

Esther Coleman
NOV 20 2012



1 Clifford A. Chanler, State Bar No. 135534
2 Laralei S. Paras, State Bar No. 203319
3 THE CHANLER GROUP
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 RUSSELL BRIMER

FILED
ALAMEDA COUNTY

JAN 04 2013

CLERK OF THE SUPERIOR COURT
By JA

Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

13 RUSSELL BRIMER,

14 Plaintiff,

15 v.

16 TEST-RITE PRODUCTS CORP.; and DOES
17 1-150, inclusive,

18 Defendants.

Case No. ~~CIV-1002842~~ RG10-543922

~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT

(Consolidated with Case No. CIV-1002842
for purposes of entry of the Consent Judgment
As To TEST-RITE PRODUCTS CORP.)

Date: January 4, 2013

Time: 2:00 p.m.

Dept. 20

Judge: Hon. Robert B. Freedman

Reservation No. R-1343134

1 Plaintiff, Russell Brimer, and defendant, Test-Rite Products Corp., having agreed
2 through their respective counsel that Judgment be entered pursuant to the terms of their
3 settlement agreement in the form of a Consent Judgment, and following this Court's
4 issuance of an Order approving this Proposition 65 settlement and Consent Judgment,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
6 Health and Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is
7 hereby entered in accordance with the terms of the Consent Judgment attached hereto as
8 Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the
9 settlement under Code of Civil Procedure § 664.6.

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11 **IT IS SO ORDERED.**

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14 Dated: JULY 24 2013

15 
16 JUDGE OF THE SUPERIOR COURT

17 Robert B. Freedman
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Exhibit 1

1 Stephen S. Sayad, State Bar No. 104866
2 Clifford A. Chanler, State Bar No. 135534
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone:(510) 848-8880
8 Facsimile: (510) 848-8118
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

11 RUSSELL BRIMER,

12 Plaintiff,

13 v.

14 TEST-RITE PRODUCTS CORP.;
15 and DOES 1-150, inclusive,

16 Defendants.
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Case No. RG10543922

[PROPOSED]
CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between plaintiff, Russell Brimer
4 (“Brimer”), and defendant, Test-Rite Products Corp. (“Test-Rite” or “Defendant”), with Brimer
5 and Test-Rite collectively referred to as the “Parties,” and individually referred to as a “Party.”

6 **1.2 Brimer**

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

10 **1.3 Defendant**

11 Defendant Test-Rite employs ten or more individuals and is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations and Product Description**

15 Brimer alleges that Test-Rite has manufactured, distributed and/or sold in California trolley
16 jack handles with grips that expose users to lead, and tools with grips that expose users to lead
17 and/or di(2-ethylhexyl)phthalate (“DEHP”), without first providing a “clear and reasonable
18 warning,” as required by Proposition 65. Lead and DEHP are listed pursuant to Proposition 65 as
19 chemicals known to the State of California to cause birth defects and other reproductive harm. All
20 such trolley jack handles with grips containing lead and tools with grips containing lead and/or
21 DEHP including, but not limited to, the products listed in Exhibit A, are referred to collectively
22 hereinafter as “Products.”

23 **1.5 Notices of Violation**

24 On or about June 17, 2010, Brimer served Test-Rite and various public enforcement
25 agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided the
26 public enforcers and Test-Rite with notice of alleged violations of Proposition 65 for failing to
27 warn consumers that certain trolley jack handles with grips manufactured, distributed and/or sold
28 by Test-Rite exposed users in California to lead. On January 19, 2012, Brimer served Test-Rite,

1 Sears Roebuck Co., Sears Holdings Corporation, O'Reilly Automotive, Inc. and various public
2 enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation" (the
3 "Supplemental Notice") that realleged the allegations in the Notice and provided the public
4 enforcers and Test-Rite with notice of alleged violations of Proposition 65 for failing to warn
5 consumers that certain tools with grips manufactured, distributed and/or sold by Test-Rite exposed
6 users in California to lead and/or DEHP . The Notice and Supplemental Notice are collectively
7 referred to hereinafter as the "Notices."

