Product types that are deemed to meet the criteria for Infrequently Handled
20 Products set forth in this Section 7.3 and are therefore exempt.

21 7.4 Should the Covered Products require Proposition 65 warnings under
22 Section 7.2, Harley-Davidson shall, except as otherwise provided in Section 7.5 below,
23 provide or arrange to provide one of the warnings described below or any other Proposition
24 65 warning that has been reviewed and approved in writing by the California Attorney
25 General for use with Covered Products regarding their Cords:

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

4 or

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

8 or

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

12
13 The word “WARNING” shall be in all capital letters and in bold typeface. The hand-washing
14 admonition shall be in bold typeface and italicized. Inclusion of the bracketed words “cancer,
15 and” in the above warning shall be at Harley-Davidson’s option.

16 7.5 Unless otherwise indicated herein, the warning required or authorized in
17 Sections 7.4 shall be given by having it: (a) affixed to the Covered Product itself or to the
18 unit package of such Covered Product; (b) printed on the Covered Product itself or on the
19 unit package of such Covered Product; (c) displayed on an internet site for those units of
20 Covered Products sold on the internet; (d) included in the owner’s manual or an instruction
21 sheet (“Owner’s Manual”) if the conditions set forth in Section 7.9 below are satisfied
22 (“Owner’s Manual Warning”); or (e) printed on the invoice issued directly to the consumer
23 by Harley-Davidson to confirm the sale. The availability of the warning method provided in
24 subsection (e) of this paragraph shall be limited to circumstances in which Harley-Davidson
25 sells Covered Products directly to consumers by telephone, mail order, or internet sale, but
26 never has physical possession of the Covered Product or its packaging.

27 7.6 If the warning is printed on the product, package label, or invoice, then the
28 warning shall be contained in the same section of the label that contains other safety

1 warnings, if any, concerning the use of the Covered Product or near its displayed price
2 and/or UPC code. Such warning shall be prominently affixed to or printed on each such
3 Covered Product, its label or package or invoice, and displayed with such conspicuousness,
4 as compared with other words, statements, designs, or devices on such Covered Product, its
5 label, package or display or invoice as to render it likely to be read and understood by an
6 ordinary individual under customary conditions of purchase or use. With respect to the
7 preceding sentence, the type size of any warning required by paragraph 7.4 must be legible,
8 but otherwise need not be larger than any other warning language used in conjunction with
9 the Covered Product in question and its relative size may take into account the nature,
10 immediacy, and acuteness of the risks for which other warnings are given. If the size of a
11 Covered Product and its packaging is such that a warning required by this Consent Judgment
12 cannot physically be printed on its non-transparent portion in a legible size, the warning may
13 be printed on a separate piece of paper or cardstock and inserted into the Covered Product's
14 packaging, provided that i) the cardstock or paper containing the warning is not white or
15 uncolored and contains only the warning language, and ii) a substantial portion of the
16 exterior of the packaging material is transparent.

17 7.7 If a warning is provided on the internet pursuant to (c) above, the warning
18 message shall be displayed (or, upon the internet site user's identification as a California
19 resident, such as when the user types in a zip code, automatically appear) either: (a) on the
20 same page on which the Covered Product is displayed, (b) on the same page as the order
21 form for the Covered Product, or (c) on the same page as the price for the Covered Product.

22 7.8 If the warning is given in the Owner's Manual pursuant to Section 7.9 below,
23 it shall be located in one of the following places in the manual: the front side or face of the
24 Owner's Manual, the first page of the owner's manual, or in any section of the Owner's
25 Manual in which any other safety or precautionary warning or warnings are provided. The
26 warning shall be in a font that is no smaller than the font used for other safety warnings in
27 the Owner's Manual.
28

