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5 Attorneys for Plaintiff
6 WHITNEY R. LEEMAN, Ph.D.

ENDORSED
FILED
ALAMEDA COUNTY

APR 29 2008

CLERK OF THE SUPERIOR COURT
By T. BUCAYAN Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION

11 WHITNEY R. LEEMAN, Ph.D.
12 Plaintiff,
13 v.
14 RICH ON, INC.; and DOES 1 through 150,
15 inclusive,
16 Defendants.

CASE NO.: RG07321854

**JUDGMENT PURSUANT
TO TERMS OF STIPULATION AND
ORDER RE: CONSENT JUDGMENT**

Date: April 18, 2008
Time: 1:30 p.m.
Dept.: 18
Judge: Hon. Cecilia P. Castellanos

Reservation No.: R-804432

1 In the above-entitled action, Plaintiff WHITNEY LEEMAN, Ph.D., and Defendant RICH
2 ON, INC., having agreed through their respective counsel that judgment be entered pursuant to the
3 terms of the Proposition 65 settlement agreement in the form of a Stipulation and [Proposed] Order
4 Re: Consent Judgment entered into by the parties, and after issuing an order approving this
5 Proposition 65 settlement agreement and entering the Stipulation and Order Re: Consent Judgment
6 on April 18, 2008,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil
8 Procedure § 664.5, judgment is entered in accordance with the terms of the Stipulation and Order
9 Re: Consent Judgment attached hereto as **Exhibit 1** and lodged concurrently herewith.

10
11 **IT IS SO ORDERED.**

12 APR 29 2008

13 Dated: _____

CECILIA CASTELLANOS

14 Hon. Cecilia P. Castellanos
15 JUDGE OF THE SUPERIOR COURT
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EXHIBIT 1

1 David S. Lavine, State Bar No. 166744
2 David R. Bush, State Bar No. 154511
3 HIRST & CHANLER LLP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 WHITNEY R. LEEMAN, Ph.D.

11 Sara H. Lee, State Bar No. 236740
12 Cheryl S. Chang, State Bar No. 237098
13 Tony M. Chang, State Bar No. 229466
14 CASTELLAN LAW GROUP, LLP
15 70 South Lake Ave., Suite 900
16 Pasadena, CA 91101
17 Telephone: (626) 577-5533
18 Facsimile: (626) 577-5532

19 Attorneys for Defendant
20 RICH ON, INC.

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **COUNTY OF ALAMEDA**
23 **UNLIMITED CIVIL DIVISION**

24 WHITNEY R. LEEMAN, Ph.D.,

25 Plaintiff,

26 v.

27 RICH ON, INC.; and DOES 1 through 150,
28 inclusive,

Defendants.

) Case No. RG 07321854

) STIPULATION AND [PROPOSED] ORDER
) RE: CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Whitney R. Leeman, Ph.D. and Rich On, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D.,
4 ("Dr. Leeman" or "Plaintiff") and defendant Rich On, Inc., ("Rich On" or "Defendant"), with Dr.
5 Leeman and Rich On referred to as the "Parties" and with Dr. Leeman and Rich On each being a
6 "Party."

7 **1.2 Dr. Leeman**

8 Dr. Leeman is an individual residing in the State of California who seeks to promote
9 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating
10 hazardous substances contained in consumer products.

11 **1.3 Rich On**

12 Rich On employs ten or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
14 Safety Code §25249.6 *et seq.* (Proposition 65).

15 **1.4 General Allegations**

16 Dr. Leeman alleges that Defendant has manufactured, distributed and/or sold cosmetic kits
17 containing lead in the State of California without the requisite health hazard warnings. Lead is a
18 substance known to cause birth defects and other reproductive harm and is listed pursuant to
19 Proposition 65. Lead shall be referred to hereinafter as the "Listed Chemical."

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: Cosmetic
22 kits or products containing any combination of eye shadow, blush, powder, mascara, cream, gel,
23 foundation, eyeliner, lipliner, pencils, lipstick (or lip gloss), brush, blusher, tools, applicators,
24 mirrors, and/or nail polish that contain lead including, but not limited to, *Cosmetic Kit #9611 by BR*
25 *Cosmetics (#7 161890 096115) and item numbers G-M333, JC232, 019GR, E001, JC 170, 6603,*
26 *036C-G, 371-C, 1868, 682, 3625, JC 133, JC036C-1 and GZ701.* All such products shall be
27 referred to hereinafter as the "Products."