8 **1.6 Complaint**

9 On October 27, 2010, Brimer, acting in a representative capacity in the interest of the
10 general public in California, filed the instant action in the Superior Court for the County of
11 Alameda alleging violations of Proposition 65 based on the exposures to lead contained in the
12 trolley jack handles with grips manufactured, distributed and/or sold by Test-Rite ("Complaint").
13 On or about June 1, 2012, Brimer filed a First Amended Complaint in the action adding the
14 allegations set forth in the Supplemental Notice. The Complaint and First Amended Complaint are
15 collectively referred to hereinafter as the "Complaints" or "First Action."

16 On October 1, 2012, Brimer filed a separate action in the Superior Court for the County of
17 Alameda against Sears, Roebuck and Co., Sears Holdings Corporation, O'Reilly Automotive, Inc.,
18 and Does 1 through 150, *Brimer v. Sears, et al.*, Case No. RG12650009, alleging violations of
19 Proposition 65 based on the exposures to lead and/or DEHP contained in trolley jack handles with
20 grips sold by the named defendants ("Second Action"). Within forty-eight business hours of the
21 Execution Date, Brimer shall file a dismissal without prejudice of the Second Action.

22 **1.7 No Admission**

23 This Consent Judgment resolves claims that are denied and disputed by Test-Rite. The
24 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
25 claims between the Parties concerning the lead and/or DEHP in the Products for the purpose of
26 avoiding prolonged litigation. Test-Rite denies the material, factual and legal allegations
27 contained in the Notices and Complaints, maintains that it did not knowingly or intentionally
28 expose California consumers to lead and/or DEHP through the reasonably foreseeable use of the

1 Products, and otherwise contends that all of the products it has manufactured, distributed and/or
2 sold in California including the Products, have been, and are, in compliance with all applicable
3 laws. Nothing in this Consent Judgment shall be construed as an admission by Test-Rite of any
4 fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Consent
5 Judgment constitute or be construed as an admission by Test-Rite of any fact, finding, conclusion,
6 issue of law or violation of law, the same being specifically denied by Test-Rite. However, this
7 Section shall not diminish or otherwise affect the Parties' obligations, responsibilities and/or duties
8 under this Consent Judgment.

9 **1.8 Consent to Jurisdiction**

10 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
11 jurisdiction over Test-Rite as to the allegations contained in the Complaint, that venue is proper in
12 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of
13 this Consent Judgment pursuant to California Code of Civil Procedure § 664.6.

14 **1.9 Execution Date**

15 For purposes of this Consent Judgment, the term "Execution Date" shall mean the date this
16 Consent Judgment is signed by both Parties.

17 **1.10 Effective Date**

18 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
19 the Court approves the terms of this Consent Judgment.

20 **2. INJUNCTIVE RELIEF: WARNINGS AND/OR REFORMULATION**

21 **2.1 Product Warnings**

22 Commencing on the Execution Date, Test-Rite shall only sell, ship or offer for sale in
23 California Products that are: (1) sold or shipped with one of the clear and reasonable warnings
24 set forth in subsections 2.1(a) and (b); or (2) exempt pursuant to Section 2.2 as Reformulated
25 Products as defined in Section 2.3.

26 This Section describes Test-Rite's options for satisfying the warning obligations required
27 by this Section, depending, in part, on the manner of sale. For purposes of Proposition 65, a
28 warning provided in accordance with this Section is clear and reasonable when provided with or

1 for Products sold or offered for sale to an individual in California. Test-Rite shall not provide,
2 nor require or request that any other party provide, a warning for any product it knows, or should
3 know, does not contain chemical reproductive toxicants listed pursuant to Proposition 65.

