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FILED 12 2000

4 Counsel for Defendant
 5 OSMENT MODELS, INC.

FEE PAID

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 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **FOR THE COUNTY OF ALAMEDA**

FP

11 MICHAEL DIPIRRO,

CASE NO. H215863-1

12 Plaintiff,

CONSENT JUDGMENT

13 vs.

14 OSMENT MODELS, INC.; and DOES 1
 15 through 1000,

BY FAX

16 Defendant.

17
 18 This Consent Judgment is entered into by and between Michael DiPirro, a California
 19 citizen ("Plaintiff"), and Osment Models, Inc., d.b.a. Woodland Scenics ("Defendant"), a
 20 Delaware corporation, on December 1, 2000 (referred to hereinafter as the "Effective Date" of
 21 this Consent Judgment) to resolve all claims raised in the above-captioned action. The parties
 22 agree to the terms and conditions set forth below.

23 **I. INTRODUCTION**

24 1. Michael DiPirro is an individual residing in San Francisco, California, who seeks
 25 to promote awareness of exposures to toxic chemicals and improve human health by reducing or
 26 eliminating hazardous substances contained in consumer and industrial products.

27 2. Defendant is a manufacturer and/or distributor of Pinewood Derby car kits (this
 28 term includes the PineCar line of products) and accessories (such as Deluxe Car Kit P372

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1 Formula Grand Prix), railroad model scenery kits and accessories (such as Scenic Details) that
 2 formerly contained lead (these products do not currently contain lead at levels that require a
 3 warning under Proposition 65), and adhesives (such as Hob-e-Tac Adhesive) that contain
 4 methylene chloride (the "Products"). Lead is a substance known to the State of California to
 5 cause cancer and birth defects (or other reproductive harm); methylene chloride is a substance
 6 known to the State of California to cause cancer. Defendant has elected to settle this matter by
 7 entering into this Consent Judgment.

8 3. On July 12, 2000, Michael DiPirro first served the Office of the Attorney
 9 General, designated public enforcement agencies and Defendant with a Proposition 65 60-Day
 10 Notice of Violation ("Notice") pursuant to Health & Safety Code § 25249.7(d), giving notice to
 11 Defendant, the Attorney General of California and such public officials authorized to bring suit
 12 under Proposition 65 of the alleged violations referred to in paragraph 1.1 above. The Notices
 13 are attached as Exhibit A. Defendant stipulates that the Notice is adequate to comply with Cal.
 14 Code Regs. tit. 22, § 12903.

15 4. On October 6, 2000, on behalf of himself and the general public, Michael DiPirro
 16 filed a complaint entitled Michael DiPirro v. Osment Models, Inc., Case No. H215863-1, in the
 17 Alameda County Superior Court. The Complaint alleges that Settling Defendant violated the
 18 Health and Safety Code § 25249.5 ("Proposition 65") and Business & Professions Code § 17200
 19 (the "Unfair Competition Law"), and seeks civil penalties, injunctive relief, restitution, and
 20 attorneys' fees. The Complaint alleges that Settling Defendant has violated Proposition 65 and
 21 the Unfair Competition Law by exposing individuals in California to lead, a Proposition 65-
 22 listed carcinogen and reproductive toxin, and methylene chloride, a Proposition 65-listed
 23 carcinogen, without first providing a clear and reasonable warning to such individuals.

24 5. Neither the Attorney General nor any of the other designated public prosecutors
 25 has commenced any action in response to the Notice. For purposes of this Consent Judgment,
 26 Plaintiff acts on behalf of the general public as to those matters described in the Complaint and
 27 Notice.

28

1 6. For purposes of this Consent Judgment, the parties stipulate that this Court has
 2 subject matter jurisdiction over the allegations contained in the Complaint. Without conceding
 3 that this Court has personal jurisdiction over any of them, each defendant does not contest the
 4 exercise of personal jurisdiction by this Court or venue in Alameda County solely and
 5 exclusively for the purposes of this Consent Judgment, or the exercise of jurisdiction by this
 6 Court to enter this Consent Judgment as a resolution of the claims that were or could have been
 7 raised in the Complaint based on the facts alleged therein.