28 ///

1 **1.6 Notice of Violation**

2 On October 13, 2006, Dr. Leeman served Defendant and various public enforcement
3 agencies with a document entitled "60-Day Notice of Violation" (Notice) that provided Defendant
4 and public enforcers with notice that alleged that Defendant was in violation of California
5 Health & Safety Code §25249.6 for failing to warn consumers that the Products that Defendant sold
6 exposed users in California to the Listed Chemical.

7 **1.7 Complaint**

8 On April 20, 2007, Dr. Leeman, who alleges she is acting in the interest of the general
9 public in California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for
10 the County of Alameda against Rich On, Inc. and Does 1 through 150, (*Leeman v. Rich On, Inc., et*
11 *al., Case #RG 07321854*) alleging violations of California Health & Safety Code §25249.6 based on
12 the alleged exposures to the Listed Chemical contained in the Products sold by Defendant.

13 **1.8 No Admission**

14 Defendant denies the material factual and legal allegations contained in Dr. Leeman's Notice
15 and Complaint and maintains that the Products it sold and distributed in California have been and
16 are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
17 admission by Defendant of any fact, finding, issue of law, or violation of law, nor shall compliance
18 with this Consent Judgment constitute or be construed as an admission by Defendant of any fact,
19 finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant.
20 However, this Section shall not diminish or otherwise affect Defendant's obligations,
21 responsibilities, and duties under this Consent Judgment.

22 **1.9 Consent to Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in
25 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of
26 this Consent Judgment.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term "Effective Date" shall mean January 15,
3 2008.

4 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

5 **2.1 Product Warnings**

6 After the Effective Date, Defendant shall not sell, ship, or offer to be shipped for sale in
7 California Products containing the Listed Chemical unless such Products are sold or shipped with
8 one of the clear and reasonable warnings set forth in this Section 2.1, comply with the reformulation
9 standards set forth in Section 2.3 or are otherwise exempt pursuant to Section 2.2. Defendant may
10 satisfy its duty under this Consent Judgment by complying with any one or more of the three
11 standards set by either Section 2.1, 2.2 or 2.3.

12 Any warning issued for Products pursuant to this Section 2.1 shall be prominently placed as
13 to render it likely to be read and understood by an ordinary individual under customary conditions
14 before purchase or, for Products shipped directly to an individual in California or used in the
15 workplace, before use. Any warning issued pursuant to this Section 2.1 (a)-(b) shall be provided in
16 a manner such that the consumer or user understands to which specific Product the warning applies,
17 so as to minimize if not eliminate the chance that an overwarning situation will arise.

18 Sections 2.1(a)-(b) describe Defendant's options for satisfying its warning obligations
19 depending, in part, on the manner of sale. Use of any one of the following warnings will satisfy the
20 warning requirement set forth in this Section 2.1. The following warnings will be applicable when
21 the Product is sold either to consumers or in a business-to-business transaction:

22 **(a) Retail Store Sales.**

23 **(i) Product Labeling.** From the Effective Date, a warning may be
24 affixed to packaging, labeling, or directly on each Product sold in retail outlets by Defendant
25 or its agents, that states:

26
27 **WARNING:** This product contains lead, a chemical known to the
28 State of California to cause birth defects and other
 reproductive harm.

1 Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
2 displayed to a purchaser during the checkout process. The following warning statement
3 shall be used and shall appear in any of the above instances adjacent to or immediately
4 following the display, description, or price of the Product for which it is given in the same
5 type size or larger as the Product description text:

6 **WARNING:** This product contains lead, a chemical known to the State of
7 California to cause birth defects and other reproductive harm.

