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Bridgestone Retail Operations, LLC

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF SAN FRANCISCO**

9 MATEEL ENVIRONMENTAL JUSTICE  
10 FOUNDATION,

11 Plaintiff,

12 v.

13 BIG O TIRES, LLC.; BRIDGESTONE  
AMERICAS, INC.; and BRIDGESTONE  
14 RETAIL OPERATIONS, LLC

15 Defendants.

**CASE NO. CGC-14-543233**

**CONSENT JUDGMENT AS TO  
DEFENDANT BRIDGESTONE  
RETAIL OPERATIONS, LLC**

17 **1. INTRODUCTION**

18 1.1 **The Parties.** This Consent Judgment is entered into by and between plaintiff  
19 Mateel Environmental Justice Foundation acting on behalf of the public interest (“Mateel”), on  
20 the one hand, and defendant Bridgestone Retail Operations, LLC (“BSRO”), on the other hand,  
21 with Mateel and BSRO collectively referred to as the “Parties” and each of them as a “Party.”  
22 Mateel is a non-profit organization, based in Eureka, California, and incorporated under the laws  
23 of the State of California. BSRO is a person doing business within the meaning of the Safe  
24 Drinking Water and Toxic Enforcement Act of 1986, Cal. Health & Safety Code §§ 25249.5 et  
25 seq. (“Proposition 65”).

26 1.2 **General Allegations.** Mateel alleges that BSRO distributes and/or markets, in the  
27 State of California, automotive batteries (including, without limitation, Interstate Brand  
28 Automotive Batteries), which Mateel alleges utilize terminals that contain lead and lead

1 compounds, and that such distribution and/or marketing has not been accompanied by clear and  
2 reasonable Proposition 65 warnings. Lead and lead compounds have been listed under  
3 Proposition 65 as chemicals known to the State of California to cause cancer since October 1,  
4 1992, and birth defects or other reproductive harm since February 27, 1987.

5       **1.3 Notices of Violation/Complaint.** On or about August 14, 2014, Mateel served  
6 BSRO, and various public enforcement agencies, with a document, pursuant to Cal. Health &  
7 Safety Code § 25249.7(d), alleging that BSRO was and is in violation of Proposition 65 for  
8 failing to warn consumers in California that battery terminals expose users in California to lead  
9 and lead compounds (the “Notice”). No public enforcer diligently prosecuted the claims  
10 threatened in the Notice within sixty days plus service time. Therefore, Mateel initiated this  
11 action by filing its complaint on December 16, 2014 (the “Complaint”).

12       **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court  
13 has jurisdiction over BSRO as to the allegations contained in the Complaint, that venue is proper  
14 in the County of San Francisco, and that this Court has jurisdiction to approve, enter, and enforce  
15 this Consent Judgment as a full and final binding resolution of all claims which were or could  
16 have been asserted in the Complaint based on the facts or conduct alleged therein and/or in the  
17 Notice.

18       **1.5** Mateel and BSRO enter into this Consent Judgment as a full and final settlement  
19 of all claims which were or could have been asserted in the Complaint arising out of the facts or  
20 conduct alleged therein and/or in the Notice. BSRO denies the material allegations contained in  
21 the Notice and Complaint and maintains that it has not violated Proposition 65. Nothing in this  
22 Consent Judgment shall be construed as an admission by BSRO of any fact, finding, issue of law,  
23 conclusion of law, or violation of law; nor shall compliance with this Consent Judgment  
24 constitute or be construed as an admission by BSRO of any fact, finding, conclusion of law, issue  
25 of law, or violation of law, such being specifically denied by BSRO. However, this section shall  
26 not diminish or otherwise affect the obligations, responsibilities, and duties of BSRO under this  
27 Consent Judgment. Nothing in this Consent Judgment shall prejudice, waive or impair any right,  
28 remedy, argument or defense the Parties may have in any other pending or future legal

1 proceedings. This Consent Judgment is the product of negotiation and compromise and is  
2 accepted by the Parties solely for purposes of settling, compromising, and resolving issues  
3 disputed in the Complaint. This Consent Judgment shall not be used for any other purpose or in  
4 any other manner.