1 7.9 A warning in the Owner’s Manual of a Covered Product may be used to
2 satisfy the warning requirements of this Section 7 only under the following circumstances:
3 the Covered Product (i) may cause serious injury or bodily harm (other than by means of fire
4 or electrocution) unless used as directed; or (ii) is sophisticated, difficult to understand or
5 install, set-up, or assemble; or (iii) has one or more features a consumer must read about in
6 order to know how to program or use the Covered Product. However, a Covered Product
7 may not utilize an Owner’s Manual Warning if it meets the following criteria: (a) the
8 Covered Product is unlikely to cause serious injury or bodily harm other than by means of
9 fire or electrocution; (b) the Covered Product is easily assembled or programmed by an
10 ordinary consumer without need to reference instructions; and (c) fundamental operation of
11 the Covered Product is easily understood and commonly performed by an ordinary
12 consumer without training or need to reference operating instructions. Exhibit F contains a
13 list of Covered Product types for which Owner’s Manual Warnings are deemed to be an
14 allowable method of communicating the warnings required by this Section 7.

15 7.10 A Covered Product that utilizes other Covered Products as accessories
16 (“Parent Product”) may, in lieu of the warnings specified in Section 7.4 above, carry the
17 following warning language:

18 “WARNING: Handling the cord on this product or cords associated with accessories
19 sold for use with this product, will expose you to lead, a chemical known to the State
20 of California to cause [cancer, and] birth defects or other reproductive harm. *Wash*
21 *hands after handling.*”

22 Covered Products that serve as accessories to Parent Products (“Accessory Products”) shall be
23 deemed to be covered by means of the preceding warning appearing in a Parent Product’s
24 Owner’s Manual irrespective of whether the Accessory Products are sold separately from or
25 included with the Parent Products. Accessory Products include, but are not limited to, battery
26 charging harnesses.

27 7.11 The requirement for product labeling, set forth herein, is imposed pursuant to
28 the terms of this Consent Judgment. The Parties recognize that product labeling is not the

1 exclusive method of providing a warning under Proposition 65 and its implementing
2 regulations.

3 **8. ADDED INFREQUENTLY HANDLED PRODUCTS**

4 8.1 Exhibit E contains a list of Infrequently Handled Products that are deemed to
5 meet the criteria of Section 7.3(a) and, therefore, deemed to be exempt from Proposition 65
6 warning requirements.

7 8.2 If a Covered Product is not described in the categories identified in the
8 Exhibit E and Harley-Davidson believes that the Covered Product meets the criteria of
9 Section 7.3, at least 60 days prior to retail sale, Harley-Davidson shall provide to Plaintiff by
10 certified mail or other confirmable delivery, a list of those Covered Products which do not
11 exist as of the Effective Date for which Harley-Davidson contends are infrequently handled
12 products for which no warning is required. Plaintiff shall, within 60 days, notify
13 Harley-Davidson as to whether Plaintiff agrees that that the Covered Product is infrequently
14 handled and does not require a warning. In the event that Plaintiff determines that a warning
15 is required it shall provide a written explanation of the basis therefore. In the event that
16 Harley-Davidson disagrees with Plaintiff's determination Harley-Davidson may elect to
17 invoke the Dispute Resolution process provided for in Section 9 hereof.

18 **9. DISPUTE RESOLUTION**

19 9.1 Wherever this Consent Judgment provides that Harley-Davidson may invoke
20 the Dispute Resolution process or file a motion to have the Court resolve an issue,
21 Harley-Davidson shall first mail (by certified mail) and fax a notice to Plaintiff, setting forth
22 the dispute and the basis for the Party's position. The Parties interested in the dispute shall
23 then meet and confer in good faith within sixty (60) days to determine whether the dispute
24 may be resolved in order to avoid further litigation of the issue, unless both Parties waive, in
25 writing, notice and the opportunity to meet and confer. In the event that Plaintiff fails to
26 meet and confer within the sixty (60) day period, Harley-Davidson's position shall be
27 deemed to have prevailed. In the event that, after meeting and conferring, Plaintiff
28 disapproves or disagrees with a position taken by Harley-Davidson, Plaintiff shall notify