8 Alternatively, the designated symbol may appear adjacent to or immediately
9 following the display, description, or price of the Product for which a warning is being
10 given, provided that the following warning statement also appears elsewhere on the same
11 web page:

12 **WARNING:** Products identified on this page with the following symbol
13 contain lead, a chemical known to the State of California to
14 cause birth defects and other reproductive harm: ▽

15 **(ii) Package Insert or Label Warning.** For all Products sold via the Internet, a
16 warning may be provided with the Product when it is shipped directly to an individual in
17 California by either: (a) affixing the following warning language to the packaging, labeling,
18 or directly to a specific Product; (b) inserting a warning card measuring at least 4" x 6" in
19 the shipping carton which contains the following warning language; or (c) placing the
20 following warning statement on the packing slip or customer invoice on the line directly
21 below the description of the Product on the packing slip or customer invoice:

22 **WARNING:** This product contains lead, a chemical known to the State of
23 California to cause birth defects and other reproductive harm.

24
25 **2.2 Exceptions to Warning Requirements**

26 The warning requirements set forth in Section 2.1 shall not apply to:

- 27 (i) Any Products received in inventory before the Effective Date; or
28 (ii) Reformulated Products (as defined in Section 2.3 below)

1 **2.3 Reformulation Standards**

2 Reformulated Product components are defined as follows: (1) any lipstick (and/or
3 lipgloss) that contains less than or equal to 0.35 parts per million (“ppm”) of lead; and (2)
4 any other cosmetic item, including eye shadows and eyeliner that contain less than or equal
5 to 0.50 parts per million (“ppm”) of lead. The warnings required pursuant to Section 2.1
6 above shall not be required for Reformulated Products.

7 Defendant shall use Environmental Protection Agency (“EPA”) testing methodology
8 6020 or 6010 to determine whether the respective levels have been exceeded in their
9 Products. A modified test method may be used so long as the method is approved under 22
10 CCR §12900.

11 Rich On hereby commits that it will make its best efforts to ensure that the Products
12 that it offers for sale in California after January 1, 2009 shall qualify as Reformulated
13 Products as defined in this Section or shall otherwise be exempt from the warning
14 requirements of Section 2.1.

15 For purposes of this Consent Judgment, “best efforts” shall mean, at a minimum, that
16 Rich On will contact all of the upstream suppliers of its cosmetic kits via certified mail (or
17 an international equivalent that requires the recipient to sign for delivery with confirmation
18 provided to the sender) requesting that the products that it purchases or has manufactured
19 and made for sale in California will be Reformulated Products. In the event that Rich On’s
20 existing upstream suppliers cannot provide such products, Rich On will seek alternative
21 upstream suppliers and/or manufacturers to provide Reformulated Products for all orders
22 that it reasonably believes will be ultimately offered for sale in California beginning on
23 January 1, 2009.

24 In addition, best efforts shall mean, at a minimum, that Rich On will conduct its own
25 periodic testing of samples of its cosmetic kits at a state (or federally) certified laboratory in
26 the United States OR require that its manufacturers conduct periodic testing of samples of
27 cosmetic kits shipped to Rich On and update such testing whenever new products are
28 shipped to Rich On, and keep the results of such tests for at least two years.

1 **3. MONETARY PAYMENTS**

2 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

3 In settlement of this matter and without admitting any wrongdoing, Defendant agrees to pay
4 the sum of \$7,000, which shall be characterized and apportioned by Plaintiff as a payment pursuant
5 to California Health & Safety Code §25249.7(b). All payments made pursuant to this Section 3.1
6 shall be payable to "HIRST & CHANLER LLP in Trust For Whitney R. Leeman, Ph.D." and shall
7 be delivered within ten (10) calendar days after the Effective Date to Dr. Leeman's counsel at the
8 following address:

9 HIRST & CHANLER LLP
10 Attn: Proposition 65 Controller
11 2560 Ninth Street
12 Parker Plaza, Suite 214
13 Berkeley, CA 94710-2565

14 **3.2 Apportionment of Penalties Received**

15 All penalty monies received shall be apportioned by Dr. Leeman in accordance with
16 California Health & Safety Code §25192, with seventy-five percent (75%) of these funds remitted
17 by Dr. Leeman to the State of California's Office of Environmental Health Hazard Assessment and
18 the remaining twenty-five percent (25%) of these penalty monies retained by Dr. Leeman as
19 provided by California Health & Safety Code §25249.12(d). Dr. Leeman shall bear all
20 responsibility for apportioning and paying to the State of California the appropriate civil penalties
21 paid in accordance with this Section.