8 7. The parties enter into this Consent Judgment to settle disputed claims between
 9 them, to avoid prolonged litigation, to ensure that the objectives of Proposition 65 are
 10 expeditiously carried out, and to provide a prompt remedy for the matters alleged in the
 11 Complaint. By execution of this Consent Judgment, Defendant does not admit any violations of
 12 Proposition 65 or the Unfair Competition Law, or any other law or standard applicable to
 13 warning or disclosure concerning the manufacture, distribution and/or sale of Pinewood Derby
 14 car kits or railroad model scenery kits that contain lead, or adhesives that contain methylene
 15 chloride. Nothing in this Consent Judgment shall be construed as an admission by Defendant of
 16 any fact, issue of law, or violation of law; nor shall compliance with this Consent Judgment
 17 constitute or be construed as an admission by Defendant of any fact, issue of law, or violation of
 18 law. Defendant specifically denies that it has committed any such violation or that any present
 19 warning program is not sufficient to comply with any duties under Proposition 65 that relate to
 20 the manufacture, distribution or sale of Pinewood Derby car kits or railroad model scenery kits
 21 that contain lead, or adhesives that contain methylene chloride. Defendant asserts that its
 22 manufacture, distribution and/or sale of Pinewood Derby car kits or railroad model scenery kits
 23 that contain lead, or adhesives that contain methylene chloride have not posed, nor do they
 24 currently pose a health or safety risk to persons who handle or use such products; that there has
 25 been no violation by it of Proposition 65; that it has violated no other state or federal law
 26 (including the common law) or regulation relating to the manufacture, distribution or sale of
 27 such products; and that it has no obligation to provide warnings other than those already
 28 provided regarding the manufacture, distribution or sale of such products. Nothing in this

1 Consent Judgment shall prejudice, waive or impair any right, remedy or defense the parties may
 2 have in any other or further legal proceeding. However, this paragraph shall not diminish or
 3 otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent
 4 Judgment.

5 **II. PROPOSITION 65 COMPLIANCE REQUIREMENTS**

6 8. Plaintiff has been informed that Defendant changed the composition of the
 7 Pinewood Derby car kit and railroad model scenery kits prior to 1996, such that they no longer
 8 contain lead in amounts that would require warnings under Proposition 65. Plaintiff has been
 9 provided with documentation that this change in formulation has been made.

10 9. Defendant represents that it has begun the process of revising the health hazard
 11 warnings for the adhesives (such as Hob-e-Tac Adhesive) to be consistent with the language set
 12 forth in paragraph 10 below. Beginning six months following the Effective Date of the Consent
 13 Judgment, Defendant agrees that it will not knowingly ship (or cause to be shipped) any
 14 Products containing methylene chloride for sale in the State of California unless such Products
 15 comply with paragraph 10 below.

16 10. For all Products containing methylene chloride, such Products shall bear the
 17 following warning statement:

18 **WARNING: This product contains a chemical known to the State of**
 19 **California to cause cancer.**

20 11. The warning statement shall appear in a type size and style that is legible and
 21 conspicuous to an ordinary individual (e.g., having a relative size equivalent to other health and
 22 safety information appearing on the Product's label).

23 **III. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE § 25249.7(B)**

24 12. Pursuant to Health & Safety Code § 25249.7(b), Defendant shall pay a civil
 25 penalty of \$4,000.00 on or before December 8, 2000. Such payment shall be made by check
 26 payable to the Chanler Law Group, "In Trust for Michael DiPirro," which will deposit the
 27 payment into an escrow account and held until thirty days after the Effective Date of the
 28 Consent Judgment.

