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Josh Voorhees, State Bar No. 241436
Troy C. Bailey, State Bar No. 277424
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
JOHN MOORE

ENDORSED
FILED
San Francisco County Superior Court

SEP 04 2012
CLERK OF THE COURT
BY: CYNTHIA S. HERBERT
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,) Case No.: CGC-11-514224
)
Plaintiff,)
)
v.) **[PROPOSED] JUDGMENT**
) **PURSUANT TO TERMS OF**
) **PROPOSITION 65 SETTLEMENT**
) **AND CONSENT JUDGMENT**
WINPLUS NORTH AMERICA, INC.; *et al.*,)
)
Defendants.) Date: September 4, 2012
) Time: 9:30 a.m.
) Dept.: 302
) Judge: Hon. Harold E. Kahn

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In the above-entitled action, Plaintiff John Moore and Defendant Winplus North America, Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment:

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

IT IS SO ORDERED.

HAROLD KAHN

Dated: SEP 04 2012

JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Josh Voorhees, State Bar No. 241436
 Troy C. Bailey, State Bar No. 277424
 2 THE CHANLER GROUP
 2560 Ninth Street
 3 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565
 4 Telephone: (510) 848-8880
 Facsimile: (510) 848-8118
 5

6 Attorneys for Plaintiff
 JOHN MOORE

7 John M. Genga, State Bar No. 125522
 GENGA & ASSOCIATES, P.C.
 8 15260 Ventura Boulevard, Suite 1810
 Sherman Oaks, CA 91403
 9 Telephone: (818) 444-4580
 Facsimile: (818) 444-4585
 10

11 Attorneys for Defendant
 WINPLUS NORTH AMERICA, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 FOR THE COUNTY OF SAN FRANCISCO
 14
 15 UNLIMITED CIVIL JURISDICTION

16 JOHN MOORE,)	Case No. CGC-11-514224
)	
17 Plaintiff,)	
)	[PROPOSED] CONSENT JUDGMENT
18 v.)	
)	
19 WINPLUS NORTH AMERICA, INC.; and)	Dept:
20 DOES 1-150, inclusive,)	Judge:
)	Date: None set
21 Defendants.)	
)	Complaint Filed: September 13, 2011

1 **1. INTRODUCTION**

2 **1.1 John Moore and Winplus North America, Inc.**

3 This Consent Judgment is entered into by and between John Moore (“Moore” or “Plaintiff”)
4 and Winplus North America, Inc. (“Winplus” or “Defendant”), with Plaintiff and Defendant
5 collectively referred to as the “Parties.”

6 **1.2 John Moore**

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

10 **1.3 Winplus North America, Inc.**

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

14 **1.4 General Allegations**

15 Winplus has manufactured, imported, distributed and/or sold in California automotive seat
16 covers that contain di(2-ethylhexyl)phthalate (“DEHP”), without the requisite Proposition 65 health
17 hazard warnings. DEHP is on the Proposition 65 list as known to cause birth defects and other
18 reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as automotive seat
21 covers containing DEHP including, but not limited to, *Type S Seat Cover, Quilted Coupe Suede,*
22 *SC30415-6 (#6 43334 30415 6)*, manufactured, imported, distributed and/or sold by Winplus,
23 hereinafter referred to as the “Products.”

24 **1.6 Notice of Violation**

25 On or about June 29, 2011, Moore served Winplus and various public enforcement agencies,
26 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with
27 notice of alleged violations of Proposition 65 based on Winplus’ alleged failure to warn consumers
28

1 that the Products exposed users in California to DEHP. To the best of the Parties' knowledge, no
2 public prosecutor has commenced and is diligently prosecuting an action against this violation.

3 **1.7 Complaint**

4 On September 13, 2011, Moore filed a complaint in the Superior Court in and for the
5 County of San Francisco against Winplus North America, Inc. and Does 1 through 150, *Moore v.*
6 *Winplus, et al.*, Case No. CGC-11-514224 ("Complaint" or "Action"), alleging violations of
7 Proposition 65, based on the alleged exposures to DEHP contained in certain automotive seat covers
8 sold by Winplus.

9 **1.8 No Admission**

10 Winplus denies the material, factual and legal allegations contained in Moore's Notice and
11 Complaint and maintains that all Products it has sold, manufactured, imported and/or distributed in
12 California have been and are in compliance with all laws. Nothing in this Consent Judgment shall
13 be construed as an admission by Winplus of any fact, finding, issue of law, or violation of law, nor
14 shall compliance with this Consent Judgment constitute or be construed as an admission by Winplus
15 of any fact, finding, conclusion, issue of law, or violation of law. Winplus represents it had no
16 knowledge of the presence DEHP in its Products and has implemented an internal program to
17 ensure compliance with Proposition 65. However, this section shall not diminish or otherwise
18 affect Winplus' obligations, responsibilities, and duties under this Consent Judgment.

