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DRIVING INNOVATION®

GlobalAutomakers

April 8, 2015

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Sent Electronically to: P65Public.Comments@oehha.ca.gov

SUBJECT: “Clear and Reasonable Warning Regulations”

Dear Ms. Vela:

We are writing on behalf of the members of the Association of Global Automakers, Inc.¹ (Global Automakers) and the Alliance of Automobile Manufacturers² (Auto Alliance), which include nearly every company selling new vehicles in the United States (U.S.). Thank you for the opportunity to provide the following comments on the California Office of Environmental Health Hazard’s (OEHHA) proposed regulations for the Proposition 65 (Prop 65)³ warning requirements.⁴

We appreciate OEHHA’s openness and willingness to work with industry and other stakeholders throughout the regulatory and pre-regulatory stages of this rulemaking. We have seen many positive changes⁵ in the proposed regulations compared to the pre-regulatory draft that demonstrate that OEHHA has carefully considered the previously submitted comments. However, we remain concerned about issues identified in our previous comments (submitted June 13, 2014 and October 17, 2014) that have not been resolved.

In addition, while we welcome OEHHA’s latest effort, the revised draft raises new concerns. Although the revisions to the rule were intended to minimize lawsuits, provide more sufficient warnings to consumers, and generally improve the regulations, the proposed rule still falls short

¹ Global Automakers’ members are Aston Martin, Ferrari, Honda, Hyundai, Isuzu, Kia, Maserati, McLaren, Nissan, Subaru, Suzuki, and Toyota. Please visit www.globalautomakers.org for further information.

² Auto Alliance members are BMW Group, FCA US, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars North America, Toyota, Volkswagen Group of America, and Volvo Cars of North America. For additional information, please visit <http://www.autoalliance.org>.

³ Safe Drinking Water and Toxic Enforcement Act of 1986, Title 27, California Code of Regulations, Sections 25601-25607.

⁴ We also support the comments submitted by the California Chamber of Commerce on the “Clear and Reasonable Warning” and herein incorporate those comments by reference.

⁵ Changes since the last draft that we support include removal of the GHS pictogram and changing from “will expose” to “can expose.”

of this intent in many areas. In certain sections, the proposal is more confusing than the current rule. This lack of clarity may create more opportunities for lawsuits and does not achieve the purpose of streamlining consumer warnings. We discuss our concerns in detail below.

NEED FOR CHANGES TO VEHICLE-SPECIFIC REQUIREMENTS

§ 25608.16 Passenger Vehicle Exposure Warnings – Method of Transmission

We urge OEHHA not to require vehicle labels. The US Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) have worked hard to eliminate the multitude of vehicle environmental labels that were previously required, due to safety concerns from obstructed visibility (prior to label removal) and concerns about overloading customers with excessive information. OEHHA's current proposal runs counter to this effort.

To the best of our knowledge, the proposal to require new vehicle labels does not address nor identify any particular issue. Consumers recognize that new motor vehicle are highly complex products consisting of or containing many substances, including solids and liquids. Vehicles already include a "Smog Index Label" that was required by the California Air Resources Board (CARB) beginning with the 1998 model year and that provides information regarding vehicle emissions. Beginning with the 2013 model year, CARB harmonized its requirements with Federal agencies to accept a "Fuel Economy and Environment" label that presents the environmental information, including vehicle emissions, of most interest to purchasers of automobiles in a simplified fashion.

A window label provides point-of-purchase information; it is intended to be removed upon the purchase of the vehicle to allow for the full window visibility intended by the manufacturer. It is appropriate to limit the use of window labels to the display of information likely to be relevant to a consumer's purchase decision, i.e., to facilitate comparisons of Vehicle A and Vehicle B. Consumers are unlikely to digest and remember exposure information that a) is not unique to the vehicle they are purchasing, and b) was contained on a label long since removed from the vehicle. In contrast, the owner's manual is a reference guide that stays with the vehicle. In light of the above, we believe that maintaining a prominent Prop 65 warning in the owner's manual is the appropriate course of action, and that no additional vehicle labels should be required.

If, in spite of the above, OEHHA finalizes the proposal to require labels for vehicles, OEHHA should specify in §25608.16 (a)(2) that the warning labels provided on vehicles should be easily removable. OEHHA should also provide an option for that removable label to be either a temporary label or a hang tag that would be hung from the rear view mirror as suggested in our recommended language in Appendix A; a hang tag is also visible at point of sale to a label on the window and should be allowed.

Additionally, the passenger vehicle category should be expanded to include passenger vehicles, light-duty trucks, medium-duty trucks, and heavy-duty trucks, as discussed in detail below.

§ 25600.1 Definitions

The section for passenger vehicle in the regulations should be amended to make it clear that this section includes, in addition to passenger cars, light-duty trucks, medium-duty vehicles, heavy-

duty vehicles and vehicles as defined in California Vehicle Code Sections 465⁶ and 670⁷. This change would provide better consistency for product types that all have similar content and should therefore be treated the same under the Prop 65 warning requirements. Separate categories (passenger vehicle, diesel engine, products not classified under a category) could lead to different labels on different types of vehicles, thereby making it confusing for consumers and difficult for manufacturers to comply.

Need for a De Minimis Exemption

For the over 800 Prop 65 chemicals, only approximately 300⁸ have “safe harbor” levels and those safe harbor levels are expressed as exposure levels (NSRL (µg/day)), not percent-by-weight. Data, such as percent-by-weight would be more readily available for industry, including the automotive sector, based on existing data collection methods. This would simplify deciding when a label may need to be applied. We understand that OEHHA’s intent is for businesses to provide warning on chemicals that pose exposure risk, and not on all products containing a certain Prop 65-listed chemical.

However, since exposure information may not be readily available, manufacturers must resort to labeling products that may not pose a significant risk, thereby confusing consumers. A *de minimis* percent-by-weight level will help consumers distinguish between small or insignificant risks and significant risks that potentially pose a threat to human health and the environment. *De minimis* levels are commonly used by other regulatory bodies, including the European Union, various state chemical laws and the California Department of Toxic Substance Control. Moreover, weight percent data, such as a *de minimis* level, is more accurate than exposure levels. Exposure levels can vary due to a number of conditions (temperature, volume, whether there’s a route of exposure, distance from the chemical, velocity of gaseous stream, container, etc.). However, initial percent-by-weight of a chemical is controlled to meet specs, and is therefore more accurate.

The costs of not establishing *de minimis* levels for Prop 65 chemicals are unreasonably high for all involved in the process, including OEHHA, the regulated community and the public. Requiring warning labels for *de minimis* levels that pose little or no risk dilutes the intended impact of the warning labels. The additional cost of over-labeling does not result in an additional benefit to consumers. A practical and predictable *de minimis* exemption is essential, especially one that is already being used as an industry standard.

As noted in our comments on the pre-regulatory draft, the automotive industry uses the International Material Data System (IMDS) and accompanying Global Automotive Declarable Substance List (GADSL) to identify certain chemicals in vehicle components.⁹ In the absence of

⁶ “A ‘passenger vehicle’ is any motor vehicle, other than a motortruck, truck tractor, or a bus, as defined in Section 233, and used or maintained for the transportation of persons. The term ‘passenger vehicle’ shall include a housecar.” CA Vehicle Code Section 465.

⁷ “A ‘vehicle’ is a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.” CA Vehicle Code Section 670.

⁸ CA Title 27, Section 27505.

⁹ GADSL includes substances that are expected to be present in a material or part that remains in the vehicle or part at point of sale. The listings in GADSL are based on *de minimis* threshold levels routinely assigned at 0.1%.

a *de minimis* level, neither the IMDS nor the GADSL system would help us determine our duty to comply. We urge OEHHA to adopt *de minimis* levels for chemicals, applicable at the component level, to clarify and streamline the application of labels under Prop 65.