22 **4. REIMBURSEMENT OF FEES AND COSTS**

23 The Parties acknowledge that Dr. Leeman and her counsel offered to resolve this dispute
24 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
25 this fee and cost issue to be resolved after the material terms of the agreement had been settled.
26 Defendant then expressed a desire to resolve the fee and cost issue shortly after the other settlement
27 terms had been finalized. The Parties then reached an accord on the compensation due to Dr.
28 Leeman and her counsel under the private attorney general doctrine codified at California Code of
29 Civil Procedure §1021.5 for all work performed in reaching and finalizing this Consent Judgment.
30 Under the private attorney general doctrine, Defendant shall reimburse Dr. Leeman and her counsel

1 for fees and costs incurred as a result of investigating, bringing this matter to Defendant's attention,
2 and negotiating a settlement in the public interest. Defendant shall pay Dr. Leeman and her counsel
3 \$36,900 for all attorneys' fees, expert and investigation fees, litigation, and related costs. The
4 payment shall be made payable to "HIRST & CHANLER LLP" and shall be delivered within ten
5 (10) calendar days after the Effective Date to Dr. Leeman's counsel at the following address:

6 HIRST & CHANLER LLP
7 Attn: Proposition 65 Controller
8 2560 Ninth Street
9 Parker Plaza, Suite 214
10 Berkeley, CA 94710-2565

11 **5. RELEASE OF ALL CLAIMS**

12 **5.1 Dr. Leeman's Release of Defendant**

13 In further consideration of the promises and agreements herein contained, and for the
14 payments to be made pursuant to Sections 3 and 4, Dr. Leeman on behalf of herself, her past and
15 current agents, representatives, attorneys, successors, and/or assignees, and as an enforcer of the
16 public's interest in Proposition 65 pursuant to California Health & Safety Code § 25249.7(d),
17 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
18 and releases all claims, including, without limitation, all actions, and causes of action, in law or in
19 equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses
20 (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature
21 whatsoever, whether known or unknown, fixed or contingent (collectively "claims"), against
22 Defendant and each of its downstream customers, owners, purchasers, users, parent companies,
23 corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
24 shareholders, agents, insurers and employees, and sister and parent entities (collectively
25 "releasees") relating to the Products. This release includes those claims that arise under Proposition
26 65, claims that arise under any other applicable California regulations, and/or claims that arise from
27 personal harm, to the extent that such claims relate to Defendant's alleged failure to warn about
28 exposures to the Listed Chemical contained in the Products.

The Parties further understand and agree that this release shall not extend upstream to any
entities that manufactured the Products or any component parts thereof, or any distributors or

1 suppliers who sold the Products or any component parts thereof to Defendant.

2 **5.2 Defendant's Release of Dr. Leeman**

3 Defendant waives any and all claims against Dr. Leeman, her attorneys, and other
4 representatives for any and all actions taken or statements made (or those that could have been
5 taken or made) by Dr. Leeman and her attorneys and other representatives, whether in the course of
6 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter,
7 and/or with respect to the Products identified in Section 1.5.

8 **5.3 No Transfer of Claims**

9 Dr. Leeman and Defendant hereto represent and warrant that she and it have not heretofore
10 assigned or transferred, or purported to assign or transfer, to any person, firm or corporation
11 whatsoever any claim, liability, demand, obligation, cost, expense, damage, action or cause of
12 action herein released.

13 **6. COURT APPROVAL**

14 This Consent Judgment is not effective until it is approved and entered by the court and
15 shall be null and void if, for any reason, it is not approved and entered by the court within one year
16 after it has been fully executed by all Parties. In such an event, any monies that have been provided
17 to Plaintiff, or her counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within
18 fifteen (15) days after receiving written notice from Defendant that the one-year period has expired.

19 **7. SEVERABILITY**

20 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
21 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
22 provisions remaining shall not be adversely affected.

23 **8. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of California
25 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
26 rendered inapplicable by reason of law generally, or as to the Product, then Defendant shall provide
27 written notice to Dr. Leeman of any asserted change in the law, and shall have no further
28 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products

1 are so affected.