1 Harley-Davidson in writing, sent by an overnight delivery service requiring a signature upon
2 delivery, within 14 (fourteen) days of meeting and conferring. Should the Plaintiff do so and
3 should Harley-Davidson wish to pursue its position, Harley-Davidson shall then seek to
4 have the California Attorney General concur with Harley-Davidson's position. If the
5 California Attorney General concurs in writing with Harley-Davidson, Harley-Davidson
6 shall provide notice thereof to Plaintiff and Harley-Davidson's view shall prevail. If,
7 however, the California Attorney General does not concur with Harley-Davidson within
8 ninety (90) days of the date on which Harley-Davidson sought the California Attorney
9 General's concurrence, Harley-Davidson shall have the right to bring the issue to the Court
10 by noticed motion for its de novo review and, provided that it is proceeding in good faith,
11 shall not be subject to further penalties during the pendency of such motion and/or if the
12 motion is not contested by Plaintiff. In the event that the Plaintiff chooses to contest such a
13 motion and prevails, 1) Harley-Davidson shall be deemed to be in compliance with the terms
14 of this Consent Judgment provided that it implements the warning requirements imposed as
15 the result of the Court's determination within ninety (90) days that the Court's determination
16 is final; and 2) Plaintiff may elect to seek to recover its attorney fees incurred in association
17 with such motion as provided for by California Civil Procedure Code Section 1021.5.

18 **10. APPLICATION OF JUDGMENT**

19 The obligations of this Consent Judgment shall apply to and be binding upon all
20 plaintiffs, acting in the public interest pursuant to Health and Safety Code
21 section 25249.7(d) and Harley-Davidson and the successors or assigns of any of them.

22 **11. AUTHORITY TO STIPULATE**

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

26 **12. NOTICES**

27 Whenever a notice is called for by this Consent Judgment, it shall be provided to Harley-
28 Davidson at the addresses identified in Exhibit B hereto. If any Party desires to change the

1 individual and/or address designated to receive notice on its behalf, such Party shall provide
2 notice to the other Party pursuant to the terms of this Section.

3 **13. RETENTION OF JURISDICTION**

4 This Court shall retain jurisdiction of this matter to implement this Consent Judgment.

5 **14. ENTIRE AGREEMENT**

6 This Consent Judgment contains the sole and entire agreement and understanding of the
7 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
8 negotiations, commitments and understandings related hereto. No representations, oral or
9 otherwise, express or implied, other than those contained herein have been made by any Party
10 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
11 deemed to exist or to bind any of the Parties.

12 **15. GOVERNING LAW**

13 The validity, construction and performance of this Consent Judgment shall be governed
14 by the laws of the State of California, without reference to any conflicts of law provisions of
15 California law.

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1 **16. COURT APPROVAL**

2 If this Consent Judgment is not approved and entered by the Court, or if the entry of this
3 Consent Judgment is successfully challenged, this Consent Judgment shall be of no force or
4 effect, and cannot be used in any proceeding for any purpose.

5 **IT IS SO STIPULATED:**

<p>6 AGREED TO:</p> <p>7 Date: <u>6/27/07</u></p> <p>8 Print name: <u>William Verick</u></p> <p>9 By: <u>William Verick</u></p> <p>10 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION</p>	<p>6 AGREED TO:</p> <p>7 Date: <u>6/22/07</u></p> <p>8 Print name: <u>EDWARD KRISHOK</u></p> <p>9 By: <u>[Signature]</u></p> <p>10 HARLEY-DAVIDSON, INC.</p>
<p>11 APPROVED AS TO FORM:</p> <p>12 KLAMATH ENVIRONMENTAL LAW CENTER</p> <p>13 Date: <u>6/27/07</u></p> <p>14 By: <u>William Verick</u></p> <p>15 William Verick Attorney for Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION</p>	<p>11 APPROVED AS TO FORM:</p> <p>12 BINGHAM MCCUTCHEN LLP</p> <p>13 Date: <u>6/26/07</u></p> <p>14 By: <u>Trenton H. Norris</u></p> <p>15 Trenton H. Norris Attorneys for Defendant HARLEY-DAVIDSON, INC.</p>