5 **2. DEFINITIONS**

6 2.1 “Complaint” and “Notice” shall have the meanings given in Section 1.3.

7 2.2 “Covered Product(s)” means automotive batteries, including without limitation  
8 Interstate Brand Automotive Batteries, manufactured, distributed or sold by or on behalf of  
9 BSRO.

10 2.3 “Effective Date” means the date this Consent Judgment is entered as a Judgment  
11 of the Court.

12 2.4 “Listed Chemicals” means lead and lead compounds.

13 **3. INJUNCTIVE RELIEF: PROVIDE WARNINGS**

14 3.1 Covered Products shall be accompanied by a warning as required by Section 3 of  
15 the Consent Judgment entered by and between the Parties on December 15, 1999 (*Mateel Envtl.*  
16 *Justice Found. v. A&A Mfg. Co., Inc. et al.*, Case No. 308295) (the “1999 Consent Judgment”).  
17 BSRO is a “Covered Retailer” under the terms of the 1999 Consent Judgment. The relevant  
18 provisions of the 1999 Consent Judgment, which include Section 3.3, Section 3.5 and the exhibits  
19 referenced by those sections, are attached to this Consent Judgment as Exhibit 1, and are  
20 incorporated by reference herein.

21 3.2 The warning requirements set forth in Section 3.1 shall only apply to Covered  
22 Products manufactured by or on behalf of, or distributed or sold by, BSRO in California on or  
23 after the Effective Date.

24 3.3 The requirements for warnings set forth in Section 3.1 are imposed pursuant to the  
25 terms of this Consent Judgment. The Parties recognize that these are not the exclusive methods  
26 of providing a warning under Proposition 65 and its implementing regulations and that they may  
27 or may not be appropriate in other circumstances.

28 3.4 In the event that Proposition 65 warnings for lead or lead compounds should no

1 longer be required, either by statutory or regulatory amendments or court order, BSRO shall have  
2 no further warning obligations pursuant to this Consent Judgment, and shall provide written  
3 notice to Mateel of its intent to cease providing the warnings required under this Consent  
4 Judgment.

5 **4. MONETARY TERMS**

6 4.1 **Civil Penalty.** BSRO shall pay a civil penalty of two thousand dollars (\$2,000) to  
7 the Office of Environmental Health Hazard Assessment pursuant to Cal. Health & Safety Code §  
8 25249.7(b). Mateel waives any portion of the civil penalty that would normally be remitted to  
9 Mateel, as provided by Cal. Health & Safety Code §§ 25249.12(c) and 25249.12(d).

10 4.2 **Attorney Fees and Costs.** BSRO shall pay and will not oppose an application  
11 made by Mateel's counsel for an award of attorney fees, inclusive of all expenses and costs  
12 incurred as a result of investigating, bringing this matter to BSRO's attention, litigating,  
13 negotiating and obtaining judicial approval of a settlement in the public interest, in an amount of  
14 forty thousand dollars (\$40,000). In addition, as payment in lieu of additional attorneys fees and  
15 costs that Mateel may have recovered had it filed a motion for attorney fees and costs pursuant to  
16 Cal. Code of Civil Procedure § 1021.5, BSRO shall pay thirteen thousand dollars (\$13,000) to the  
17 Ecological Rights Foundation and five thousand dollars (\$5,000) to Californians for Alternatives  
18 to Toxics. Other than the payments required herein, each side is to bear its own attorney's fees  
19 and costs (including but not limited to expert and consultant fees, if any).

20 4.3 At least five business days prior to the hearing date scheduled for approval of this  
21 Consent Judgment, BSRO shall forward the settlement payments scheduled under Sections 4.1  
22 and 4.2 to its outside counsel, Jones Day. These payments shall be made in the form of checks  
23 made out to the entities and in the respective amounts specified in Sections 4.1 and 4.2. Upon  
24 receiving the settlement payments from BSRO, Jones Day shall provide e-mail confirmation to  
25 Mateel's counsel, William Verick, at wverick@igc.org, that it has received the settlement  
26 payments. Within five business days of the Effective Date, Jones Day shall forward the  
27 settlement payments by overnight mail to William Verick, Klamath Environmental Law Center,  
28 424 First Street, Eureka, CA 95501.