2 **9. NOTICES**

3 Unless specified herein, all correspondence and notices required to be provided pursuant to
4 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
5 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the
6 other Party at the following addresses:

7 To Defendant:

To Dr. Leeman:

8 Cheryl S. Chang Castellan Law Group, LLP 70 South Lake Ave., Suite 900 9 Pasadena, California 91101	10 Proposition 65 Coordinator HIRST & CHANLER LLP 2560 Ninth Street, Suite 214 Berkeley, CA 94710-2565
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11 Any Party, from time to time, may specify in writing to the other Party a change of address
12 to which all notices and other communications shall be sent.

13 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

14 This Consent Judgment may be executed in counterparts and by facsimile, each of which
15 shall be deemed an original, and all of which, when taken together, shall constitute one and the
16 same document.

17 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

18 Dr. Leeman agrees to comply with the reporting form requirements referenced in California
19 Health & Safety Code §25249.7(f).

20 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

21 The Settling Parties shall mutually employ their best efforts to support the entry of this
22 Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court
23 before April 1, 2008. The Parties acknowledge that, pursuant to California Health & Safety Code
24 §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment.
25 Accordingly, Plaintiff agrees to file a Motion to Approve the Agreement (“Motion”). Defendant
26 shall have no additional responsibility to Plaintiff’s counsel pursuant to Code of Civil Procedure
27 §1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with respect to
28 the preparation and filing of the Motion or with regard to Plaintiff’s counsel appearing for a hearing
thereon.

1 **13. MODIFICATION**

2 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
3 upon entry of a modified Consent Judgment by the court thereon; or (2) upon a successful motion of
4 any Party and entry of a modified Consent Judgment by the court. The Attorney General shall be
5 served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days
6 in advance of its consideration by the court.

7 **14. AUTHORIZATION**

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

<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>1/11/08</u></p> <p>By: <u>[Signature]</u> Plaintiff, WHITNEY R. LEEMAN, Ph.D.</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, RICH ON, INC.</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>1/11/08</u></p> <p style="text-align: center;">HIRST & CHANLER LLP</p> <p>By: <u>[Signature]</u> David R. Bush, Esq. Attorneys for Plaintiff WHITNEY R. LEEMAN, Ph.D</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____</p> <p style="text-align: center;">CASTELLAN LAW GROUP, LLP</p> <p>By: _____ Cheryl S. Chang, Esq. Attorneys for Defendant RICH ON, INC.</p>

25 **IT IS SO ORDERED.**

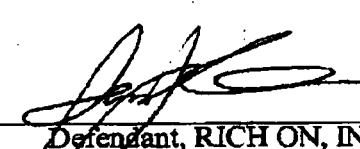
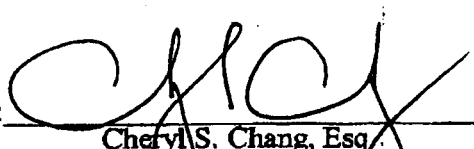
26 Date: _____

27 _____
28 JUDGE OF THE SUPERIOR COURT

1 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
2 upon entry of a modified Consent Judgment by the court thereon; or (2) upon a successful motion of
3 any Party and entry of a modified Consent Judgment by the court. The Attorney General shall be
4 served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days
5 in advance of its consideration by the court.

6 **14. AUTHORIZATION**

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

<p>11 AGREED TO:</p> <p>12 Date: _____</p> <p>13</p> <p>14 By: _____</p> <p>15 Plaintiff, WHITNEY R. LEEMAN, Ph.D.</p>	<p>11 AGREED TO:</p> <p>12 Date: <u>01/11/2008</u></p> <p>13</p> <p>14 By: </p> <p>15 Defendant, RICH ON, INC.</p>
<p>16 APPROVED AS TO FORM:</p> <p>17 Date: _____</p> <p>18 HIRST & CHANLER LLP</p> <p>19</p> <p>20</p> <p>21 By: _____</p> <p>22 David R. Bush, Esq. Attorneys for Plaintiff WHITNEY R. LEEMAN, Ph.D</p>	<p>16 APPROVED AS TO FORM:</p> <p>17 Date: <u>1/11/08</u></p> <p>18 CASTELLAN LAW GROUP, LLP</p> <p>19</p> <p>20</p> <p>21 By: </p> <p>22 Cheryl S. Chang, Esq. Attorneys for Defendant RICH ON, INC.</p>

24 **IT IS SO ORDERED.**

25 Date: _____

26 _____
27 JUDGE OF THE SUPERIOR COURT