16 **IT IS SO ORDERED.**

17 Dated: _____

18 _____
19 Judge of the Superior Court

EXHIBIT A
(Copy Of 60-Day Notice Letter)

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Klamath

October 19, 2006

EDWARD G. WEIL
DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 70550
OAKLAND CA 94612-0550

Greetings:

This office and the Mateel Environmental Justice Foundation ("Mateel") hereby give you notice that the companies on the attached service list have been, are and threaten to be in violation of Cal. Health & Safety Code § 25249.6. This office and Mateel 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 thermoset/thermoplastic-coated wires, cables, and/or cords/cord sets, including PVC-coated wires, cords/cord sets, plugs and connectors, and both SPT and HPN cords/cord sets (hereinafter collectively "Cords"). The listed companies market products with, or that are themselves, Cords. Some examples of the products that incorporate Cords are those listed in the attached Product List. Though 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(2ethylhexyl) 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 those 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. These 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 19, 2003 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 companies make outside of California, except as to workplaces the companies' themselves maintain in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off the property of the companies and in each of California's 58 counties.

Cordially,


William Verick

PRODUCTS LIST

SHIN FU COMPANY OF AMERICA, INC.

MVP RECHARGEABLE SPOTLIGHT 1.5M CANDLEPOWER #WL-316 UPC: 652597 193315 This product description pertains not only to the specific model of the product listed, but also for all units of all models of the same types of products.

PENZOIL-QUAKER STATE COMPANY

AXIUS AUTO EXPRESSIONS CLIP-ON FAN #83106 UPC: 019912 518886 This product description pertains not only to the specific model of the product listed, but also for all units of all models of the same types of products.

RICCAR AMERICA/TACONY CORPORATION

RICCAR MINI VACUUM #"GEM-R" UPC: 098612 500704 This product description pertains not only to the specific model of the product listed, but also for all units of all models of the same types of products.

HARLEY DAVIDSON

HARLEY DAVIDSON SUPERSMART BATTERY TENDER JUNIOR #94654-98 NO UPC This product description pertains not only to the specific model of the product listed, but also for all units of all models of the same types of products.

SERVICE LIST

EDWARD G. WEIL
DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY
GENERAL
P.O. BOX 70550
OAKLAND CA 94612-0550

OFFICE OF THE CITY ATTORNEY
CITY OF OAKLAND
505 14TH ST 12TH FLOOR
OAKLAND, CA 94612

OFFICE OF THE CITY ATTORNEY
CITY OF SAN FRANCISCO
CITY HALL ROOM 206
400 VAN NESS
SAN FRANCISCO, CA 94102

OFFICE OF THE CITY ATTORNEY
CITY OF SACRAMENTO
980 9th Street, 10th Floor
SACRAMENTO, CA 95814

OFFICE OF THE CITY ATTORNEY
CITY OF SAN JOSE
151 W. MISSION ST.
SAN JOSE, CA 95110

OFFICE OF THE CITY ATTORNEY
CITY OF LOS ANGELES
200 N. MAIN ST.
LOS ANGELES, CA 90012

OFFICE OF THE CITY ATTORNEY
CITY OF SAN DIEGO CONSUMER &
ENVIRONMENTAL PROTECTION
1200 THIRD AVENUE, SUITE 700
SAN DIEGO, CA 92101

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF ALAMEDA
1225 FALLON STREET ROOM 900
OAKLAND, CA 94612

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF ALPINE
P.O. BOX 248
MARKLEEVILLE, CA 96120

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF AMADOR
708 COURT STREET
JACKSON, CA 95642

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF BUTTE
25 COUNTY CENTER DR.
OROVILLE, CA 95965

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF CALA VERAS
GOVERNMENT CENTER
891 MOUNTAIN RANCH ROAD
SAN ANDREAS, CA 95249

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF COLUSA
547 MARKET STREET
COLUSA, CA 95932

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF CONTRA COSTA
P.O. BOX 670
MARTINEZ, CA 94553

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF DEL NORTE
450 H ST. #171
CRESCENT CITY, CA 95531