THE REGULATIONS MUST RECOGNIZE COURT-APPROVED SETTLEMENTS

While we understand that OEHHA's proposed regulations are intended to provide greater clarity and relevance to consumers, OEHHA must make clear that prior court-approved warnings will meet the "clear and reasonable" mandate. Any new warning requirements must be carefully designed to ensure that the agreements made in previous court-approved settlements can be met, without resulting in unnecessary duplication of requirements.

For instance, the December 15, 1999 consent judgment between Mateel Environmental Justice Foundation and A&A Manufacturing Company, Inc. et. al., ("*Mateel v. A&A*, 1999") designates specific language¹⁰, as well as specific locations where that language must be provided. This consent judgment is provided in Appendix B.

OEHHA's Initial Statement of Reason (ISOR) notes that regardless of the regulations, the terms of any court-approved settlement must be met. We agree, but we remain concerned that the terms of such settlement may result in longer than necessary and potentially duplicative warnings. For example, although the aforementioned settlement is focused on the exposure to lead from lead-acid batteries, it also requires general Prop 65 warnings in the introductory section of the owner's manual.

While the intent of the language proposed by OEHHA for vehicles may be in the spirit of the consent judgment, the language does not match the court-approved language, and therefore would result in the application of multiple warnings in the owner's manual to ensure both OEHHA's regulation and the settlement are met. At a minimum, we urge OEHHA to adopt language in the regulation that makes it clear that any court-approved settlements will meet the requirements for "clear and reasonable" warnings. It may also be helpful to provide a reference list of court-approved settlements at the end of the regulations. This would be helpful in informing parties of both the existence of such settlements and how and why certain warnings may differ from the proposed regulations.

Furthermore, to reduce duplication and length of the warnings, we also recommend that OEHHA adopt or incorporate specific language from the aforementioned court-approved settlement for use in the owner's manual; this request in no way would impact the additional point of sale label required by § 25608.16. We provide examples of such language in Appendix A. The suggested language includes:

- Using the court-approved settlement's font size of "in a type size and style that is at least as conspicuous as, but not necessarily any more prominent than, other text printed in the

¹⁰ "WARNING: This product contains or emits chemicals known to State of California to cause cancer and birth defects or other reproductive harm." *Mateel v. A&A*, 1999.

owner's manual" instead of specifying 12-point font, which may inadvertently require all other font size in the manual to be altered to meet the terms of the settlement.¹¹

- Specifying separate content for the owner's manual that includes the requirements from the settlement.
- Specifying, in accordance with the settlement, that the owner's manual statement would be printed within the introductory section of the owner's manual and under the heading "California Proposition 65 Warning."¹²
- Allowing three options for language in the introductory section of the owner's manual, which includes the two options from Section 3.2.1, as well as the proposed language on reducing exposure and visiting the website.

These changes would ensure compliance with both Prop 65 and the court-approved settlement. It would also in no way alter the additional settlement requirements related to lead-acid batteries; those requirements would still have to be met separately, according to the settlement, as would hopefully be made clear by the addition of general grandfathering language in the general requirements of the Prop 65 regulations. We also would recommend inclusion of a statement under § 25608.16 that notes additional warnings for lead-acid batteries are required by *Mateel v. A&A, 1999*.

As shown here, OEHHA's proposal creates unacceptable ambiguity, which will likely increase litigation. Without a clearly articulated grandfathering provision, OEHHA is virtually guaranteeing that enforcement actions will be filed challenging the adequacy of these prior warnings, even those that have been in place, and relied upon, for decades. Such a situation will defeat OEHHA's intent to reduce lawsuits associated with Prop 65.

NEED FOR INCREASED CLARITY

Precision in Chemical Nomenclature

We agree with OEHHA's statement in the ISOR that "including the more technical chemical names or all of the individual chemicals within a chemical class or mixture... could defeat the purpose of providing understandable and useful information... on the warning."¹³ Therefore, we also agree with using the simplified chemical name on the label. However, for purposes of the regulatory text, the chemicals that must be listed should be identified by technical names, including CAS numbers, as well as the chemical classes and mixtures.¹⁴ CAS numbers are currently provided for some, but not all Prop 65-listed chemicals (i.e. benzidine-based dyes, residual fuel oils, etc.). When dealing with a global supply chain, where chemical names do not necessarily translate, use of CAS numbers is necessary for the responsible party to determine whether the chemical is present and consequently requires a label, providing greater certainty and consistency to the regulated parties.

¹¹ *Mateel, 1999*, Section 3.2.

¹² *Mateel, 1999*, Section 3.2.1.

¹³ Clear and Reasonable Warning ISOR, page 14.

¹⁴ Because of the global nature of the automotive sector, many of our suppliers are located throughout the world. We rely on internationally accepted practices to communicate with them about chemicals present in the products they supply to us. For specific chemical issues, universal practice relies on exact CAS numbers. While we can provide them with generic names, generic uses and even trade names, the CAS Registry Number, is essential in determining if these chemicals are present.

It is equally important that OEHHA be precise when identifying a category of chemicals to be addressed. For example, OEHHA has indicated that phthalates are one of the 12 chemicals that must be individually identified on the proposed warning label. EPA has identified eight specific phthalates with ten individual CAS Numbers in its Design for the Environment (DfE) Alternatives to Phthalates Program. By simply listing “phthalates” in Article 6, Section 25602, there is a high degree of uncertainty as to what OEHHA intends, making compliance challenging. We recommend that OEHHA list the specific members of any listed category as well as the appropriate and exact CAS Numbers of any chemical subject to the Prop 65 warning requirements.

Therefore, we request that OEHHA ensure that the appropriate CAS Numbers are provided in the regulations (in addition to the Final Statement of Reasons) for each of the individual chemicals for purposes of identifying which chemicals would be required to be included on the label under a specified generic chemical name.

Need for Safe Harbor Language Clarity

In addition to the need to expressly provide that previous-agreed upon consent decrees will qualify for OEHHA’s safe harbor protection, additional clarity is required. It is our understanding that OEHHA’s intent with Article 6 is to provide guidance on how to provide safe harbor warnings. Per our discussions with OEHHA, warnings do not necessarily have to follow the prescriptive language in Article 6. Warnings can be provided in any manner, as long as they are “clear and reasonable” and can be defended as such. By following the specific safe harbor language and warning requirements in accordance with Article 6, we avoid risk of litigation. Proposed section 25601(a) should be clear that the safe harbor warnings established in Article 6 shall be deemed clear and reasonable as a *matter of law*.

The need for clarity does not stop there. OEHHA’s deletion of the regulatory definition of “clear and reasonable” from the proposed regulations has introduced ambiguity in cases where an entity chooses to provide warning language or methods that differ from Article 6. The current regulations¹⁵ define “clear and reasonable”¹⁶. This definition attaches meaning to the “clear and reasonable” requirement for warnings and provides guidance to businesses choosing to use non-safe harbor warnings. Because OEHHA has deleted this provision in the current proposal, businesses no longer have guidance as to what is “clear and reasonable” other than the new safe harbor warnings themselves. Enforcement actions will fill the vacuum created by this deletion, and for that reason alone OEHHA should refrain from deleting the current regulatory definition of “clear and reasonable.”

¹⁵ Title 27, California Code of Regulations, Section 25601.