4 Each warning shall be prominently placed with such conspicuousness as compared with
5 other words, statements, designs or devices as to render it likely to be read and understood by an
6 ordinary individual under customary conditions before purchase or use. Each warning shall be
7 provided in a manner such that the ordinary consumer exercising reasonable behavior or use
8 understands to which specific Product(s) the warning applies, so as to minimize the risk of
9 consumer confusion.

10 (a) **Retail Store Sales**

11 (i) **Product Labeling.** Test-Rite may affix a warning to the packaging,
12 labeling or directly on any Products sold in California that states:

13 **WARNING:** This product contains chemicals known
14 to the State of California to cause cancer
15 and birth defects or other reproductive
harm.

16 (ii) **Point-of-Sale Warnings.** Alternatively, Test-Rite may provide
17 warning signs in the form below to its retailers in California with instructions to post the signs in
18 close proximity to the point of display of any such Products for the benefit of its retailers'
19 customers.

20 **WARNING:** This product contains chemicals known to
21 the State of California to cause cancer and
birth defects or other reproductive harm.

22 Where any such Products are sold in proximity to other like items or to those that do not
23 require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the following statement
24 must be used:

25 **WARNING:** The following product(s) contain chemicals
26 known to the State of California to cause
27 cancer and birth defects or other reproductive
harm:
28 [list product(s) for which warning is required]

1 (b) **Mail Order Catalog and Internet Sales.** In the event that Test-Rite sells
2 any Products that are not Reformulated Products via mail order catalog or the Internet to
3 customers located in California on or after the Execution Date, Test-Rite shall provide a warning
4 for such Products sold via mail order catalog or the Internet to California residents pursuant to
5 section 2.1(a)(i) above, in the mail order catalog or on the website. Warnings given in the mail
6 order catalog or on the website shall identify the specific Product(s) to which the warning applies
7 as further specified in Sections 2.1(b)(i), (ii) and (iii).

8 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
9 order catalog must be in the same type size or larger than the Product(s) description text within
10 the catalog. The following warning shall be provided on the same page and in the same location
11 as the display and/or description of the Product(s):

12 **WARNING:** This product contains chemicals known
13 to the State of California to cause cancer
14 and birth defects or other reproductive
harm.

15 Where it is impracticable to provide the warning on the same page and in the same
16 location as the display and/or description of the Product(s), Test-Rite may utilize a designated
17 symbol to cross reference the applicable warning and shall define the term “designated symbol”
18 with the following language on the inside of the front or back cover of the catalog or on the same
19 page as any order form for the Product(s):

20 **WARNING:** Certain products identified with this
21 symbol ▼¹ and offered for sale in this
22 catalog contain chemicals known to the
State of California to cause cancer and birth
defects or other reproductive harm.

23 The designated symbol must appear on the same page and in close proximity to the display and/or
24 description of the Product(s). On each page where the designated symbol appears, Test-Rite must
25 provide a header or footer directing the consumer to the warning language and definition of the
26 designated symbol.

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¹ The symbol “▼” is to appear in the color red.

1 (ii) **Internet Website Warning.** A warning may be given in
2 conjunction with the sale of the Products via the Internet, provided it is displayed to a purchaser
3 during the checkout process and appears either: (a) on the same web page on which any
4 Product(s) is displayed and/or described; (b) on the same web page as the order form for any
5 Product(s); or (c) on the same page as the price for any Product(s).

6 (iii) **Package Insert or Label.** Alternatively, a warning may be
7 provided with the Product(s) when shipped directly to a consumer in California, by (a) product
8 labeling pursuant to Section 2.1(a)(i) above, (b) inserting a card or slip of paper measuring at least
9 4" x 6" in the shipping carton, or (c) placing the warning on the packing slip or customer invoice
10 identifying the Product(s) in lettering of the same size as the description of the Product(s). The
11 warning shall include the language appearing in Section 2.1(a)(i) and shall inform the consumer
12 that he or she may return the Product(s) for a full refund within 30 days of receipt.