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IV. REIMBURSEMENT OF FEES AND COSTS

13. The parties acknowledge that DiPirro offered to resolve the dispute without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this open issue to be resolved after the material terms of the agreement had been reached, and the matter settled. Defendants then expressed a desire to resolve the fee and cost issue concurrently with other settlement terms, so the parties tried to reach an accord on the compensation due to DiPirro and his counsel. Defendant shall pay the sum of \$14,000 in one installment on or before December 8, 2000 to Plaintiff concurrent with the filing of the Consent Judgment, as reimbursement for plaintiff's attorneys' fees and costs incurred to investigate and prosecute this matter, and to negotiate this Consent Judgment. Such payment shall be made payable to "Chanler Law Group" which will deposit the payment into an escrow account and held until thirty days after the Effective Date of the Consent Judgment. This amount includes all fees and costs that may be incurred in the implementation of this Consent Judgment, and additional work to be performed by Chanler Law Group until the entry of this Consent Judgment. Except as specifically provided in this paragraph, each party shall bear its own costs and attorneys' fees.

V. DISMISSAL WITH PREJUDICE OF CLAIMS RELATING TO PINWOOD DERBY CAR KITS AND ACCESSORIES AND RAILROAD MODEL SCENERY KITS AND ACCESSORIES

14. Those claims of the Complaint alleging that Defendant engaged in conduct which violates Health & Safety Code § 25249.6 et. seq. ("Proposition 65") by placing Pinewood Derby car kits and accessories (such as Deluxe Car Kit P372 Formula Grand Prix) and railroad model scenery kits and accessories (such as Scenic Details), products that contain lead, into commerce without a "clear and reasonable" warning within the meaning of Health & Safety Code §§ 25249.6 and 25249.11, are hereby dismissed with prejudice.

15. Those claims of the Complaint alleging that Defendant violated Business and Professions Code § 17200 et. seq. (the "Unfair Competition Law") by engaging in conduct which violates Health & Safety Code § 25249.6 et. Seq. (Proposition 65) by placing Pinewood Derby car kits and accessories (such as Deluxe Car Kit P372 Formula Grand Prix) and railroad model scenery kits and accessories (such as Scenic Details), products that contain lead into

1 commerce without a "clear and reasonable" warning within the meaning of Health & Safety
2 Code §§ 25249.6 and 25249.11, are hereby dismissed with prejudice.

3 **VI. MICHAEL DIPIRRO'S RELEASE OF DEFENDANT**

4 16. Michael DiPirro, by this Consent Judgment, on behalf of himself, his agents,
5 representatives, attorneys, assigns and the citizens of the State of California, waives all rights to
6 institute or participate in, directly or indirectly, any form of legal action, and releases all claims,
7 liabilities, obligations, losses, costs, expenses, fines and damages, against Defendant and its
8 respective subsidiaries, distributors, retailers, customers, directors, officers, employees,
9 affiliates, successors and assigns, whether under Proposition 65 or the Business & Profession
10 Code § 17200 *et seq.* based on Defendant's failure to warn about exposure to lead and/or
11 methylene chloride contained in any of the Products. This release of liability includes, but is not
12 limited to release of all claims Michael DiPirro has filed with regard to the Products acquired
13 from Defendant or its respective distributors.

14 **VII. DEFENDANT'S RELEASE OF MICHAEL DIPIRRO**

15 17. Defendant, by this Consent Judgment, waives all rights to institute any form of
16 legal action against Michael DiPirro and his attorneys or representatives, for all actions or
17 statements made by Michael DiPirro and his attorneys or representatives, up to the date of this
18 Consent Judgment in the course of seeking enforcement of Proposition 65 or Business &
19 Profession Code § 17200 against Defendant.