¹⁶ § 25601 Clear and Reasonable Warnings: “Whenever a clear and reasonable warning is required under Section 25249.6 of the Act, the method employed to transmit the warning must be reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to the individual prior to exposure. The message must clearly communicate that the chemical in question is known to the state to cause cancer, or birth defects or other reproductive harm. Nothing in this section shall be construed to preclude a person from providing warnings other than those specified in this article that satisfy the requirements of this article, or to require that warnings be provided separately to each exposed individual.”

The effects of this ambiguity, including increased risk of litigation, are magnified by OEHHA's ISOR. Under the "Benefits" section of the ISOR, OEHHA states:

The regulatory proposal also provides more clarity to the warning requirements and more specificity regarding the minimum elements for providing a "clear and reasonable" warning for exposures that occur...

The reference to "minimum elements" can be interpreted to establish a floor for all Prop 65 warnings whereby all the elements of the Article 6 safe harbor warnings, including the symbol, the phrase "can expose," and the listing of the 12 specified chemicals must be used in order for a warning to be considered "clear and reasonable." This creates ambiguity about whether safe harbor can be provided by any other language or warning mechanism not specified in Article 6 – including language from previous settlement agreements. OEHHA should reinstate its previous definition for "clear and reasonable warnings."

§ 25602 Chemicals Included in the Text of a Warning

Section 25602 states "a warning meets the requirements of this Article if the name or names of the chemicals listed in this section are included in the text of the warning." There are no exceptions provided in §25602 for categorical warnings per Section 25608. We recommend including an exception because the warnings in 25608 require specific warning language that, in many cases, already includes specific chemicals from 25602. It is our understanding that OEHHA does not intend warnings per Section 25608 to include any chemicals other than those identified in the warning language in Section 25608. By not providing an exception for categories in Section 25608, Section 25602 is confusing by requiring information that is already considered in the warning language in Section 25608.

§ 25603 and 25604-Exemptions for Product Categories

Sections 25603(a) and 25604(a) state "unless otherwise specified in Section 25608," which indicates that if following 25608 for specific products, entities do not need to comply with warning requirements in Sections 25603 and 25604. This exemption is not clear; we request that OEHHA clarify it as "Persons providing a warning for a specific type of exposure per §25608 must comply with warning requirements in §25608 and are not required to comply with the provisions of §25603/§25604."

§ 25608 Specific Product, Chemical and Area Exposure Warnings

As noted earlier, we support the inclusion of specific product warnings, but it is important and necessary to clarify in §25608 that application of the specific product warning would be applied instead of the general warning in § 25603 and § 25604. As proposed, the regulations are silent on how the application of specific product warnings interacts with the general warning, which results in ambiguous language that could lead to additional lawsuits rather than helping to reduce litigation.

The ISOR states:

...warning from exposures from...passenger vehicles...are treated separately in subsections of 25608¹⁷;

¹⁷ Clear and Reasonable Warning, page 23.

Section 25604 sets out the requirements...other than products that are covered in Section 25608¹⁸; and

Section 25608 requires a person to provide a warning in a specific way and with specific content when a warning covering that exposure has been adopted by OEHHA¹⁹.

Based on this language, it appears that it was OEHHA's intent to indicate that meeting the requirements for specific product warnings would be deemed adequate for compliance with all provisions of the regulations. However, providing this intent in the ISOR alone is not adequate, and the regulations must be clear on this point in order to provide regulatory certainty and prevent unnecessary litigation.

In other words, by applying the specific warning requirement for a product, the general warning requirement is not necessary. We recommend adding the following language, shown in red and underlined, to § 25608:

§ 25608 Specific Product, Chemical and Area Exposure Warnings

(b) Unless otherwise specified, compliance with the warnings for specific types of exposures as required by § 25608 is deemed to meet the requirements for “clear and reasonable” warnings and would be applied in place of the general warnings requirements found in §25603 and 25604.

§ 25600 General – Implementation Date

We strongly support inclusion of lead-time prior to implementing the regulations, because any change to existing owner's manuals or labeling requires time for notification, redesign of materials (i.e. labels), and application of any changes. A model year approach is also necessary for these same reasons. The proposal provides for a two-year transition period before the new requirements become fully effective. We request an additional third year.

Another concern is regarding the ambiguity on how the regulations are applied and enforced in the interim period leading up to the effective date. OEHHA clearly states in the ISOR that in the interim two years, businesses can continue to use the “old” warning requirement.²⁰ Yet, OEHHA has decided to repeal its current warning requirements, which could have the effect of removing safe harbor from products and places that utilize warnings that are compliant with the previous warning requirements. OEHHA should clearly address this situation in order to provide regulatory certainty to the regulated parties.

¹⁸ Clear and Reasonable Warning, page 25.

¹⁹ Clear and Reasonable Warning, page 29.

²⁰ Clear and Reasonable Warning, page 5.

While we appreciate OEHHA's intent to keep the regulations clean and simple and reduce duplication, the need to ensure compliance and enforcement, without resulting in additional litigation, necessitates maintaining the current requirements until the new requirements are effective.

In addition to providing lead time prior to implementation, it is also necessary to provide clarification in the regulations that products manufactured prior to the implementation date would not be required to be relabeled. Relabeling would be cumbersome, overly burdensome and extremely costly. Products likely to be impacted would include those with long shelf life, such as vehicle replacement parts, which are often manufactured in large quantities at or toward the end of the production run of a vehicle to ensure the vehicle can be operated, serviced, and maintained throughout its lifetime. As a result, replacement parts can have long shelf lives. In addition, consumer automotive products sold by some of our members' aftermarket divisions also often have long shelf lives. These products should and would be labeled with today's Prop 65 warnings, if applicable, and therefore would not be without a label, but it is unnecessary to require relabeling of these products. We request that OEHHA specify in the regulations that products manufactured prior to the effective date of the regulation would not have to be relabeled, even if sold after the effective date of this regulation.

"Can Expose" Language

We would like to thank OEHHA for considering our previous comments regarding the phrase "will expose" when referring to chemicals. We appreciate that the current draft has been changed to "can expose," however, we would like to urge OEHHA to use the phrase "may expose." The word "may" better reflects the reality of risk, which is reflected in a combination of hazard PLUS exposure. This is an essential formula for evaluating environmental hazards that is not adequately expressed in the word "can." For instance, the fact that a chemical is present does not necessarily mean there is exposure. Therefore the term "may" is more appropriate for classifying potential exposure to chemicals. We recommend that OEHHA change "can expose" to "may expose" in all places in the proposal.

Economic Impact

The ISOR states that "the proposed regulations would not impose any significant costs because businesses are already subject to the warning requirements of Proposition 65."²¹ We are concerned that this statement oversimplifies and underestimates the cost of regulatory compliance. Any regulatory change requires businesses to analyze and assess their method of compliance, share and communicate any changes throughout the company, redesign materials (i.e. label and owner's manuals) to accommodate the changes, and implement the changes throughout the product line. Each of these steps takes significant time and resources that should be acknowledged.

For the passenger vehicle warning, there is a new requirement for a point of sale warning that may not have been previously used, in addition to revising existing owner's manuals. This could result in a new cost, both to design and apply, for an automotive manufacturer.

²¹ Clear and Reasonable Warnings ISOR, page 43.

In conclusion, we thank you for considering the arguments presented herein. Please do not hesitate to contact us with questions or if we may provide additional information. We look forward to working with OEHHA as it moves forward.

Sincerely,



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Appendix A – Recommended Changes to § 25608.16, and 25608.17

§ 25608.16 Passenger Vehicle Exposure Warnings – Method of Transmission

(a) A warning for exposures that occur during the operation, service and/or maintenance of a passenger vehicle, as defined in Vehicle Code section 465, meets the requirements of this Article if it is provided using one of the following methods and includes the elements required in Section 25608.17.