13 **2.2 Exceptions to Warning Requirements**

14 The warning requirements set forth in Section 2.1 shall not apply to: (a) Reformulated
15 Products (as defined in Section 2.3 below); and (b) Products shipped by Test-Rite to a third party
16 before the Execution Date.

17 **2.3 Reformulation Standards**

18 As of the Effective Date, and as an alternative to providing the warnings as set forth in
19 Section 2.1, Test-Rite shall use its best efforts to manufacture, produce, assemble, import,
20 distribute, ship, sell or offer for sale in California Reformulated Products. Reformulated Products
21 are defined as Products which (1) yield less than 100 parts per million ("ppm") of lead when
22 analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies
23 utilized by federal or state agencies for the purpose of determining lead content in a solid
24 substance, and which components yield a result of no more than 1.0 microgram ("µg") of lead
25 when analyzed pursuant to NIOSH Test Method 9100; and (2) contain less than or equal to 1000
26 ppm of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or
27 equivalent methodologies utilized by federal or state agencies for the purpose of determining
28 DEHP content in a solid substance. By entering into this Consent Judgment, the Parties do not

1 intend to expand or restrict any obligations or responsibilities that may be imposed upon Test-Rite
2 by laws other than Proposition 65, nor do the Parties intend this Consent Judgment to affect any
3 defenses available to Test-Rite under laws other than Proposition 65.

4 **3. MONETARY PAYMENTS**

5 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

6 Test-Rite shall pay \$98,000 under this section, as follows:

7 **3.1.1 Initial Civil Penalty.** Test-Rite shall make an initial payment of \$10,000 to
8 be apportioned in accordance with California Health & Safety Code § 25249.12, subdivisions
9 (c)(1) and (d), with 75% of these funds earmarked for the State of California's Office of
10 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of these penalty
11 monies earmarked for Brimer.

12 **3.1.2 Final Civil Penalty.** Test-Rite shall make a final payment of \$80,000 on
13 the date provided in Section 3.3.2. The final civil penalty shall be waived in its entirety, however,
14 if an officer of Test-Rite provides Brimer with written certification that, as of August 31, 2013,
15 and continuing into the future, Test-Rite has utilized its best efforts to reformulate all of its
16 Products as set forth in Section 2.3 and has, in fact, met the reformulation standard specified in
17 Section 2.3 above such that all trolley jack handles with grips manufactured, produced,
18 assembled, imported, distributed, shipped, sold or offered for sale in California by Test-Rite are
19 Reformulated Products. Brimer must receive any such certification on or before September 15,
20 2013, and time is of the essence. The final civil penalty shall be apportioned in accordance with
21 California Health & Safety Code § 25249.12, subdivisions (c)(1) and (d), with 75% of these funds
22 remitted to OEHHA and the remaining 25% of the penalty remitted to Brimer.

23 **3.1.3 Payment in Lieu of Civil Penalty.** Test-Rite shall pay the sum of \$8,000 to
24 Silent Spring Institute ("Silent Spring"), a not-for-profit institution, in lieu of further civil fines
25 pursuant to California Health & Safety Code § 25249.7(b), and California Code of Regulations,
26 Title 11, § 3202(b). Silent Spring will use such funds in one or more of the following ways: (a) to
27 continue its work identifying the links between exposure to environmental chemicals including
28 lead, DEHP and other phthalates such as di-n-butyl ("DBP") and butyl benzyl phthalate ("BBP")

1 and reproductive and developmental harm, as well as educating the public about such potential
2 exposures; (b) to conduct exposure- and risk-based prioritization of chemicals listed under
3 Proposition 65, or chemicals OEHHA has identified as candidates for listing, in order to identify
4 exposures of potential public health significance; (c) to monitor compliance with the
5 reformulation requirements of this and other, similar consent judgments addressing Proposition
6 65-listed chemical exposures; or (d) to conduct additional exposure measurements that evaluate
7 the levels of chemical exposures to users of products that contain lead, DEHP, DBP and BBP.