20 **VIII. WAIVER OF THE PROVISIONS OF THE CALIFORNIA CIVIL CODE,
21 SECTION 1542**

22 18. DiPirro, on behalf of himself, his agents, representatives, attorneys, successors
23 and assigns, and not in his representative capacity on behalf of citizens of the State of
24 California, and the Defendant, hereby waive the provision of the California Civil Code,
25 Section 1542, which provides as follows:

26 "A general release does not extend to claims which the creditor does
27 not know or suspect to exist in his favor at the time of executing the
28 settlement with the debtor."

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IX. CLAIMS COVERED

19. This Consent Judgment is a final and binding resolution between and among the Plaintiff and its agents and attorneys, acting on behalf of the general public, and Defendant, (defined for purposes of paragraph 22 to include its respective parents, subsidiaries, affiliates, divisions, subdivisions, directors, officers, employees, agents or attorneys), and Defendant's customers, distributors, wholesalers, retailers or any other person in the course of business who may use, maintain, or sell Pinewood Derby car kits and accessories (such as Deluxe Car Kit P372 Formula Grand Prix), railroad model scenery kits and accessories (such as Scenic Details) that contain lead, and adhesives (such as Hob-e-Tac Adhesive) that contain methylene chloride, were sold or distributed by Defendant, with respect to any and all Claims, as defined in paragraphs 21 and 22, which Defendant or DiPirro each now have or may hereafter have against each other, whether based on past actions committed by Defendant, or by any entity within Defendant's chain of distribution, including, but not limited to, retail sellers, wholesalers, and any other person in the course of business, with respect to Pinewood Derby car kits and accessories (such as Deluxe Car Kit P372 Formula Grand Prix), railroad model scenery kits and accessories (such as Scenic Details) that contain lead, and adhesives (such as Hob-e-Tac Adhesive) that contains methylene chloride, sold or distributed by Defendant. The parties mutually release each other with respect to all such Claims.

20. Plaintiff further releases Defendant from any claim of alleged occupational or environmental exposure to lead from Pinewood Derby car kits and accessories (such as Deluxe Car Kit P372 Formula Grand Prix), and/or railroad model scenery kits and accessories (such as Scenic Details), and exposure to methylene chloride from adhesives (such as Hob-e-Tac Adhesive).

21. Compliance with the terms of this Consent Judgment resolves any issue, now and in the past, concerning compliance by Defendant, its parent, subsidiaries, affiliates, successors, divisions, subdivisions, directors, officers or employees, and its customers, distributors, wholesalers, retailers or any other person in the course of doing business who may use, maintain or sell Pinewood Derby car kits and accessories (such as Deluxe Car Kit P372 Formula Grand

1 Prix), railroad model scenery kits and accessories (such as Scenic Details) that contain lead, and
 2 adhesives (such as Hob-e-Tac Adhesive) that contains methylene chloride, that were
 3 manufactured, sold, distributed, or labeled by Defendant, with the requirements of
 4 Proposition 65 and the Unfair Competition Law.

5 22. For purposes of paragraph 19 of this Consent Judgment, "Claims" shall mean any
 6 and all manner of action or actions, cause or causes of action, in law or in equity, administrative
 7 actions, petitions, suits, debts, liens, contracts, agreements, promises, liabilities, claims,
 8 demands, known or unknown, fixed or contingent, that have existed, or now exist, all to the
 9 extent based upon, arising out of or relating to the part compliance of Defendant with
 10 Proposition 65, or regulations promulgated thereunder, and Business and Professions Code
 11 § 17200, *et seq.*, with respect to the distribution or use of the products identified on the Notices
 12 attached at Exhibit A.

13 **X. USE OF DOCUMENTS AND INFORMATION**

14 23. The Plaintiff shall not use documents or information that Defendant has produced
 15 in the course of this action or in settlement discussions, except in the course of monitoring
 16 compliance with the terms of this Consent Judgment. Within thirty (30) days of receiving a
 17 written request to do so, Plaintiff shall return all documents produced in the course of this
 18 action.

19 **XI. RETENTION OF JURISDICTION**

20 24. This Court shall retain jurisdiction of this matter to implement the Consent
 21 Judgment.