1 **5. ENFORCEMENT OF JUDGMENT**

2 5.1 In the event that, at any time following ninety (90) days after the Effective Date,  
3 Mateel and/or its attorneys, agents, assigns, or any other person acting in the public interest under  
4 Cal. Health & Safety Code § 25249.7(d) identifies one or more sale(s) to customers in the State of  
5 California for which the warnings for Covered Products required under Section 3 are not being or  
6 were not given (hereinafter the “Alleged Default(s)”), Mateel or such person shall notify BSRO in  
7 writing of such alleged default(s) (the “Probationary Notice of Default”). The Probationary  
8 Notice of Default shall be sent by first class mail, with proof of service, to the person(s) identified  
9 in Section 14 to receive notices for BSRO, and must be served within fifteen (15) days of the date  
10 the Alleged Default(s) was or were observed. The Probationary Notice of Default shall, at a  
11 minimum, set forth the date(s) the Alleged Default(s) was observed, identify the location of the  
12 sale in question, and include both a description of the Covered Product(s) giving rise to the  
13 Alleged Default(s) and a description of the Alleged Default(s) with sufficient detail to allow  
14 BSRO to determine the basis of the claim being asserted. The Probationary Notice of Default  
15 may also provide some other form of documentary evidence specifically in support of the  
16 allegation that the warnings required by Section 3 have not been given. Such Probationary Notice  
17 of Default shall allege all defaults that could have been raised as of the date of the Probationary  
18 Notice of Default.

19 5.2 In the event that BSRO corrects the Alleged Default(s) at the retail store from  
20 which the Alleged Default arose, and at all other retail stores in California that sell Covered  
21 Products distributed and/or marketed by BSRO, within sixty (60) days of receiving the  
22 Probationary Notice of Default, Mateel or the notifying person shall take no further enforcement  
23 action with respect to such default(s) and shall not recover any damages, or compensation,  
24 including (without limitation) any penalties, attorney fees or costs. In the event that BSRO fails  
25 to correct such Alleged Default(s) within sixty (60) days following the Probationary Notice of  
26 Default from Mateel or the notifying person, Mateel may issue a Notice of Violation to enforce  
27 this Consent Judgment or initiate a new lawsuit against BSRO.

28 5.3 In the event that, after the sixty (60) day period provided for in Section 5.2, Mateel

1 or the notifying person identifies one or more defaults of the same type as that contained in a  
2 Probationary Notice of Default previously served under Section 5.1, Mateel may issue a Notice of  
3 Violation to enforce this Consent Judgment or initiate a new lawsuit against BSRO, without need  
4 for any further notice or opportunity to correct being provided to BSRO.

5 5.4 In the event that two (2) years elapse from the time that Mateel serves BSRO with  
6 a Probationary Notice of Default under Section 5.1, during which time BSRO does not commit an  
7 additional default, the process set forth in Sections 5.1 through 5.3 shall begin anew. In the event  
8 that BSRO defaults within two (2) years after service of a Probationary Notice of Default, Mateel  
9 may, in response to that and any subsequent default(s), issue a Notice of Violation or initiate a  
10 new lawsuit under Section 5.3.

11 5.5 In the event that BSRO wishes to contest the allegations contained in any  
12 Probationary Notice of Default, it shall notify Mateel or the notifying person of such within thirty  
13 (30) days of its receipt of the Notice of Default. BSRO may provide any documentary evidence  
14 to Mateel or the notifying person in support of its position. In the event that, upon a good faith  
15 review of the evidence, Mateel or the notifying person agrees with BSRO's position, it shall take  
16 no further action hereunder and not be entitled to nor seek any recovery, damages, or  
17 compensation, including (without limitation) any penalties, attorney fees or costs. In the event  
18 that BSRO provides documentary evidence, and Mateel or the notifying person disagrees with  
19 BSRO's position, it shall, within thirty (30) days, notify BSRO of such and provide BSRO, in  
20 writing, with the reasons for its disagreement. Thereafter, the parties shall meet and confer to  
21 attempt to resolve their dispute on mutually acceptable terms; if no such resolution results (a)  
22 Mateel may by motion or order to show cause before the Superior Court of San Francisco, seek to  
23 enforce the terms and conditions contained in this Consent Judgment, or (b) Mateel or the  
24 notifying person may initiate an enforcement action for new violations pursuant to Cal. Health &  
25 Safety Code § 25249.7(d).

