

1 Clifford A. Chanler, State Bar No. 135534
2 Gregory M. Sheffer, State Bar No. 173124
3 THE CHANLER GROUP
4 81 Throckmorton Avenue, Suite #202
5 Mill Valley, CA 94941
6 Telephone: (415) 388-0911
7 Facsimile: (415) 388-9911

8 Attorneys for Plaintiff
9 JOHN MOORE

ENDORSED
FILED
San Francisco County Superior Court
JAN 02 2013
CLERK OF THE COURT
BY: GINA GONZALES
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN FRANCISCO
12 UNLIMITED CIVIL JURISDICTION

13 JOHN MOORE,
14 Plaintiff,

15 v.

16 STANLEY BLACK & DECKER, INC. and
17 DOES 1-150,
18 Defendants.

Case No. CGC-12-521520
JUDGMENT UPON
~~PROPOSITION 65~~ ORDER APPROVING
PROPOSITION 65 CONSENT TO
JUDGMENT SETTLEMENT

Action Filed : June 11, 2012

1 In the above-entitled action, Plaintiff JOHN MOORE and Defendant STANLEY BLACK &
2 DECKER, INC., having agreed through their respective counsel that a judgment be entered pursuant
3 to the terms of the Consent To Judgment entered into by the parties in resolution of this Proposition 65
4 action, and following the issuance of an order approving the Parties' Consent to Judgment on this day,
5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety Code §
6 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance with the
7 terms of the Consent To Judgment attached hereto as Exhibit A. By stipulation of the parties, the
8 Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.
9

10 **IT IS SO ORDERED.**

11
12 Dated: JAN 02 2013

MARLA J. MILLER

Hon. Harold E. Kahn **MARLA J. MILLER**
Judge Of The Superior Court

EXHIBIT A

1 Clifford A. Chanler, State Bar No. 135534
Gregory M. Sheffer, State Bar No. 173124
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 Attorneys for Plaintiff
6 JOHN MOORE

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8
9 IN AND FOR THE COUNTY OF SAN FRANCISCO
10
11 UNLIMITED CIVIL JURISDICTION

11 JOHN MOORE,
12 Plaintiff,
13
14 v.
15 STANLEY BLACK & DECKER, INC. and
DOES 1-150,
16 Defendants.

Case No. CGC-12-521520
**CONSENT TO JUDGMENT AS TO
DEFENDANT STANLEY BLACK &
DECKER, INC.**

Action Filed: June 11, 2012
Trial Date: Not Assigned

17
18
19
20
21
22
23
24
25
26
27
28

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent To Judgment is entered into by and between Plaintiff John Moore,
4 (“Moore” or “Plaintiff”) and Defendant Stanley Black & Decker, Inc. (“Stanley”) with Moore and
5 Stanley collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Stanley employs 10 or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Stanley manufactured, distributed and/or sold, in the State of
16 California, certain types of hand tools with grips containing DEHP, including, but not limited to,
17 Stanley Ultimate Tool Kit pliers, Item #STMT70683 and Stanley 2-piece pliers set, Item #84-212,
18 that exposed users to DEHP, without first providing “clear and reasonable warning” under
19 Proposition 65. DEHP is listed as a reproductive and developmental toxicant pursuant to
20 Proposition 65 and is referred to hereinafter as the “Listed Chemical.”

21 **1.5 Notice of Violation**

22 On January 31, 2012, Moore served Defendant and various public enforcement agencies
23 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided public
24 enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6
25 for failing to warn consumers of the presence of DEHP, a toxic chemical found in and on
26 Defendant’s hand tool products sold in California. To the best of the Parties’ knowledge, no
27 public enforcer has commenced and is diligently prosecuting the allegations set forth in the
28 Notice.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1.6 Complaint

On June 11, 2012, Moore, acting, in the interest of the general public in California, filed a Complaint in the Superior Court of the State of California for the County of San Francisco, alleging violations by Defendant of Health & Safety Code § 25249.6 based, *inter alia*, on the alleged exposures to DEHP contained in the referenced hand tool products (the “Action”).