(1) The warning is printed in the owner’s manual for the specific passenger vehicle, printed in a type size and style that is at least as conspicuous as, but not necessarily any more prominent than, other text printed in the owner’s manual concerning the vehicle’s use, care and maintenance and related accessories (except for lead acid batteries, for which warnings are required as set forth in subsection (b) below) and no smaller than 12 point type within the introductory section of the owner’s manual and under the heading “California Proposition 65 Warning”, or affixed to the inside or outside the front or back cover of the manual or on the first page of the text; or

(2) The warning is provided on a label attached to the front window on the driver’s side of the vehicle or on a hang tag which is hung from the rear view mirror of the vehicle, or other prominent location if the vehicle does not have a rear view mirror. This warning would be provided as a point of sale warning and is in no way intended to be permanent label.

(b) Warnings specific to Lead-Acid Batteries are also required, as specified by the court approved settlement, *Mateel Environmental Justice Foundation v. A&A Manufacturing Company, Inc. et al.*, December 15, 1999.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.17 Passenger Vehicle Exposure Warnings – Content

(a) ~~The~~ The warning for exposures that occur during the operation, service and/or maintenance of a passenger vehicle required by Section 25608.17(a) meets the requirements of this Article if it is provided using all the following elements.

(1) The symbol required in Section 25604(a)(1).

(2) The word “**WARNING**” in all capital letters and bold print.

(3) Any one of the following warnings:

(i) **WARNING: This product contains or emits chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. “Operating, servicing and maintaining a passenger vehicle can may expose you to chemicals such as lead, phthalates, engine exhaust and**

~~carbon monoxide that are known to the State of California cause cancer and birth defects or other reproductive harm. [To minimize exposure, avoid breathing exhaust, service your vehicle in a well-vented area and wear gloves or wash your hands frequently when servicing your vehicle.] For more information go to: [www.P65Warnings.ca.gov/passenger vehicle](http://www.P65Warnings.ca.gov/passenger_vehicle).”~~

The bracketed text may, but is not required to, be used.

or

(ii) **WARNING:** Engine exhaust, some of its constituents, and certain vehicle components contain or emit chemicals known to State of California to cause cancer and birth defects or other reproductive harm. ~~“Operating, servicing and maintaining a passenger vehicle can may expose you to chemicals such as lead, phthalates, engine exhaust and carbon monoxide that are known to the State of California cause cancer and birth defects or other reproductive harm. [To minimize exposure, avoid breathing exhaust, service your vehicle in a well-vented area and wear gloves or wash your hands frequently when servicing your vehicle.] For more information go to: [www.P65Warnings.ca.gov/passenger vehicle](http://www.P65Warnings.ca.gov/passenger_vehicle).”~~

The bracketed text may, but is not required to, be used.

Or

(iii) **WARNING:** Operating, servicing and maintaining a passenger vehicle ~~can~~ may expose you to chemicals such as lead, phthalates, ~~engine exhaust~~ and carbon monoxide that are known to the State of California cause cancer and birth defects or other reproductive harm. [To minimize exposure, avoid breathing exhaust, service your vehicle in a well-vented area and wear gloves or wash your hands frequently when servicing your vehicle.] For more information go to: [www.P65Warnings.ca.gov/passenger vehicle](http://www.P65Warnings.ca.gov/passenger_vehicle).”

The bracketed language may, but is not required to, be used.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

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Deputy Clerk

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO

16 MATEEL ENVIRONMENTAL JUSTICE
17 FOUNDATION,

No. 308295

18 Plaintiff,

~~PROPOSED~~ CONSENT
JUDGMENT

v.

19 A&A MANUFACTURING COMPANY,
20 INC. et al.,

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

21 Defendants.

Action Filed: June 24 1999
Trial Date: None Set

22 **1. Introduction**

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

1 manufacturing, distribution, marketing and/or sale of certain lead-acid batteries
2 and battery accessories allegedly exposed residents of the State of California to
3 lead and lead compounds, lead acetate, lead phosphate, and lead subacetate
4 ("lead") without first providing those residents with clear and reasonable warnings
5 ("Notice Letter"). Mateel subsequently served several modified Notice Letters
6 covering additional claims and additional businesses. Copies of the Notice Letter,
7 and the Notice Letter as subsequently modified, are attached hereto as Exhibit A.

8 1.2 Delphi Automotive Systems, Corp., Douglas Battery Mfg. Co., East
9 Penn Mfg. Co., Inc., Exide Corp., GNB Technologies, Inc., Johnson Controls
10 Battery Group, Inc., Optima Batteries, Inc., Trojan Battery Co., U.S. Battery Mfg.,
11 Co. (including its affiliates A&A Mfg. Co., Inc. and White Van Battery Co., Inc.),
12 C&D Technologies, Inc., Ramcar Batteries, Inc., Concorde Interspace Battery
13 Corp., Power-Sonic Corp., YUASA, Inc., Teledyne Continental Motors Battery
14 Products Operations, and Voltmaster Company, Inc. are among the businesses that
15 were named in and received the Notice Letter and/or subsequent modifications
16 thereof, and are herein referred to as "Covered Battery Manufacturers." American
17 Honda Motor, Inc., BMW of North America, Inc., DaimlerChrysler Corp., Ferrari
18 S.p.A., Ford Motor Co., General Motors, Corp., Hyundai Motor America,
19 American Isuzu Motors, Inc., Mazda Motor of America, Inc., Mercedes-Benz
20 U.S.A., Inc., New United Motor Mfg., Inc., Nissan Motor Mfg. Corp., U.S.A.,
21 Nissan North America, Inc., Porsche Cars North America, Inc., Subaru of America,
22 Inc., Subaru-Isuzu Automotive, Inc., Toyota Motor Mfg. North America, Inc.,
23 Toyota Motor Sales, U.S.A., Inc., Volkswagen of America, Inc., Volvo Cars of
24 North America, Inc. are also among the businesses that were named in and
25 received the Notice Letter and/or subsequent modifications thereof, and are herein
26 referred to as "Covered Vehicle Manufacturers." Further, AutoZone, Inc., Midas
27 International Corp., Unocal, CSK Auto Corp., Sears, Roebuck and Co.,
28 Bridgestone/Firestone, Interstate Battery System of America, Inc., are also among

1 the businesses that were named in and received the Notice Letter and/or
2 subsequent modifications thereof, and are herein referred to as "Covered
3 Retailers." The Covered Battery Manufacturers, the Covered Vehicle
4 Manufacturers, and the Covered Retailers are hereinafter collectively referred to
5 as the "the Settling Defendants." Mateel and the Settling Defendants are
6 collectively referred to as the "Parties."

7 1.3 On December 3, 1999, Mateel, acting in the public interest pursuant to
8 Health and Safety Code section 25249.7(d) and on behalf of the general public
9 pursuant to Business and Professions Code section 17204, filed a complaint in the
10 San Francisco County Superior Court containing Proposition 65 and Unfair
11 Competition Act claims against certain of the Settling Defendants based on the
12 allegations contained in the Notice Letter ("Complaint"). A copy of the Complaint
13 is attached hereto as Exhibit B.

14 1.4 For the purpose of avoiding protracted litigation, the Parties hereto
15 have exchanged information concerning the claims asserted and factual matters
16 alleged in the Notice Letter as subsequently modified and the Complaint, including
17 consumer, occupational and environmental exposures, and now enter into this
18 Consent Judgment as a full and final settlement of all claims that were raised or
19 which could have been raised in the Complaint based on the facts alleged therein
20 or in the Notice Letter as modified.