26 5.6 The terms of this Consent Judgment are enforceable by and among the Parties or,  
27 with respect to the injunctive relief provided for herein, by the California Attorney General.  
28 Enforcement of the injunctive relief provided for in Section 3 by Mateel or any other notifying

1 person shall be exclusively pursuant to the terms of this Section 5; the California Attorney  
2 General's enforcement of the injunctive relief provided for in Section 3 shall not be limited by  
3 this Section 5.

4 **6. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

5 6.1 This Consent Judgment is a full, final, and binding resolution between Mateel  
6 acting in the public interest, and BSRO, Bridgestone Americas, Inc., and their respective parent  
7 companies, officers, directors, shareholders, divisions, subdivisions, subsidiaries, partners, sister  
8 companies, affiliates, employees, agents, and their respective successors and assigns ("Defendant  
9 Releasees"), and all persons and entities from whom they obtain and/or to whom they directly or  
10 indirectly distribute or sell Covered Products, including but not limited to manufacturers,  
11 suppliers, distributors, wholesalers, customers, licensors, licensees, retailers, franchisees,  
12 cooperative members, and all other entities in the distribution chain down to the consumers of any  
13 Covered Products, and their respective successors and assigns (collectively referred to as  
14 "Downstream Defendant Releasees"), of all claims for alleged violation of Proposition 65 that  
15 have been or could have been asserted regarding any alleged exposure to Listed Chemicals in any  
16 Covered Products manufactured, distributed or sold by or on behalf of BSRO before the Effective  
17 Date (hereinafter, the "Released Claims"). Mateel, acting in the public interest, releases, waives  
18 and forever discharges Defendant Releasees and Downstream Defendant Releasees from the  
19 Released Claims. Compliance with the terms of this Consent Judgment constitutes compliance  
20 with Proposition 65 with regard to the Covered Products.

21 6.2 In addition to the foregoing, Mateel, on behalf of itself, its past and current agents,  
22 representatives, attorneys, and successors and assigns, and *not* in its representative capacity,  
23 hereby releases, waives and forever discharges Defendant Releasees and Downstream Defendant  
24 Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits,  
25 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,  
26 expenses, and attorney's fees, of any nature whatsoever, known or unknown, in law or equity,  
27 fixed or contingent, now or in the future, with respect to any alleged exposure to Listed  
28 Chemicals in any Covered Products manufactured, distributed or sold by or on behalf of BSRO

1 before the Effective Date. Mateel, on behalf of itself, its past and current agents, representatives,  
2 attorneys, and successors and assigns, also shall not institute or participate in, directly or  
3 indirectly, any form of legal action against Defendant Releasees or Downstream Defendant  
4 Releasees with regard to the claims released and waived in this Section 6.2, unless such action is  
5 to enforce this Consent Judgment. With respect to the foregoing waivers and releases in this  
6 Section 6.2, Mateel hereby specifically waives any and all rights and benefits which it now has, or  
7 in the future may have, conferred by virtue of the provisions of Cal. Civil Code § 1542, which  
8 provides as follows:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
10 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE  
11 TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE  
12 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

13 6.3 BSRO hereby releases, waives and forever discharges Mateel, its attorneys and  
14 other representatives from any and all manner of actions, causes of action, claims, demands,  
15 rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges,  
16 losses, costs, expenses, and attorney's fees, of any nature whatsoever, known or unknown, in law  
17 or equity, fixed or contingent, now or in the future, with respect to any and all actions taken or  
18 statements made by Mateel and its attorneys and other representatives in the course of  
19 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
20 and/or with respect to Covered Products.