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF EL DORADO
515 MAIN ST.
PLACERVILLE, CA 95667

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF FRESNO
2220 TULARE ST #1000
FRESNO, CA 93721

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF GLENN
P.O. BOX 430
WILLOWS, CA 95988

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF HUMBOLDT
825 5TH ST.
EUREKA, CA 95501

COUNTY OF IMPERIAL
COURTHOUSE, FLOOR 2
939 W. MAIN ST
EL CENTRO, CA 92243

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF INYO
P.O. DRAWER D
INDEPENDENCE, CA 93526

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF KERN
1215 TRUXTUN AVE. FLOOR 4
BAKERSFIELD, CA 93301

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF KINGS
1400 W. LACEY BLVD.
HANFORD, CA 93230

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF LAKE
255 N. FORBES ST # 424
LAKEPORT, CA 95453

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF LASSEN
220 SOUTH LASSEN ST. STE 8
SUSANVILLE, CA 96130

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF LOS ANGELES
18000 CRIMINAL COURTS
BUILDING
210 W. TEMPLE ST.
LOS ANGELES, CA 90012

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MADERA
209 W. YOSEMITE AVE.
MADERA, CA 93637

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MARIN
HALL OF JUSTICE #183
SAN RAFAEL, CA 94903

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MARIPOSA
P.O. BOX 730
MARIPOSA, CA 95338

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MENDOCINO
PO BOX 1000
UKIAH, CA 95482

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MERCED
2222 M ST.
MERCED, CA 95340

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MODOC
P.O. BOX 1171
ALTURAS, CA 96101

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MONO
P.O. BOX 617
BRIDGEPORT, CA 93517

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MONTEREY
240 CHURCH STREET
P.O. BOX 1131
SALINAS, CA 93902

COUNTY OF NAPA
931 PARKWAY MALL
P.O. BOX 720
NAPA, CA 94559-0720

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF NEVADA
COURTHOUSE ANNEX
NEVADA CITY, CA 95959

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF ORANGE
401 CIVIC CENTER DR WEST
SANTA ANA, CA 92701

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF PLACER
11562 B AVE
AUBURN, CA 95603-2687

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF PLUMAS
520 MAIN STREET #404
QUINCY, CA 95971

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF RIVERSIDE
4075 MAIN ST.
RIVERSIDE, CA 92501

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SACRAMENTO
901 G STREET
SACRAMENTO, CA 95814

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN BENITO
419 4TH ST
HOLLISTER, CA 95023

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN BERNARDINO
316 MT. VIEW AVE.
SAN BERNARDINO, CA 92415-0004

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO
330 W. BROADWAY
SAN DIEGO, CA 92101

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN FRANCISCO
850 BRYANT ST #322
SAN FRANCISCO, CA 94103

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN JOAQUIN
222 E. WEBER AVE #202
STOCKTON, CA 95202

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN LUIS OBISPO
COUNTY GOVERNMENT CENTER #450
SAN LUIS OBISPO, CA 93408

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
REDWOOD CITY, CA 94063

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA BARBARA
1112 SANTA BARBARA ST.
SANTA BARBARA, CA 93101

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA CLARA
70 W. HEDDING ST.
SAN JOSE, CA 95110

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA CRUZ
701 OCEAN ST. #200
SANTA CRUZ, CA 95060

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SHASTA
1525 COURT ST.
REDDING, CA 96001

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SIERRA
P.O. BOX 457
DOWNEVILLE, CA 95936

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SISKIYOU
P.O. BOX 986
YREKA, CA 96097

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SOLANO
600 UNION AVE
FAIRFIELD, CA 94533

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SONOMA
600 ADMINISTRATION DR. #212J
SANTA ROSA, CA 95403

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF STANISLAUS
1100 I ST. #200
MODESTO, CA 95354

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SUTTER
1160 CIVIC CENTER BLVD. #A
YUBA CITY, CA 95993

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TEHAMA
P.O. BOX 519
REDBLUFF, CA 96080

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TRINITY
P.O. BOX 310
WEAVERVILLE, CA 96093