21 1.5 Nothing in this Consent Judgment shall be construed as an admission
22 by any Party of any fact or issue of law, nor shall compliance with the Consent
23 Judgment constitute or be construed as an admission by any party of any fact or
24 issue of law. Nothing in the Consent Judgment shall prejudice, waive or impair
25 any right, remedy or defense the Settling Defendants may have in any other or
26 future legal proceedings. However, this Paragraph shall not diminish or otherwise
27 affect the obligations, responsibilities and duties of the parties under this Consent
28 Judgment.

1 **2. Jurisdiction**

2 2.1 For purposes of this Consent Judgment only, the Parties agree that:

3 2.2 The Court has jurisdiction over the allegations of violations contained
4 in the Complaint and personal jurisdiction over each of the Settling Defendants.

5 2.3 The Court is the proper venue for resolution of this Action.

6 2.4 The Court has jurisdiction to enter this Consent Judgment as a full and
7 final judgment, resolving the claims which were or could have been raised in the
8 Complaint based on the facts alleged therein or in the Notice Letter as modified.

9 **3. Injunctive Relief: Clear and Reasonable Warnings**

10 3.1 Proposition 65 warnings shall be provided in the manner set forth in
11 Paragraphs 3.2 through 3.5 below in conjunction with the sale in California of any
12 "Covered Products" as defined herein. For purposes of this Agreement, the term
13 "Covered Products" shall mean any and all lead-acid batteries, and/or Battery
14 Accessories which contain lead or lead compounds, and which are manufactured,
15 sold, and/or distributed by a Settling Defendant for consumer or occupational use
16 in California. Covered Products shall include, but are not limited to, Covered
17 Products of the type used in "Covered Vehicles" as that term is defined below,
18 uninterrupted power sources or "UPS" systems, telecommunications and power
19 utility systems, and other similar standby power or other industrial applications.
20 The term "Battery Accessories" shall include, without limitation, any and all
21 battery terminals, posts, cables, cable clamps and other accessories related to
22 batteries. The term "Covered Vehicles" shall include automobiles, trucks,
23 motorcycles, boats and similar marine applications, aircraft, golfcarts, forklifts
24 and similar industrial motor vehicles, recreational vehicles, and solar energy
25 systems containing Covered Products.

26 3.2 Warnings for Covered Products Sold in Covered Vehicles: Covered
27 Vehicle Manufacturers which manufacture or distribute Covered Vehicles for sale
28 in California shall, in conjunction with the next regularly scheduled cycle for

1 revising the layout and arranging for the reprinting of the owner's manual for
2 each such Covered Vehicle, include, in the revision of each such owner's manual,
3 either: a) a system of warnings in the manner specified in Paragraphs 3.2.1 and
4 3.2.2 below, or b) the warning specified in Paragraph 3.2.3 below in the manner
5 specified in Paragraph 3.2.3 below; if neither of these options is employed, a
6 Covered Vehicle Manufacturer shall alternatively arrange for the provision of a
7 warning as specified in Paragraph 3.6 below. If a Covered Vehicle Manufacturer
8 chooses to execute its warning obligations under this Paragraph by means of
9 publishing a system of warnings or warning in the owner's manual for Covered
10 Vehicles as specified in Paragraphs 3.2.1 and 3.2.2 or in Paragraph 3.2.3 below,
11 such warnings or warning shall be printed in a type size and style that is at least
12 as conspicuous as, but not necessarily any more prominent than, other text printed
13 in the owner's manual concerning the use, care, and maintenance of batteries and
14 related accessories.

15 3.2.1. If a Covered Vehicle Manufacturer wishes to implement its
16 warning obligations under this Consent Judgment by means of implementing a
17 system of warnings, it shall, in addition to publishing the battery-specific warning
18 statement specified in Paragraph 3.2.2 below, include either of the following two
19 Proposition 65 warning statements in the introductory section of the owner's
20 manual under the heading "California Proposition 65 Warning":

21 1. **WARNING:** This product contains or emits chemicals
22 known to State of California to cause cancer and birth
23 defects or other reproductive harm.

24 or

25 2. **WARNING:** Engine Exhaust, some of its constituents, and
26 certain vehicle components contain or emit chemicals known
27 to State of California to cause cancer and birth defects or
28 other reproductive harm.

1 3.2.2. If a Covered Vehicle Manufacturer wishes to implement its
2 warning obligations under this Consent Judgment by means of implementing a
3 system of warnings, it shall, in addition to publishing one of the Proposition 65
4 warning statements as required by Paragraph 3.2.1 above, include the following
5 statement either in the section of the owner's manual that relates to the care and
6 maintenance of batteries, or, if information relating to the care and maintenance of
7 batteries is contained in a separate brochure given to the owner of the Covered
8 Vehicle, in such brochure:

9 **WARNING: Battery posts, terminals and related accessories**
10 **contain lead and lead compounds. Wash hands after handling.**

11 If no owner's manual section or brochure specifically related to the care and
12 maintenance of batteries exists for a particular Covered Vehicle, the warning
13 required by this Paragraph shall be placed in a section of the owner's manual
14 where other generally applicable warning information is provided.

15 3.2.3 As an alternative to using the system of warnings specified in
16 Paragraphs 3.2.1 and 3.2.2 above, a Covered Vehicle Manufacturer shall, include
17 the following statement either in the section of the owner's manual that relates to
18 the care and maintenance of batteries, or, if information relating to the care and
19 maintenance of batteries is contained in a separate brochure given to the owner of
20 the Covered Vehicle, in such brochure:

21 **WARNING: Battery posts, terminals and related accessories**
22 **contain lead and lead compounds, chemicals known to the**
23 **State of California to cause cancer and reproductive harm.**
24 **Wash hands after handling.**

25 3.3 Covered Products Sold for Replacement Use in Automobiles: By no
26 later than one hundred and eighty (180) days after the date of service of notice of
27 entry of this Consent Judgment by the Court ("Effective Date"), Covered Battery
28 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 Judgment by complying with either: a) the requirements of Paragraphs 3.3 through
2 3.3.3 above, or b) by placing the warning language specified in Exhibit D on the
3 top or on any side (other than the bottom) of any non-automotive battery they
4 manufacture or on the exterior of its package or wrapping if it is sold in such. In
5 the latter event, the applicable warning language shall be printed in a type size
6 and style that is at least as conspicuous as, but not necessarily any more prominent
7 than, other instructional or warning text and information printed on the battery or
8 its package or wrapping. The warnings issued with batteries pursuant to this
9 Paragraph shall also be deemed to satisfy any obligation a Settling Defendant may
10 have to provide Proposition 65 warnings for Covered Products which are Battery
11 Accessories.

12 3.5 Warnings for Occupational Exposures:

13 3.5.1 To address any occupational exposures that may arise from the
14 use or handling of Covered Products in workplaces in California, Covered Battery
15 Manufacturers, or an entity acting on their behalf, shall include the warning
16 language specified in Exhibit D above in the Material Safety Data Sheet ("MSDS")
17 pertaining to each Covered Product they manufacture. Covered Battery
18 Manufacturers shall make available MSDSs containing the warning language
19 required by this Paragraph within one hundred and eighty (180) days of the
20 Effective Date. The warnings issued pursuant to this Paragraph shall be deemed to
21 satisfy any obligation a Settling Defendant or purchaser of its Covered Products,
22 including a Covered Vehicle Manufacturer or a Covered Retailer, may have to
23 provide Proposition 65 warnings for occupational exposures associated with such a
24 Covered Battery Manufacturer's Covered Products, provided that such Settling
25 Defendant or purchaser otherwise complies with its other obligations, if any, to
26 provide occupational warnings regarding Covered Products as may be required by
27 California or federal occupational safety and health laws and regulations.

28

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.