## 21 **7. INTEGRATION**

22 7.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
23 any and all prior negotiations and understandings related hereto shall be deemed to have been  
24 merged within it. No representations or terms of agreement other than those contained herein  
25 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

## 26 **8. GOVERNING LAW**

27 8.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
28 California and apply within the State of California.



1 **9. COMPLIANCE WITH CAL. HEALTH & SAFETY CODE § 25249.7(f); COURT**  
2 **APPROVAL**

3 9.1 Mateel shall comply with the requirements set forth in Cal. Health & Safety Code  
4 § 25249.7(f) and promptly bring a Motion for Approval and Entry of this Consent Judgment.  
5 BSRO shall support approval of such Motion.

6 9.2 This Consent Judgment shall not be effective until it is approved and entered by  
7 the Court and shall be null and void if, for any reason, it is not approved and entered by the Court.

8 9.3 Both Parties shall support fully entry of this Consent Judgment and shall waive  
9 any right to appeal if entered. If the Court approves and enters this Consent Judgment, but such  
10 order is reversed or vacated by an appellate court, the Parties shall meet and confer as to whether  
11 to modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of  
12 action to take, this action shall proceed on its normal course on the trial court's calendar.

13 **10. RETENTION OF JURISDICTION**

14 10.1 This Court shall retain jurisdiction of this matter to implement, modify and enforce  
15 this Consent Judgment.

16 **11. MODIFICATION; CONSTRUCTION; SEVERABILITY**

17 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
18 and the approval of the Court, or upon the granting of a motion brought to the Court by either  
19 Party.

20 11.2 The terms and conditions of this Consent Judgment have been reviewed by the  
21 Parties' respective counsel, and each Party has had the opportunity to fully discuss the terms and  
22 conditions with its counsel. In any subsequent interpretation or construction of this Consent  
23 Judgment, the terms and conditions shall not be construed against any Party based on any role it  
24 or its counsel may have played in drafting this Consent Judgment.

25 **12. ATTORNEY'S FEES**

26 12.1 Except as provided in Section 12.2, a Party who unsuccessfully brings or contests  
27 an action arising out of this Consent Judgment shall be required to pay the prevailing party's  
28 reasonable attorney's fees and costs, unless the unsuccessful party has acted with substantial

1 justification. For purposes of this Consent Judgment, the term “substantial justification” shall  
2 carry the same meaning as used in the Civil Discovery Act of 1986, Cal. Code of Civil Procedure  
3 § 2016, et seq.

4 12.2 In the event that Mateel prevails in enforcement of this Consent Judgment or in a  
5 new lawsuit against BSRO, as provided in Section 5.3, Mateel shall be entitled to attorney’s fees  
6 to the extent authorized by Cal. Code of Civil Procedure § 1021.5.

7 12.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
8 pursuant to law with respect to any alleged violation of this Consent Judgment.

9 12.4 Except as explicitly provided herein, each Party is to bear its own attorney’s fees  
10 and costs.

11 **13. AUTHORIZATION**

12 13.1 The undersigned are authorized to execute this Consent Judgment on behalf of the  
13 Party they represent, and to legally bind that Party to all terms and conditions of this Consent  
14 Judgment. The undersigned have read, understood and agree to all of the terms and conditions of  
15 this Consent Judgment.

16 **14. NOTICES**

17 14.1 Unless specified herein, all correspondence and notices required by this Consent  
18 Judgment shall be in writing and personally delivered or sent by: (i) first-class, registered or  
19 certified mail, return receipt requested; or (ii) overnight courier, to the following addresses:

20 For Bridgestone Retail Operations, LLC:

21 Environmental Manager  
22 Bridgestone Retail Operations, LLC  
333 E. Lake Street  
Bloomington, IL 60108

23 Senior Counsel, Environmental  
24 Bridgestone Retail Operations, LLC  
535 Marriott Drive  
25 Nashville, TN 37214

26 With a copy to:

27 Thomas M. Donnelly, Esq.  
28 Jones Day  
555 California Street, 26th Floor  
San Francisco, California 94104

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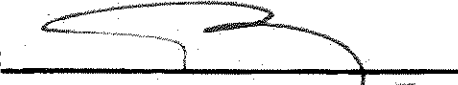
For Mateel Environmental Justice Foundation:  
William Verick, Esq.  
Klamath Environmental Law Center  
424 First Street  
Eureka, CA 95501