8 **3.2 Reimbursement of Brimer's Fees and Costs**

9 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
11 this fee issue to be resolved after the material terms of the agreement had been settled. Test-Rite
12 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms
13 had been finalized. The Parties then attempted to (and did) reach an accord on the compensation
14 due to Brimer and his counsel under general contract principles and the private attorney general
15 doctrine codified at California Code of Civil Procedure § 1021.5 for all work performed in this
16 matter through the Effective Date. Under these legal principles, Test-Rite shall pay the amount of
17 \$67,000 for attorneys' fees, expert and investigation fees, and litigation and related costs incurred
18 as a result of investigating, litigating and enforcing this matter, including the fees and costs
19 incurred (and yet to be incurred) negotiating, drafting and obtaining the Court's approval of this
20 Consent Judgment in the public interest. Except as specifically provided in this Consent
21 Judgment, Test-Rite shall have no further obligation with regard to reimbursement of Brimer's
22 fees and costs with respect to the Products covered in this Consent Judgment.

23 **3.3 Payment Procedures**

24 **3.3.1 Initial Payments.** All payments required by Sections 3.1.1, 3.1.3 and 3.2
25 shall be delivered within five days of the Execution Date in four checks, made payable as follows:
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- (a) One check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$7,500;
- (b) One check made payable to “The Chanler Group in Trust for Russell Brimer” in the amount of \$2,500;
- (c) One check to “The Chanler Group in Trust for Silent Spring Institute” in the amount of \$8,000; and
- (d) One check made payable to “The Chanler Group” in the amount of \$67,000.

3.3.2 Final Payments. If the final civil penalty of \$80,000 referenced in Section 3.1.2 above is not waived, payments shall be delivered on or before September 30, 2013, in two checks, made payable as follows:

- (a) One check to “The Chanler Group in Trust for OEHHA” in the amount of \$60,000; and
- (b) One check to “The Chanler Group in Trust for Russell Brimer” in the amount of \$20,000.

3.3.3 Issuance of 1099 Forms. After the payments required by this Section have been transmitted to Brimer’s counsel, Test-Rite shall issue separate 1099 forms, as follows:

- (a) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$7,500;
- (b) The second 1099 shall be issued to Russell Brimer in the amount of \$2,500, whose address and tax identification number shall be furnished upon request;
- (c) The third 1099 form to “Silent Spring Institute,” 29 Crafts Street, Newton, Massachusetts 02458, whose information shall be provided by email or other means within five (5) calendar days of final execution of this agreement, in the amount of \$8,000;

- 1 (d) The fourth 1099 shall be issued to The Chanler Group (EIN: 94-
2 3171522) in the amount of \$67,000.
- 3 (e) If the penalty of \$80,000 referenced in Section 3.1.2 above is paid,
4 a fifth 1099 shall be issued to the Office of Environmental Health
5 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:
6 68-0284486) in the amount of \$60,000; and
- 7 (f) If the penalty of \$80,000 referenced in Section 3.1.2 above is paid,
8 a sixth 1099 shall be issued to Brimer in the amount of \$20,000,
9 whose address and tax identification number shall be furnished
10 upon request.

11 **3.3.4 Payment Address.** All payments and tax information required by this
12 Section shall be delivered to Brimer's counsel at the following address:

13 The Chanler Group
14 Attn: Proposition 65 Controller
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710-2565

18 **3.3.5 Payment Refund.** If for any reason this Consent Judgment is not approved
19 or entered by the Court, any monies that have been provided to Brimer or his counsel pursuant to
20 Section 3 shall be refunded to Test-Rite, care of its counsel, within thirty days after receiving a
21 written demand from Test-Rite for return of such funds.