17 3.6 A Settling Defendant, or any other entity to which the release in this
18 Consent Judgment applies, that wishes to employ a warning method other than that
19 specified in Paragraphs 3.2 through 3.5 above to address alleged exposures of
20 residents of the State of California to lead and lead compounds, lead acetate, lead
21 phosphate, and lead subacetate (“lead”) from lead-acid batteries and battery
22 accessories may do so either by: a) within the time periods provided in
23 Paragraphs 3.2 through 3.5 above (as respectively applicable to those Settling
24 Defendants on whom the warning obligation falls), placing, or arranging to have
25 placed, the warning language specified in Exhibit D on the top or on any side
26 (other than the bottom) of any battery they manufacture, distribute and/or sell,
27 including a battery sold in a Covered Vehicle, provided that the applicable
28 warning language shall be printed in a type size and style that is at least as

1 conspicuous as, but not necessarily any more prominent than, other instructional
2 or warning text and information printed on the battery or its package or wrapping,
3 or b) obtaining the advanced written consent of the California Attorney General's
4 Office concerning another alternative warning, in which event, the Settling
5 Defendant shall provide a copy of such consent to all Parties in accordance with
6 the notice provision set forth in Section 16 of this Consent Judgment. Warnings
7 issued with batteries pursuant to this Paragraph shall also be deemed to satisfy any
8 obligation to provide Proposition 65 warnings for Covered Products which are
9 Battery Accessories

10 **4. Duties Limited to California**

11 4.1 The warning requirements contained in this Consent Judgment shall
12 have no effect on Covered Products sold by Settling Defendants for use outside of
13 the State of California or Covered Vehicles sold to individuals or dealerships
14 outside of the State of California.

15 **5. Statutory Penalty Payment**

16 5.1 Covered Battery Manufacturers, or an entity acting on their behalf,
17 shall within forty-five (45) days after entry of this Consent Judgment, collectively
18 pay the sum of \$25,000 in statutory penalties pursuant to Health and Safety Code
19 Section 25249.7(b).

20 5.2 Seventy-five (75) percent of the funds required by Paragraph 5.1 shall
21 be paid to the California Attorney General pursuant to Health and Safety Code
22 Sections 25192(a)(1) and (3).

23 5.3 The remaining twenty-five (25) percent of the funds required by
24 Paragraph 5.1 shall be paid to Mateel Environmental Justice Foundation pursuant
25 to Health and Safety Code Sections 25192(a)(2).

26 **6. Restitutionary Relief/Cy Pres Remedy**

27 6.1 Covered Battery Manufacturers, or an entity acting on their behalf,
28 shall, within seventy-five (75) days of entry of this Consent Judgment,

1 collectively provide the following to Mateel Environmental Justice Foundation: a)
2 one check for \$62,500 to the "Ecological Rights Foundation, b) one check for
3 \$62,500 to "Californians for Alternatives to Toxics," and c) one check for
4 \$100,000 to non-profit charitable entities to be named by Mateel within sixty (60)
5 days of entry of this Consent Judgment. Mateel shall direct such checks to their
6 recipient organizations within thirty (30) days of their receipt.

7 6.1.1 The final \$100,000 payment required by Paragraph 6.1 above
8 will be waived if Covered Battery Manufacturers, or an entity acting on their
9 behalf, distribute a camera-ready story concerning battery safety, including
10 practical means of minimizing exposure to lead from the handling of batteries and
11 related accessories (i.e., by washing hands) to a list of regional and local
12 newspapers located in California. The text of the camera-ready story and list of
13 newspapers to which the story will be distributed are attached hereto as Exhibit F.

14 **7. Attorneys' Fees**

15 7.1 Within forty-five (45) days after entry of this Consent Judgment,
16 Covered Battery Manufacturers, or an entity acting on their behalf, shall
17 collectively pay the sum of \$250,000 to Klamath Environmental Law Center as
18 reimbursement for Plaintiff's investigative and experts' costs and attorneys' fees.
19 Except as specifically provided in this Consent Judgment, each side shall bear its
20 own costs and attorneys' fees.

21 **8. Modification of Consent Judgment**

22 8.1 This Consent Judgment may be modified by written stipulation of the
23 Plaintiff and the Settling Defendant(s) to whom the modification applies and upon
24 entry of a modified Consent Judgment by the Court thereon, or upon motion of the
25 Plaintiff, the Attorney General, or any Settling Defendant as provided by law and
26 upon entry of a modified Consent Judgment by the Court. The California Attorney
27 General's office shall be served with a copy of any stipulation or motion of the
28 Parties brought before the Court pursuant to this Paragraph.

1 **9. Enforcement of Consent Judgment**

2 9.1 The Plaintiff or the California Attorney General may, by motion or
3 order to show cause before the Superior Court of San Francisco, enforce the terms
4 and conditions contained in this Consent Judgment.

5 **10. Application of Consent Judgment**

6 10.1 The obligations of this Consent Judgment as specified herein shall, as
7 applicable, apply to the Settling Defendants and the successors or assigns of any
8 of them. In the event that Proposition 65 is repealed, declared unconstitutional, or
9 found to be preempted by federal law with respect to its application to the Settling
10 Defendants' and/or their competitors' or either of their Covered Products; Settling
11 Defendants shall have no further obligations pursuant to Paragraphs 3.2 through
12 3.6 of this Consent Judgment.

13 10.2 This Consent Judgment shall apply to and be binding upon plaintiffs,
14 acting in the public interest pursuant to Health and Safety Code section 25249.7(d)
15 and on behalf of the general public pursuant to Business and Professions Code
16 section 17204, and the Settling Defendants and the privies, successors, or assigns
17 of any of them. The terms of this Consent Judgment were submitted to and
18 discussed with the California Attorney General's office prior to the entry of this
19 Consent Judgment by the Court. The final terms of this Consent Judgment reflect
20 various modifications of prior drafts made to address comments provided to the
21 parties by the Attorney General's office. A copy of this final version of the
22 Consent Judgment has been served on the Attorney General's office together with
23 advanced notice of the parties' intent to present it to the Court for entry as a final
24 judgment.

25 **11. Retention of Jurisdiction**

26 11.1 This Court shall retain jurisdiction of this matter to implement the
27 terms of this Consent Judgment.

28

1 **12. Authority to Stipulate to Consent Judgment**

2 12.1 Each signatory to this Consent Judgment certifies that he or she is
3 fully authorized by the Party he or she represents to stipulate to this Consent
4 Judgment and to enter into and execute the Consent Judgment on behalf of the
5 Party represented and legally to bind that Party. Upon execution of this Consent
6 Judgment by all Parties, Plaintiff and/or the Settling Defendants shall serve a copy
7 of it, together with all of its exhibits, on the California Attorney General along
8 with a notification of when the Parties intend to request that the Court enter this
9 [Proposed] Consent Judgment as a final judgment of the Court. A copy of a
10 certificate of service attesting to service of this [proposed] Consent Judgment on
11 the California Attorney General shall be attached to the [proposed] Consent
12 Judgment submitted to the Court for entry.

13 **13. Claims Covered**

14 13.1 This Consent Judgment is a final and binding resolution between the
15 plaintiffs, acting in the public interest pursuant to Health and Safety Code section
16 25249.7(d) and on behalf of the general public pursuant to Business and
17 Professions Code section 17204, and each Settling Defendant and their respective
18 parents, subsidiaries, affiliates, employees, agents, distributors, dealers, retailers,
19 and/or customers, and the successors and assigns of any of them, of any violation
20 that could have been asserted against any of them based on their alleged failure to
21 provide clear, reasonable, and lawful warnings pursuant to Proposition 65 of
22 consumer, occupational, or environmental exposures to lead and lead compounds,
23 lead acetate, lead phosphate, and lead subacetate ("lead") contained in or
24 otherwise associated with Covered Products manufactured, distributed and/or sold
25 by the Settling Defendants, including the Covered Battery Manufacturers, the
26 Covered Vehicle Manufacturers, and/or the Covered Retailers named herein.