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

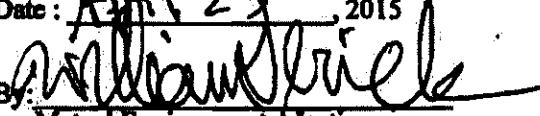

**15. COUNTERPARTS, FACSIMILE SIGNATURES**

15.1 This Consent Judgment may be executed in counterparts and by facsimile or portable document format (.pdf) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

1 **APPROVED AS TO FORM:**

2 Date: <u>April 23</u> , 2015	Date: <u>April 23</u> , 2015
3 By: <u></u>	By: <u></u>
4 On Behalf of Mateel Environmental Justice 5 Foundation 6 William Verick 7 Klamath Environmental Law Center	On Behalf of Bridgestone Retail Operations, 8 LLC 9 Thomas M. Donnelly 10 Jones Day

11 **IT IS HEREBY SO STIPULATED:**

12 Date: <u>April 23</u> , 2015	Date: <u>April 29</u> , 2015
13 By: <u></u> 14 Mateel Environmental Justice 15 Foundation	By: <u></u> 16 Bridgestone Retail Operations, LLC

17 **IT IS SO ORDERED:**

18 Date: \_\_\_\_\_

19 By: \_\_\_\_\_  
20 Judge of the San Francisco Superior Court

# **EXHIBIT 1**

1 WILLIAM VERICI JB# 140972  
2 KLAMATH ENVIRONMENTAL LAW CENTER  
3 424 FIRST STREET  
4 EUREKA, CA 95501  
5 TELEPHONE: (707) 268-8900

6 FREDRIC EVENSON CSB# 198059  
7 PUBLIC INTEREST LAWYERS GROUP  
8 2070 ALLSTON WAY, SUITE 300  
9 BERKELEY, CA 94712-3157  
10 TELEPHONE: (510) 647-1900

11 Attorneys for Plaintiff  
12 MATEEL ENVIRONMENTAL JUSTICE  
13 FOUNDATION

ENDORSED  
FILED  
San Francisco County Superior Court

DEC 15 1999

ALAN CARLSON, Clerk  
BY: MANUELITA ECHEVERRIA  
Deputy Clerk

**COPY**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

14 MATEEL ENVIRONMENTAL JUSTICE  
15 FOUNDATION,

Plaintiff,

v.

17 A&A MANUFACTURING COMPANY,  
18 INC. et al.,

Defendants.

No. 308295

~~PROPOSED~~ CONSENT  
JUDGMENT

Date: N/A  
Time: N/A  
Dept: 301  
Judge: Hon. David Garcia

Action Filed: June 24 1999  
Trial Date: None Set

**1. Introduction**

22 1.1 On or about February 2, 1999, MATEEL ENVIRONMENTAL  
23 JUSTICE FOUNDATION ("Mateel" or "Plaintiff") served, via certified mail, a  
24 notification to the California Attorney General, District and all City Attorneys  
25 throughout California, and certain private businesses pursuant to Health and  
26 Safety Code section 25249.7 (d) alleging that such businesses were in violation of  
27 California Health and Safety Code section 25249.6 because they, through the  
28

~~PROPOSED~~ CONSENT JUDGMENT

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3.3 Covered Products Sold for Replacement Use in Automobiles: By no later than one hundred and eighty (180) days after the date of service of notice of entry of this Consent Judgment by the Court ("Effective Date"), Covered Battery Manufacturers which manufacture Covered Products sold for replacement use in automobiles, or an entity, including, but not limited to a distributor acting on their