22 **XII. SEVERABILITY**

23 25. In the event that any of the provisions of this Consent Judgment are held by a
 24 court to be unenforceable, the validity of the enforceable provisions shall not be adversely
 25 affected.

26 **XIII. DEFENDANTS' SALES DATA**

27 26. Defendant understands that the sales data provided to counsel for DiPirro by
 28 Defendant was a material factor upon which DiPirro has relied to determine the amount of

1 payments made pursuant to Health & Safety Code § 25249.7(b) in this Consent Judgment. To
 2 the best of each Defendant's knowledge, the sales data provided is true and accurate. In the
 3 event that within six months of entry of this Consent Decree DiPirro discovers facts which
 4 demonstrate to a reasonable degree of certainty that the sales data provided by Defendant is
 5 materially inaccurate, DiPirro and Defendant shall meet in a good faith attempt to resolve the
 6 matter within ten (10) days of Defendant's receipt of notice from DiPirro of his intent to
 7 challenge the accuracy of the sales data. If this good faith attempt fails to resolve DiPirro's
 8 concerns, DiPirro shall have the right to rescind the Consent Judgment and re-institute an
 9 enforcement action against Defendant, provided that all sums paid by Defendant pursuant to
 10 paragraphs 13 and 14 are returned to that Defendant within ten (10) days from the date on which
 11 DiPirro notifies Defendant of his intent to rescind this Consent Judgment. In such case, all
 12 applicable statutes of limitation shall be deemed tolled for the period between the date DiPirro
 13 filed the instant action and the date DiPirro notifies Defendant that he is rescinding this Consent
 14 Judgment pursuant to this paragraph.

15 **XIV. PRODUCT CHARACTERIZATION**

16 27. Defendant acknowledges that Hob-c-Tac Adhesive contains methylene chloride,
 17 and Plaintiff alleges that the customary use or application of which is likely to expose users to
 18 methylene chloride, a substance known to the State of California to cause cancer. In the event,
 19 after the Effective Date of this Consent Judgment, Defendant obtains analytical, risk assessment
 20 or other data ("Exposure Data") that shows an exposure to methylene chloride from adhesives
 21 (such as Hob-e-Tac Adhesive) poses "no significant risk" as such standard is applicable and as
 22 defined under Health & Safety Code § 25249.10(c) and Defendant seeks to eliminate the
 23 warnings, then Defendant shall provide DiPirro with ninety (90) days prior written notice of its
 24 intent to limit or eliminate the warning provisions under this Consent Decree based on the
 25 Exposure Data and shall provide DiPirro with all such supporting Exposure Data. Within ninety
 26 (90) days of receipt of Defendant's Exposure Data, DiPirro shall provide Defendant with written
 27 notice of his intent to challenge the Exposure Data (in the event that he chooses to make such a
 28 challenge). If DiPirro fails to provide Defendant written notice of his intent to challenge the

1 Exposure Data within ninety (90) days of receipt of Defendant's notice and the Exposure Data,
 2 DiPirro shall waive all rights to challenge the Exposure Data, and Defendant shall be entitled to
 3 limit or eliminate the warning provisions required under this Consent Judgment with respect to
 4 those Product(s) to which the Exposure Data applies. If DiPirro timely notifies Defendant of his
 5 intent to challenge the Exposure Data, DiPirro and Defendant shall negotiate in good faith for a
 6 period not to exceed thirty (30) days following receipt of Defendant's notice to attempt to reach
 7 a settlement of this issue. If a settlement is not reached, DiPirro and Defendant agree to submit
 8 such challenge to the superior court for determination, pursuant to the Court's continuing
 9 jurisdiction of this matter under C.C.P. § 664.6 and this Consent Judgment. The prevailing
 10 party shall be entitled to reasonable attorneys' fees and costs associated with bringing a motion
 11 pursuant to this paragraph to the court for determination.