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over Winplus as to the allegations contained in the Complaint, that venue is proper in
22 the County of San Francisco and that this Court has jurisdiction to enter and enforce the provisions
23 of this Consent Judgment.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term "Effective Date" shall mean June 4, 2012.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

2 **2.1 Reformulation Standard**

3 “Reformulated Products” are defined as containing DEHP in concentrations less than 0.1
4 percent (1,000 parts per million) in each accessible component when analyzed pursuant to U.S.
5 Environmental Protection Agency testing methodologies 3580A and 8270C or any other
6 methodology utilized by federal or state agencies for the purpose of determining the DEHP content
7 in a solid substance.

8 **2.2 Reformulation Commitment**

9 As of the Effective Date, all Products manufactured, imported, distributed, sold and/or
10 offered for sale in the state of California by Winplus shall qualify as Reformulated Products as
11 defined in Section 2.1 above, or shall carry Proposition 65 warnings as set forth in Section 2.3
12 below.

13 **2.3 Product Warnings**

14 Commencing on the Effective Date, Winplus shall, for all Products other than Reformulated
15 Products, provide clear and reasonable warnings as set forth in Section 2.3(a) and (b). Each
16 warning shall be prominently placed with such conspicuousness as compared with other words,
17 statements, designs, or devices as to render it likely to be read and understood by an ordinary
18 individual under customary conditions before purchase or use. Each warning shall be provided in a
19 manner such that the consumer or user understands to which specific Products the warning applies,
20 so as to minimize the risk of consumer confusion.

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

22 **(i) Product Labeling.** Defendant shall affix a warning to the packaging,
23 labeling, or directly on each Product sold in retail outlets in California by Defendant or any person
24 selling the Products, that states:

25 **WARNING:** This product contains phthalate chemicals,
26 including DEHP, known to the State of
27 California to cause birth defects and other
28 reproductive harm.

1 (ii) **Point-of-Sale Warnings.** Alternatively, Winplus may provide
2 warning signs in the form below to its customers in California with instructions to post the
3 warnings in close proximity to the point of display of the Products. Such instruction sent to
4 Winplus' customers shall be sent by certified mail, return receipt requested.

5 **WARNING:** This product contains phthalate chemicals,
6 including DEHP, known to the State of
7 California to cause birth defects and other
8 reproductive harm.

9 Where more than one Product is sold in proximity to other like items or to those that do not
10 require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement
11 shall be used:¹

12 **WARNING:** The following products contain phthalate
13 chemicals, including DEHP, known to the State
14 of California to cause birth defects and other
15 reproductive harm:

16 *[list products for which warning is required]*

17 **(b) Mail Order Catalog and Internet Sales.** In the event that Winplus sells
18 Products via mail order catalog and/or the internet, to customers located in California, after the
19 Effective Date, that are not Reformulated Products, Winplus shall provide warnings for such
20 Products sold via mail order catalog or the internet to California residents. Warnings given in the
21 mail order catalog or on the internet shall identify the specific Product to which the warning applies
22 as further specified in Sections 2.3(b)(i) and (ii).

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

27 **WARNING:** This product contains phthalate chemicals,
28 including DEHP, known to the State of
California to cause birth defects and other
reproductive harm.

¹ For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 Where it is impracticable to provide the warning on the same page and in the same location
2 as the display and/or description of the Products, Winplus may utilize a designated symbol to cross
3 reference the applicable warning and shall define the term “designated symbol” with the following
4 language on the inside of the front cover of the catalog or on the same page as any order form for
5 the Products:

6 **WARNING:** Certain products identified with this symbol
7 ▼ and offered for sale in this catalog contain
8 phthalate chemicals, including DEHP,
 known to the State of California to cause
 birth defects and other reproductive harm.

9 The designated symbol must appear on the same page and in close proximity to the display
10 and/or description of the Products. On each page where the designated symbol appears, Winplus
11 shall provide a header or footer directing the consumer to the warning language and definition of
12 the designated symbol.