1 behalf, shall mail to the central purchasing office for retail stores, battery  
2 specialists, or others who sell such Covered Products to end users in California  
3 ("Retailers"), a letter containing the exact text or text that is not materially  
4 different in content or appearance than that shown in Exhibit C. A copy of this  
5 letter shall also be mailed to the office of the General Counsel for each Retailer,  
6 or, if no such office exists, to the Chief Operating Officer of the Retailer in  
7 question. A Covered Battery Manufacturer that has directly or through executing  
8 an agreement with an entity acting on their behalf, complied with the terms of this  
9 Paragraph and Paragraphs 3.3.1, 3.3.2, and 3.3.3 below in good faith, shall be  
10 deemed to have fulfilled its obligations under this Consent Judgment with respect  
11 to batteries sold for replacement use in automobiles and all related Battery  
12 Accessories and shall be released from liability arising from Proposition 65 claims  
13 concerning such Covered Products pursuant to Section 13 hereunder.

14           **3.3.1 Provision of Warnings Through Signs:** Covered Battery  
15 Manufacturers which manufacture Covered Products for replacement use in  
16 automobiles, or an entity including, but not limited to, a distributor acting on their  
17 behalf, shall by no later than one hundred and eighty (180) days after the Effective  
18 Date, mail to the central purchasing office for each of their Retailers in California  
19 at least twenty-five (25) copies, or such number as each Retailer subsequently  
20 requests, whichever is greater, of the sign contained in Exhibit D (hereinafter  
21 "Warning Sign"), printed on 65 pound cover stock. The Warning Sign shall be 8  
22 1/2" by 11" in size and shall have the exact content, form, and print style as  
23 Exhibit D.

24           **3.3.2 Provision of Warnings Through Shelf Stickers:** Covered Battery  
25 Manufacturers which manufacture Covered Products for replacement use in  
26 automobiles, or an entity including, but not limited to, a distributor acting on their  
27 behalf, shall, by no later than one hundred and eighty (180) days the Effective  
28 Date, mail to the central purchasing office for each of their Retailers in California



1 at least twenty-five (25) copies, or such number as each Retailer subsequently  
2 requests, whichever is greater, of a label ("Shelf Sticker) printed on adhesive-  
3 backed stock. Each Shelf Sticker shall be at least 1" by 3" in size and have the  
4 exact content as that set forth in Exhibit D.

5 3.3.3 Provision of Warnings Through Battery Replacement Guides:

6 By no later than their first regularly scheduled printing cycle for new models  
7 occurring one hundred and eighty (180) or more days after the Effective Date,  
8 Covered Battery Manufacturers which manufacture Covered Products for  
9 replacement use in automobiles, or an entity including, but not limited to, a  
10 distributor acting on their behalf, shall, at least annually, mail to the central  
11 purchasing office for each of their Retailers in California at least twenty-five (25)  
12 battery replacement guides, or such number as each Retailer subsequently  
13 requests, containing the same warning language as that specified in Exhibit D.  
14 Battery replacement guides are books provided by battery manufacturers to assist  
15 the selection of an appropriately-sized product for use in particular models. The  
16 warning may be printed in or affixed to the guide by means of an adhesive-backed  
17 sticker and must be placed either: 1) on the front cover of the battery replacement  
18 guide, or 2) on the footer of each page of the guide that contains listings of  
19 replacement models for particular vehicles. If placed on the cover of the guide,  
20 the applicable warning language shall appear in a type size and style that is at  
21 least as conspicuous as, but not necessarily any more prominent than, other  
22 warning information contained in the battery replacement guide. If placed on the  
23 footer, the applicable warning language shall appear in a type size and style that is  
24 consistent with other information placed in the footer.

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**3.5 Warnings for Occupational Exposures:**

**3.5.1 To address any occupational exposures that may arise from the use or handling of Covered Products in workplaces in California, Covered Battery Manufacturers, or an entity acting on their behalf, shall include the warning language specified in Exhibit D above in the Material Safety Data Sheet ("MSDS") pertaining to each Covered Product they manufacture. Covered Battery Manufacturers shall make available MSDSs containing the warning language required by this Paragraph within one hundred and eighty (180) days of the Effective Date. The warnings issued pursuant to this Paragraph shall be deemed to satisfy any obligation a Settling Defendant or purchaser of its Covered Products, including a Covered Vehicle Manufacturer or a Covered Retailer, may have to provide Proposition 65 warnings for occupational exposures associated with such a Covered Battery Manufacturer's Covered Products, provided that such Settling Defendant or purchaser otherwise complies with its other obligations, if any, to provide occupational warnings regarding Covered Products as may be required by California or federal occupational safety and health laws and regulations.**