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TULARE
COURTHOUSE #224
VISALLA, CA 93291

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TUOLUMNE
2 S. GREEN ST.
SONORA, CA 95370

VENTURA COUNTY DISTRICT
ATTORNEY'S OFFICE
800 SOUTH VICTORIA AVE
VENTURA, CA 93009

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF YOLO
301 SECOND STREET
WOODLAND, CA 95695

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF YUBA
215 5TH ST.
MARYSVILLE, CA 95901

HARLEY-DAVIDSON, INC.
JAMES L ZIEMER, PRESIDENT
3700 WEST JUNEAU AVENUE
MILWAUKEE, WI 53208

PENNZOIL-QUAKER STATE COMPANY
DOUGLAS S BOYLE, CEO
910 LOUISIANA ST
HOUSTON, TX 77002

RICCAR AMERICA
CRAIG NEAL, PRESIDENT
1800 E WALNUT AVE
FULLERTON, CA 92831-4844

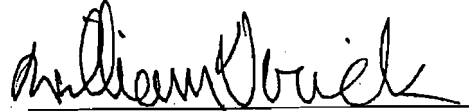
SHINN FU COMPANY OF AMERICA,
INC.
STEVEN HUANG, PRESIDENT
10939 N. POMONA AVE.
KANSAS CITY, MO 64153

TACONY CORPORATION
KENNETH J. TACONY, CEO
1760 GILSINN LN
FENTON, MO 63026

CERTIFICATE OF MERIT

I, William Verick, hereby declare: This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings. I am the attorney for the noticing 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 plaintiffs' 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(h)(2), i.e., (1) the identity of the person(s) consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 19, 2006



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, 1997. 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 compliances 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, Nicole Frank, declare:

If called, I could and would testify as follows: I am over eighteen. My business address is 424 First Street, Eureka, California, 95501. October 19, 2006 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, 2006, at Eureka, California.



Nicole Frank

1 EXHIBIT B
2 (Address For Notice Under Consent Judgment)

3
4 HARLEY DAVIDSON, INC.

5 Enrique T. Breceda
6 Corporate Counsel
7 Harley-Davidson Motor Company
8 3700 West Juneau Avenue
9 Milwaukee, WI 53208
10 United States of America

11 With a copy to:

12 Trenton H. Norris
13 Bingham McCutchen LLP
14 3 Embarcadero Center
15 San Francisco, CA 94111
16 Tel: 415-393-2062
17 Fax: 415-393-2286

18 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

19 William Verick
20 Klamath Environmental Law Center
21 424 First Street
22 Eureka, CA 95501
23 Tel: 707-268-8900
24 Fax: 707-268-8901
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1 EXHIBIT C
2 (Optional List of Certain Brand Names and Product Type)

3
4 A. Brand Names:

5 Harley-Davidson
6 Deltran

7 B: Product Types:

8 Motorcycle battery chargers, motorcycle battery tenders, and motorcycle battery accessories
9 that are themselves, or that incorporate, utilize, or have appended to them, Cords, including,
10 but not limited to:

- 11 • 5 Amp Global Battery Charger
- 12 • Global Battery Charger
- 13 • 5-Bank Automatic Supersmart® Battery Charger
- 14 • 10-Bank Automatic Supersmart® Battery Charger
- 15 • Battery Charging Harness
- 16 • SuperSmart® Battery Tender®
- 17 • SuperSmart® Battery Tender® Junior
- 18 • Electrical Accessory Adapter (used for the addition of multiple electrical accessories
19 to a main battery power circuit on motorcycles)
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EXHIBIT D
(Exemplar of Optional Testing Protocol)

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

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

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

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

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

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

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EXHIBIT E
(Infrequently Handled Covered Product types)

Electrical Accessory Adapters (used for the addition of multiple electrical accessories to a main battery power circuit on motorcycles)

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EXHIBIT F

(Covered Products Types For Which Warnings May Be Given In Owner's Manual)

- Battery chargers
- Battery charging harnesses
- Battery tenders