22 **4. CLAIMS COVERED AND RELEASED**

23 **4.1 Brimer's Release of Test-Rite**

24 Brimer, acting on his own behalf and in the public interest, releases Test-Rite, its parents,
25 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
26 attorneys, and each entity to whom Test-Rite directly or indirectly distributes or sells Products,
27 including, but not limited to, downstream distributors, wholesalers, customers, retailers,
28 franchisees, cooperative members, licensors, and licensees ("Releasees") from all claims for
violations of Proposition 65 up through the Execution Date based on exposure to lead and/or
DEHP from the Products as set forth in the Notices. Compliance with the terms of this Consent

Judgment constitutes compliance with Proposition 65 with respect to exposures to lead and/or DEHP from the Products as set forth in the Notices.

Brimer also, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Brimer of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to lead and/or DEHP from the Products manufactured, distributed and/or sold by Test-Rite and its Releasees.

As of the Execution Date, Brimer represents to Test-Rite that Brimer is not in possession of information pertaining to any other alleged violations by Test-Rite or Releasees of Proposition 65 covered by the Notices and Complaints. Brimer presently intends no further enforcement action against Test-Rite based upon a violation of Proposition 65. If any such future enforcement action is instituted, it may not be based upon any sale of any Product by Test-Rite prior to the Execution Date.

4.2 Test-Rite's Release of Brimer

Test-Rite on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Brimer, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Brimer and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

5. SEVERABILITY

If, subsequent to Court approval of this Consent Judgment, any of the provisions contained herein are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

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1 **6. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and
3 shall be null and void if, for any reason, it is not approved and entered by the Court within twelve
4 months after it has been fully executed by all Parties.

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California.
7 In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
8 generally, or as to the Products, then Test-Rite shall have no further obligations pursuant to this
9 Consent Judgment with respect to, and to the extent that, the Products are so affected.

10 **8. NOTICES**

11 When any Party is entitled to receive any notice under this Consent Judgment, the notice
12 shall be sent by certified mail to the person(s) identified below:

13 To Test-Rite:

14 Albert T. Liou, Esq.
15 LKP Global Law, LLP
16 1901 Avenue of the Stars, Suite 480
 Los Angeles, CA 90067

17 To Brimer:

18 The Chanler Group
19 Attn: Proposition 65 Coordinator
20 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

21 Any Party may modify the person and address to whom the notice is to be sent by sending each
22 other Party notice by certified mail and/or other verifiable form of written communication.

23 **9. ADDITIONAL POST-EXECUTION ACTIVITIES**

24 The Parties acknowledge that, pursuant to California Health & Safety Code §25249.7, a
25 noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
26 obtaining such approval, Brimer, Test-Rite and their respective counsel agree to mutually employ
27 their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval
28 of the Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best

1 efforts shall include, cooperating on the drafting and filing any papers in support of the required
2 motion for judicial approval, and, if any third party objection to the noticed motion is filed, the
3 Parties shall work together to file a joint reply and appear at any hearing before the Court.

4 **10. MODIFICATION**

5 This Consent Judgment may be modified only: (1) by written agreement of the Parties; or
6 (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court.

7 **11. ENTIRE AGREEMENT**

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

14 **12. COUNTERPARTS, FACSIMILE/PDF SIGNATURES**

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

18 **13. AUTHORIZATION**

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

22 **AGREED TO:**

AGREED TO:

23 Dated: October 30, 2012

Dated: Nov 1, 2012

24 By: 
25 Russell Brimer

26 By: 
27 Christina Ma, Treasurer and Secretary
28 Test-Rite Products Corp.

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EXHIBIT A

- 1. GM Performance Parts 2 Ton Hydraulic Trolley Jack – Model #: GM7002

- 2. ACDelco 2 Ton (4,000 lbs.) Hydraulic Trolley Jack – Model #: 34136

- 3. Ultra Steel 34 Piece ¼” Drive Ratchet, Bit and Socket Set – Model #: TS02265J

- 4. Ultra Steel 4 Piece Snap Ring Pliers Set – Model #: AT65817J

- 5. Voltage Pro 99 Piece Electrical Home Repair Kit – Model #: TDO4002S