1                   **3.5.2 Workplace Signs: A Covered Battery Manufacturer which**  
2 **manufactures Covered Products for replacement use in automobiles, or an entity**  
3 **including, but not limited to, a distributor acting on its behalf, shall, in**  
4 **conjunction with fulfilling its obligations under Paragraph 3.3 above, by no later**  
5 **than one hundred and eighty (180) days after the Effective Date, mail to the**  
6 **central purchasing office of each of their Retailers in California which provide**  
7 **battery installation services at least five (5) copies of workplace signs**  
8 **("Workplace Signs") designed to educate installers about minimizing their**  
9 **exposure to lead from the handling of batteries and related accessories. The**  
10 **Workplace Signs shall be at least 8-1/2" by 11" in size and shall have the same**  
11 **content or content that is not materially different than that shown in Exhibit E.**


12                   **3.5.3. A Covered Vehicle Manufacturer's compliance with the**  
13 **requirements of Paragraph 3.2 of this Consent Judgment shall be deemed to**  
14 **address any independent responsibility it may have for occupational exposures that**  
15 **may arise from the use or handling of Covered Products in Covered Vehicles in**  
16 **occupational settings other than its own workplaces, if any, in California.**

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1 This signature sheet applicable solely in conjunction with the Proposed  
 2 Consent Judgment in the litigation encaptioned, Mateel Environmental  
 3 Justice Foundation v. A & A Manufacturing Company, Inc., et al.,  
 4 No. 303601, Superior Court of the State of California, County of  
 5 San Francisco.

6 IT IS SO STIPULATED.

7 Dated: Nov. 18 '99

8   
 9 By: (Authorized Official)  
 10 NOBUO ARAKI

11 NISSAN NORTH AMERICA Inc.  
 12 For: (Name of Company/Party)

13 *Reviewed and approved*

14  
 15 *12/15/99* *William Gehl*  
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 17 *Judge of the*  
 18 *Superior Court*  
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**EXHIBIT D**

**Warning Sign**

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**Exhibit D**  
**WARNING SIGN**

**PROPOSITION 65**  
**WARNING**

Battery posts, terminals, and related accessories contain lead and lead compounds, chemicals known to the State of California to cause cancer and reproductive harm. Wash hands after handling.

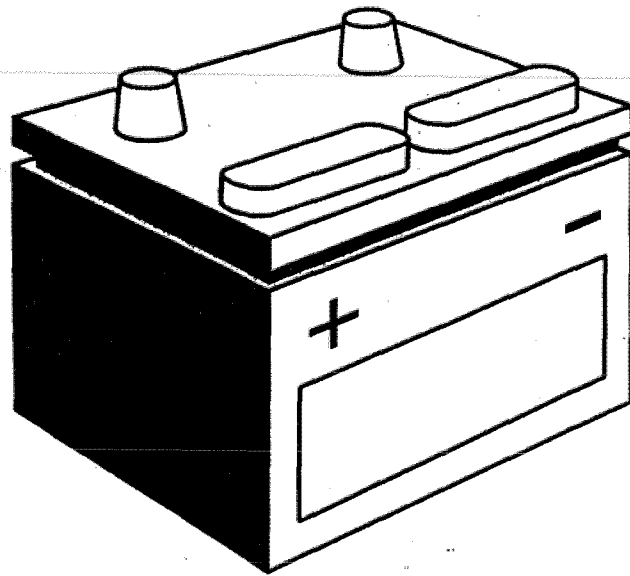
**Exhibit E**  
**Workplace Sign**

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# **BATTERIES**

## **AND RELATED PARTS**

### **CONTAIN LEAD**



# **WASH HANDS**

# **AFTER HANDLING!**

**WARNING:** Battery posts, terminals and related accessories contain lead and lead compounds, chemicals known to the State of California to cause cancer and reproductive harm.