13 (ii) **Internet Website Warning.** A warning shall be given in conjunction
14 with the sale of the Products via the internet, which warning shall appear either: (a) on the same
15 web page on which the Products are displayed; (b) on the same web page as the order form for the
16 Products; (c) on the same page as the price for any of the Products; or (d) on one or more web pages
17 displayed to a purchaser during the checkout process. The following warning statement shall be
18 used and shall appear in any of the above instances adjacent to or immediately following the
19 display, description, or price of the Products for which it is given in the same type size or larger
20 than the Products description text:

21 **WARNING:** This product contains phthalate chemicals,
22 including DEHP, known to the State of
 California to cause birth defects and other
 reproductive harm.

23 Alternatively, the designated symbol may appear adjacent to or immediately following the
24 displays, descriptions, or prices of the Products for which a warning is being given, provided that
25 the following warning statement also appears elsewhere on the same web page, as follows:
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1 **WARNING:** Products identified on this page with the
2 following symbol ▼ contain phthalate
3 chemicals, including DEHP, known to
4 the State of California to cause birth
5 defects and other reproductive harm.

6 **3. MONETARY PAYMENTS**

7 **3.1 Payment of Civil Fines Pursuant to Health & Safety Code § 25249.7(b)**

8 In settlement of all the claims referred to in this Consent Judgment, Winplus, shall pay
9 \$24,000 in civil penalties as follows:

10 **(a) Initial Civil Penalty.** Winplus shall make an initial payment of \$8,000 to
11 be apportioned in accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and
12 (d), with 75% of these funds earmarked for the State of California’s Office of Environmental
13 Health Hazard Assessment (“OEHHA”) and the remaining 25% of these penalty monies earmarked
14 for Moore. Such payment shall be made, in the manner detailed in Section 3.3 below, on or before
15 June 4, 2012.

16 **(b) Final Civil Penalty.** Winplus shall pay a final civil penalty in the amount of
17 \$16,000 on October 31, 2012. As an incentive for Winplus to reformulate its Products, however,
18 this final civil penalty shall be waived in its entirety if an officer of Winplus certifies in writing that,
19 as of October 31, 2012, it will not sell or ship for sale in California any Products unless they are
20 Reformulated Products. Such certification must be received by The Chanler Group on or before
21 October 15, 2012.

22 The final civil penalty payment shall be apportioned in accordance with Health & Safety
23 Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for the
24 state of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the
25 remaining 25% of these penalty monies earmarked for Moore.

26 **3.2 Reimbursement of Moore’s Fees and Costs**

27 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
28 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee

1 issue to be resolved after the material terms of the agreement had been settled. Winplus then
2 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
3 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
4 Moore and his counsel under general contract principles and the private attorney general doctrine
5 codified at California Code of Civil Procedure section 1021.5, for all work performed, in this
6 matter, except fees that may be incurred on appeal. Under these legal principles, Winplus shall pay
7 the amount of \$25,000 for fees and costs incurred prior to the execution of this Consent Judgment
8 including investigating, noticing, and litigating this matter and for future fees and costs, including
9 attorney's fees, to be incurred in seeking judicial approval of this Consent Judgment including, but
10 not limited to, preparing and filing the approval papers, complying with Proposition 65 reporting
11 requirements, and preparing for and attending any and all hearings related to the approval of this
12 Consent Judgment.

13 **3.3 Payment Procedures**

14 **3.3.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.2 shall
15 be delivered on or before June 4, 2012 to either The Chanler Group or the attorney of record for
16 Winplus, and shall be held in trust pending the Court's approval of this Consent Judgment.

17 Payments delivered to The Chanler Group shall be made payable, as follows:

- 18 (a) One check made payable to "The Chanler Group in Trust for
19 OEHHA" in the amount of \$6,000;
- 20 (b) One check made payable to "The Chanler Group in Trust for John
21 Moore" in the amount of \$2,000; and
- 22 (c) One check made payable to "The Chanler Group in Trust" in the
23 amount of \$25,000.

24 Payments delivered to Genga & Associates, P.C. shall be made payable, as follows:

- 25 (a) One check made payable to "Genga & Associates, P.C. in Trust for
26 OEHHA" in the amount of \$6,000;

- 1 (b) One check made payable to “Genga & Associates, P.C. in Trust for
2 John Moore” in the amount of \$2,000; and
3 (c) One check made payable to “Genga & Associates, P.C. in Trust for
4 The Chanler Group” in the amount of \$25,000.

5 If Winplus elects to deliver payments to its attorney of record, such counsel shall confirm,
6 in writing within five days of deposit, that the funds have been deposited in a trust account.

7 Within two days of the date of the hearing on which the Court approves the Consent
8 Judgment, the payments being held in trust by the attorney of record for Winplus shall be delivered
9 to The Chanler Group in three separate checks payable, as follows:

- 10 (a) One check made payable to “The Chanler Group in Trust for
11 OEHHA” in the amount of \$6,000;
12 (b) One check to “The Chanler Group in Trust for John Moore” in the
13 amount of \$2,000; and
14 (c) One check to “The Chanler Group” in the amount of \$25,000.