27 13.2 Compliance with the terms of this Consent Judgment resolves any
28 issue, now or in the future, concerning compliance by any Settling Defendant, its

1 parent, subsidiaries, affiliates, divisions, subdivisions, brands, employees, agents,
2 distributors, dealers, retailers, and/or customers, and the successors and assigns of
3 any of them, concerning the requirements of Proposition 65 and the Unfair
4 Competition Act with respect to any consumer, occupational, or environmental
5 exposures associated with lead and lead compounds, lead acetate, lead phosphate,
6 and lead subacetate ("lead") contained in or otherwise associated with Covered
7 Products manufactured, distributed, or sold by the Settling Defendants, including
8 the Covered Battery Manufacturers, the Covered Vehicle Manufacturers, and/or the
9 Covered Retailers named herein. The release of future liability provided for by
10 this Paragraph shall not apply (1) to any Retailer or distributor of Covered
11 Products sold for replacement use in automobiles that fails to make and fails to
12 continue to employ its best efforts to provide Proposition 65 warnings to its
13 customers of such products using at least one of the following types of warnings
14 delineated in Paragraphs 3.3.1, 3.3.2, and 3.3.3 above within sixty (60) days of
15 receiving such warnings (*i.e.*, unless warnings for such products are otherwise
16 provided pursuant to Paragraph 3.6 above) ; and, 2) to any Settling Defendant or
17 purchaser of its Covered Product that fails to comply with its obligations, if any,
18 to provide other occupational warnings regarding Covered Products as may be
19 required by California or federal occupational safety and health laws and
20 regulations, provided, however, that, in this event, the release of liability provided
21 for by this Paragraph shall continue to apply with respect to such entity's
22 Proposition 65 warning obligations.

23 **14. Entire Agreement**

24 14.1 The agreement reflected in this Consent Judgment contains the entire
25 understanding regarding the subject matter of this Consent Judgment and
26 supercedes all prior understandings and agreements, whether oral or in writing,
27 regarding the subject matter of this Consent Judgment.
28

1 **15. Use of Documents**

2 15.1 Unless otherwise required by subpoena or court order, the Plaintiff
3 shall not use or disseminate any documents that any Settling Defendant has
4 provided to it in the course of this Action or in the course of settlement
5 discussions conducted prior to or during the course of this Action. Plaintiff shall
6 advise a Settling Defendant of its receipt of any subpoena or court order requiring
7 it to produce documents it has received from the Settling Defendant within a
8 reasonable time in advance of their required production date so as to allow the
9 Settling Defendant an opportunity to attempt to obtain a protective order
10 concerning the production and/or further dissemination of such information.

11 **16. Provision of Notice**

12 16.1 When any Party is entitled to receive any notice or report under this
13 Consent Judgment, the notice or report shall be sent by U.S. mail or overnight
14 courier service to all of the persons and addresses set forth in Exhibit G. Any
15 Party may modify the person and address to whom notice is to be sent by sending
16 each other Party notice in accordance with this Paragraph.

17 **17. Individual Obligations**

18 17.1 Except as otherwise provided herein, the obligations of the Settling
19 Defendants pursuant to this Consent Judgment are individual to each of them and
20 are in no way collective or joint. No Settling Defendant shall be held responsible
21 for the failure of any other Settling Defendant to comply with the terms hereof.

22 **18. Choice of Law**

23 18.1 This Consent Judgment shall be governed by and construed under the
24 laws of the State of California.

25 **19. Effective Date**

26 19.1 Except as otherwise specified in Paragraph 19.2 below, this Consent
27 Judgment shall become effective when it is entered as a final judgment by the
28 Court and shall be of no force or effect if it is not so entered.

1 19.2 Those aspects of Section 13 of this Consent Judgment which concern
2 alleged Proposition 65 violations not identified in the Notice Letters issued more
3 than seventy (70) days prior to the date on which this Consent Judgment is entered
4 as a final judgment by the Court shall become effective on the seventy-first (71st)
5 day after the date of the most recently-issued Notice Letter contained in Exhibit A
6 hereto provided that no public prosecutor specified in section 25249.7(c) of the
7 Health and Safety Code institutes an action against the Settling Defendants
8 concerning such claims in the interim.

9 **20. Court Approval**

10 20.1 If this Consent Judgment is not approved by the Court, it shall, at the
11 Settling Defendants' sole option, be of no force or effect and cannot be used in
12 any proceeding for any purpose.

13 **21. Execution by Facsimile and/or in Counterparts**

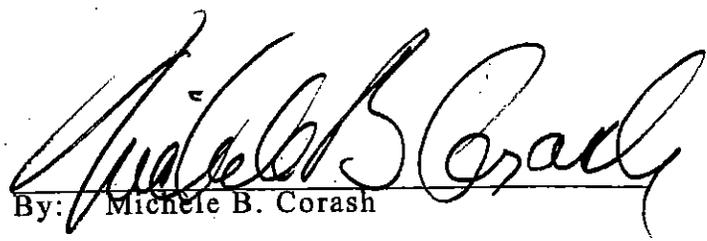
14 21.1 The stipulations to this Consent Judgment may be executed together
15 or in counterparts and/or by facsimile, which taken together shall be deemed to
16 constitute one document.

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APPROVED TO FORM:

DATE: 12/7/99


By: Michele B. Corash

Counsel to Defendants

DATE: 12/8/99


By: William Verick

By: Fredric Evenson

Counsel to Plaintiff, Mateel Environmental
Justice Foundation

NOV 09 1999 17:52 FR (ANCE

2023265567 TO 91313 41071 P.23/28

IT IS SO STIPULATED:

DATE: 11-29-99


By: (signature of authorized official)

General Motors Corporation
For: (name of company/party)

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Excerpt
Exhibit A

October 22, 1998

Craig C. Thompson
Supervising Deputy Attorney General
California Department of Justice
1300 "T" Street
P.O. Box 94255
Sacramento, CA 95814

Dear Mr. Thompson:

This office and the Mateel Environmental Justice Foundation ("Mateel") give you notice that the private businesses named on the attached service list have been, are, will be and threaten to be in violation of Cal. Health & Safety Code § 25249.6. Both this office and Mateel are private enforcers of Proposition 65, both may be contacted at the below listed address and telephone number, and I am a responsible individual for both Mateel and this office. The above referenced violations occur when California residents come into contact with battery terminals, terminal posts, cables, and other battery accessories that contain lead. These private businesses market these products. Battery terminals and terminal posts contain lead. People are exposed to lead and lead compounds, lead acetate, lead phosphate, and lead subacetate when they change batteries; clean their terminals; remove, replace or tighten their battery terminal connectors; or when they otherwise come into contact with the abovementioned items. These exposures to lead and lead compounds, lead acetate, lead phosphate, and lead subacetate occur via the dermal absorption, ingestion, and inhalation routes. These violations and threatened violations pertain to lead's properties as both a carcinogen and a reproductive toxin. These private businesses did not and do not provide people with clear and reasonable warnings before they expose them to these chemicals. These violations have occurred every day since at least October 22, 1994. These violations will continue every day until clear and reasonable warnings are provided or these companies' products are reformulated so as not to contain lead.