12 **XV. ATTORNEYS' FEES**

13 28. In the event that a dispute arises with respect to any provision(s) of this Consent
 14 Judgment, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

15 **XVI. GOVERNING LAW**

16 29. The terms of this Consent Judgment shall be governed by the laws of the State of
 17 California.

18 **XVII. NOTICES**

19 30. All correspondence to Michael DiPirro shall be mailed to:

20 Hudson Bair, Esq.
 21 Kapsack & Bair, LLP
 1440 Broadway, Suite 610
 22 Oakland, CA 94612
 (510) 645-0027

23 or

24 Clifford A. Chanler, Esq.
 25 Chanler Law Group
 Magnolia Lane (off Huckleberry Hill)
 26 New Canaan, CT 06840-3801
 (203) 966-9911

27 All correspondence to Defendant shall be mailed to:
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Stanley W. Landfair
McKenna & Cunco, L.L.P.
Steuart Street Tower, 27th Floor, One Market Plaza
San Francisco, CA 94105
(415) 267-4170

XVIII. COMPLIANCE WITH REPORTING REQUIREMENTS

31. The parties agree to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f). If, as of the Effective Date, an approved form is available for use, such form shall be promptly completed and then sent to the California Attorney General's office, along with a copy of this Agreement. If, on the other hand, an approved reporting form is not available, Defendant represents that its counsel will send a copy of this Agreement to the California Attorney General's Office prior to or concurrently with the presentation of the Stipulated Judgement to the Alameda County Superior Court.

XIX. COUNTERPARTS AND FACSIMILE

32. This consent judgment may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same documents.

XX. AUTHORIZATION

33. The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

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AGREED TO:

Date: 12/3/00

Michael DiPiro
Michael DiPiro
Plaintiff

AGREED TO:

Date: _____

David Oarsen
David Oarsen
Oarsen Models, Inc. d.o.a.
Woodland Scenics

APPROVED AS TO FORM:

Date: _____

Clifford A. Chanler
Clifford A. Chanler
Counsel for Michael DiPiro

APPROVED AS TO FORM:

Date: _____

Stanley W. Landfar
Stanley W. Landfar
McKenna & Cuneo, LLP
Counsel for Oarsen Models, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Date: _____

Judge of the Superior Court

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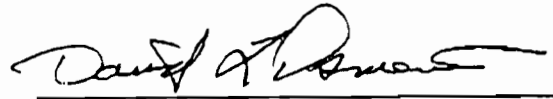
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Date: _____

Date: 12-4-00

Michael DiPirro
Plaintiff



David Osment
Osment Models, Inc. d.b.a.
Woodland Scenics

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____

Date: _____

Clifford A. Chanler
Counsel for Michael DiPirro

Stanley W. Landfair
McKenna & Cunco, LLP
Counsel for Osment Models, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Date: _____

Judge of the Superior Court

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AGREED TO:

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Date: _____

Michael DiPirro
Plaintiff

David Osment
Osment Models, Inc. d.b.a.
Woodland Scenics

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 12/5/00

Date: _____

Clifford A. Chanler
Clifford A. Chanler
Counsel for Michael DiPirro

Stanley W. Landfair
McKenna & Cuneo, LLP
Counsel for Osment Models, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Judge Barbara J. Miller

Date: DEC 13 2000

Judge of the Superior Court

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AGREED TO:

AGREED TO:

Date: _____

Date: _____

Michael DiPirro
Plaintiff

David Osment
Osment Models, Inc. d.b.a.
Woodland Scenics

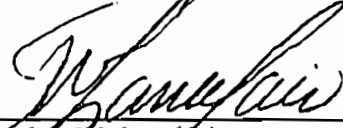
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APPROVED AS TO FORM:

Date: _____

Date: 12/04/00

Clifford A. Chanler
Counsel for Michael DiPirro


Stanley W. Landfair
McKenna & Cuneo, LLP
Counsel for Osment Models, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Date: _____

Judge of the Superior Court