15 If the penalty payments required by Section 3.1(b) above are not waived, payments shall be
16 delivered to The Chanler Group made payable, as follows:

- 17 (a) One check made payable to “The Chanler Group in Trust for
18 OEHHA” in the amount of \$12,000;
19 (b) One check made payable to “The Chanler Group in Trust for John
20 Moore” in the amount of \$4,000.

21 **3.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
22 and the settlement funds have been transmitted to Plaintiff’s counsel, Winplus shall issue three
23 separate 1099 forms, as follows:

- 24 (a) The first 1099 shall be issued to the Office of Environmental Health
25 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:
26 68-0284486) in the amount of \$6,000;
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- 1 (b) The second 1099 shall be issued to John Moore in the amount of
2 \$2,000, whose address and tax identification number shall be
3 furnished upon request; and
- 4 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-
5 3171522) in the amount of \$25,000.
- 6 (d) If the final penalty in Section 3.1(b) above is paid, the fourth 1099
7 shall be issued to the Office of Environmental Health Hazard
8 Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-
9 0284486) in the amount of \$12,000;
- 10 (e) If the final penalty in Section 3.1(b) above is paid, the fifth 1099
11 shall be issued to Moore in the amount of \$4,000, whose address and
12 tax identification number shall be furnished upon request.

13 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered to
14 the following payment address:

15 The Chanler Group
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710

18 **4. CLAIMS COVERED AND RELEASED**

19 **4.1 Moore's Public Release of Proposition 65 Claims**

20 Moore acting on his own behalf and in the public interest releases Winplus from all claims
21 for violations of Proposition 65 up through the Effective Date based on exposure to DEHP from the
22 Products as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes
23 compliance with Proposition 65 with respect to exposures to DEHP from the Products as set forth in
24 the Notice.

25 **4.2 Moore's Individual Release of Claims**

26 Moore also, in his individual capacity only and *not* in his representative capacity, provides
27 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
28 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,

1 liabilities and demands of Moore of any nature, character or kind, whether known or unknown,
2 suspected or unsuspected, limited to and arising out of alleged or actual exposures to the DEHP in
3 the Products manufactured, distributed or sold by Winplus.

4 **4.3 Winplus' Release of Moore**

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

11 **5. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved and entered by the Court and
13 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
14 after it has been fully executed by all Parties.

15 **6. SEVERABILITY**

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

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of California
21 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
22 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
23 Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or
24 preemption or rendered inapplicable by reason of law generally as to the Products, then Winplus
25 shall notify Moore in writing and shall have no further obligations pursuant to this Consent
26 Judgment with respect to, and to the extent that, the Products are so affected.

1 **8. NOTICES**

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

6 To Winplus:

7 John M. Genga, Esq.
8 Genga & Associates, P.C.
9 15260 Ventura Boulevard, Suite 1810
10 Sherman Oaks, CA 91403

 To Moore:

 Proposition 65 Coordinator
 The Chanler Group
 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

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

13 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

14 This Consent Judgment may be executed in counterparts and by facsimile or .pdf signature,
15 each of which shall be deemed an original, and all of which, when taken together, shall constitute
16 one and the same instrument. A facsimile or .pdf signature shall be as valid as the original.

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

18 Moore and his attorneys agree to comply with the reporting form requirements referenced in
19 California Health & Safety Code § 25249.7(f).

20 **11. ADDITIONAL POST-EXECUTION ACTIVITIES**

21 Moore and Winplus agree to 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 in a
23 timely manner. 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, which
25 Moore shall draft and file, and Winplus shall join. If any third party objection to the noticed
26 motion is filed, Moore and Winplus shall work together to file a joint reply and appear at any
27 hearing before the Court. This provision is a material component of the Consent Judgment and
28 shall be treated as such in the event of a breach.

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12. MODIFICATION

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

13. AUTHORIZATION

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.

AGREED TO:

AGREED TO:

Date: JUNE 24, 2012

Date: _____

By: 
Plaintiff, John Moore

By: _____
Authorized Signatory for Defendant,
Winplus North America, Inc.

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12. MODIFICATION

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

13. AUTHORIZATION

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.

AGREED TO:

AGREED TO:

Date: _____

Date: 6-21-12

By: _____
Plaintiff, John Moore

By: 
Authorized Signatory for Defendant,
Winplus North America, Inc.