Cordially,

W. Verick
William Verick

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Exhibit C

LETTER TO RETAILERS

**RE: Court-Ordered Proposition 65 Warnings for Sale of Lead-Acid Batteries
and Battery Accessories Containing Lead in California**

Dear Retailer:

Important materials concerning the need to provide court-ordered warnings for the sale of lead-acid batteries and their related accessories, including clamps, cables, terminals, etc., in California are attached to this letter. *It is very important that you read and follow the instructions enclosed with this letter.*

This letter is provided by battery manufacturers and distributors as part of a court-approved settlement of a legal action brought under a California statute commonly referred to as "Proposition 65." In this legal action, the plaintiff claimed that lead-acid batteries and related accessories containing lead and lead compounds require a "clear and reasonable" warning under Proposition 65 and that all businesses in the chain of distribution, from manufacturer to retailer, have an obligation to provide such warnings to consumers prior to purchase. Lead and lead compounds are chemicals listed under Proposition 65 as known to the State of California to cause cancer and birth defects or other reproductive harm. The companies sued dispute these claims, but have agreed to take various actions to settle the case.

Under the settlement, which has been entered by court order, lead-acid batteries and their lead-containing accessories may continue to be sold legally in California. The court order requires manufacturers make a variety of payments to settle the case and to provide warning signs, warning stickers, and battery replacement guides containing Proposition 65 warnings to retailers like you for

1 you to provide to your customers. The court order also requires manufacturers to
2 provide warnings signs to you for you to provide to your employees if you provide
3 services for the installation and/or removal of batteries. The court order releases
4 you from liability for Proposition 65 claims concerning batteries and their related
5 lead-containing accessories, provided that you use any *one* of these three different
6 warning alternatives described below to provide the requisite warnings to your
7 customers. *However, you must select and implement one of these warning*
8 *alternatives.*

9 1) Warning Signs: In conjunction with this letter, the settling battery
10 manufacturers and distributors are providing you with an initial stock of
11 Proposition 65 warning signs for posting at a location that is clearly visible to
12 the consumer prior to purchase, such as at your cash registers or in the
13 department, aisle or case in which automotive batteries are available for sale
14 in your store. If you wish to rely on this warning alternative, these signs
15 need to be posted within thirty (30) days of receipt.

16 2) Warning Stickers: In conjunction with this letter, the settling battery
17 manufacturers and distributors are providing you with an initial stock of
18 adhesive-backed warning stickers. If you wish to rely on this warning
19 alternative, the stickers need to be posted within thirty (30) days of receipt in
20 locations clearly visible to the consumer prior to purchase, such as on a
21 battery displayed for sale in your stores or on the front part of the shelf where
22 it is placed on display.

23 3) Warnings in Battery Replacement Guides: Under separate cover, the settling
24 battery manufacturers and distributors will soon be mailing you new, updated
25 versions of the battery replacement guides they typically supply you to assist
26 your consumers in selecting the appropriate replacement battery product for
27 their needs. These new guides will already contain the required warning
28

1 either on the front cover of the guide, or on the last page inside the front
2 cover of the guide. Updated versions of the replacement guide containing the
3 required Proposition 65 warning will be sent to you annually. *If this warning
4 alternative is selected, you must ensure that the guide is put out for display
5 within thirty (30) days of its receipt and made readily accessible and visible
6 to the consumer prior to purchase.*

7 In addition, if you provide battery installation or removal services as part of
8 your retail services, the settling battery manufacturers and distributors will
9 provide you with an initial stock of Proposition 65 warnings posters concerning
10 occupational exposure to batteries and related accessories to be posted and
11 displayed in your service bays. The posters must be posted within thirty (30)
12 days of receipt, and be clearly visible to employees who provide battery
13 installation services in your service bays.

14 To further assist you in implementing these warning requirements, battery
15 manufacturers and distributors will provide you with additional signs, stickers,
16 posters, and battery replacement guides containing the required Proposition 65
17 warnings at no charge upon request. If you need more of any of these materials
18 for your California stores, please contact your vendor as soon as possible.

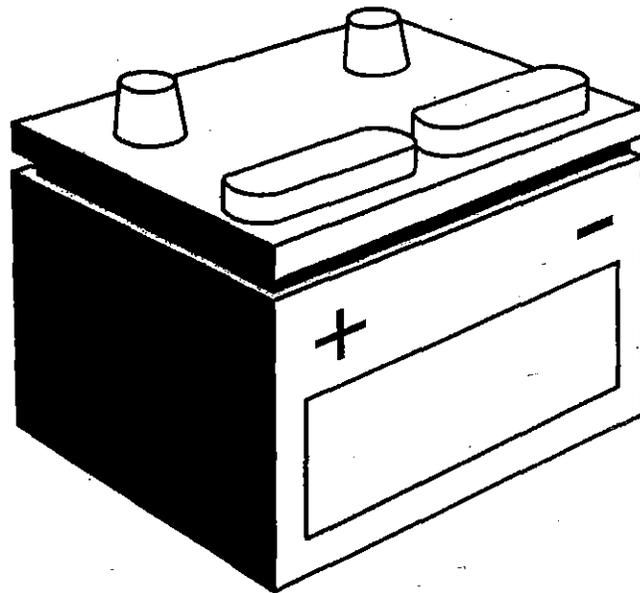
19 **Once again, it is very important that you select and implement one of the**
20 **foregoing warning alternatives, and post warning signs concerning**
21 **occupational exposure to batteries if applicable. You will be protected by the**
22 **terms of the settlement as long as you implement any of the warning**
23 **alternatives listed above and ensure that the warnings you choose are made**
24 **conspicuously available to consumers in your California stores prior to**
25 **purchase. If you fail to do so, you could incur further Proposition 65 liability**
26 **and lose protection from such claims under the terms of the battery**
27 **manufacturers' settlement.**

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.

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.

1
2

Exhibit F
Camera-Ready Story and
List of Publications

TIPS FOR SAFE HANDLING OF LEAD-ACID BATTERIES

A Little Caution Means Being Safe, Not Sorry

Dateline -- When changing, jumping or recharging the battery in your car, there are some easy steps you should take to be safe.

The major components of lead-acid batteries are lead and acid. In adults, prolonged exposure to lead can lead to headaches, fatigue, muscle and joint pain and depression or sleep disturbances. In children, prolonged or significant exposure can hinder brain and neurological development. Lead is also a substance known to the state of California to cause cancer and/or birth defects. For all these reasons, one should use care and common sense when handling batteries. Most of the lead in lead-acid batteries is contained inside the heavy plastic case, so ordinary handling of a new or spent battery is unlikely to result in exposure to lead inside the battery. But because the solid lead posts and terminals are exposed, exposure to small amounts of lead from these sources is possible, and you should handle lead-acid batteries, battery cables, clamps, etc., accordingly.

There are two main ways to take lead into the body – inhalation or ingestion. Consumers who handle batteries are not at high risk for inhaling lead. Ingestion of lead can be avoided by following simple, common sense good hygiene practices.

Here are a few simple, practical tips to follow while carrying, removing or installing a lead-acid battery.

1. First, as a practical matter, wear eye protection while doing *any* work on your vehicle.
2. Most automotive batteries are ~~sealed and~~ maintenance-free. Don't try to remove the vent caps.
3. Wear gloves while handling a battery, especially if you are connecting or disconnecting the battery cables or cleaning the lead terminals.
4. Don't smoke, eat, drink or bite your fingernails while working on or around a battery. Don't hold spare tools in your teeth as you work.
5. Wash your hands in hot, soapy water after you've handled a battery and before handling food or cigarettes.

California is one of the 37 states with lead-acid battery recycling laws that require a consumer to turn in a spent battery with the purchase of a new battery or pay a recycling fee. If you buy and install your own new battery, don't leave the old one in your garage or shed. Take it back to the store for recycling. It's good for you and the environment.

For more information on lead-acid batteries, go to www.batterycouncil.org.

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