1.7 No Admission

This Consent To Judgment resolves claims that are denied and disputed by Stanley. The Parties enter into this Consent To Judgment pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Defendant denies the material factual and legal allegations contained in the Notice and Action, maintains that it did not knowingly or intentionally expose California consumers to DEHP through the reasonably foreseeable use of the Covered Products and otherwise contends that all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Consent To Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent To Judgment constitute or be construed as an admission by the Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Stanley’s obligations, responsibilities, and duties under this Consent To Judgment.

1.8 Consent to Jurisdiction

For purposes of this Consent To Judgment only, the Parties stipulate that this Court has jurisdiction over Stanley as to the allegations contained in the Complaint, that venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment. As an express part of this Agreement, pursuant to C.C.P. §664.6 the Court in which this action was filed shall retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. DEFINITIONS

2.1 The term "Complaint" shall mean the June 11, 2012, Complaint.

2.2 The term "Covered Products" means any hand tools with grips containing DEHP that are manufactured, distributed, marketed or sold by Stanley except Stanley Ultimate Tool Kit pliers, Item #STMT70683 and Stanley 2-piece pliers set, Item #84-212.

2.3 The term "Specific Products" means the Stanley Ultimate Tool Kit pliers, Item #STMT70683 or the Stanley 2-piece pliers set, Item #84-212.

2.4 The term "Effective Date" shall mean September 15, 2012.

2.5 The term "DEHP Free" Covered Products or Specific Products shall mean Covered or Specific Products containing materials or other components that may be handled, touched or mouthed by a consumer, and which components contain less than or equal to 1,000 parts per million ("ppm") of DEHP as determined by a minimum of duplicate quality controlled test results using Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C.

3. INJUNCTIVE RELIEF

3.1 Formulation Commitment

As of the Effective Date, Defendant shall not order, cause to be ordered, manufacture or cause to be manufactured any Specific Product for distribution to or sale in California that is not DEHP Free. As of the January 1, 2013, Stanley shall not order, cause to be ordered, manufacture or cause to be manufactured any Covered Product for distribution to or sale in the California that is not DEHP Free. For every Specific Product ordered, caused to be ordered, manufactured or caused to be manufactured for distribution to or sale in California after the Effective Date, Defendant shall maintain copies of any testing of such products demonstrating compliance with this section. For every Covered Product ordered, caused to be ordered, manufactured or caused to be manufactured for distribution to or sale in California after January 1, 2013, Defendant shall maintain copies of any testing of such products demonstrating compliance with this section.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3.2 Previously Obtained or Distributed Specific Products or Non-DEHP Free Covered Products.

3.2.1 Product Warnings

Commencing on the November 1, 2012, and until December 31, 2012, Stanley shall not manufacture or distribute for sale, ship, or offer to be shipped for sale in California any Covered Products unless such Covered Products are DEHP Free under Section 2.5 or are manufactured, distributed or shipped with one of the clear and reasonable warnings set forth hereafter.

Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. Each warning shall be affixed to or printed on the Covered Product itself or to the Covered Product's packaging, labeling, or instruction booklet, if any.

(a) Retail Store Sales.

(i) Product Labeling. Stanley may affix a warning to the packaging, labeling, or directly on any Covered Products sold at a retail outlet of Defendant in California that states:

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

(ii) Point-of-Sale Warnings. Alternatively, Stanley may provide warning signs in the form below to retail outlets in California, which stores it is reasonably aware of having sold the Covered Products or having inventory or orders of the Covered Products, with instructions to post the signs *in immediate proximity* to the point of display of any and all such Covered Products for the benefit of its customers.

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

1
2 Stanley shall maintain records of compliance correspondence, inventory reports or other
3 communication confirming compliance with § 3.2.1 for two (2) years from the Effective Date and
4 shall produce copies of such records upon written request by Moore.

5 **3.2.2 De-Listing of DEHP**

6 In the event that the State of California shall remove DEHP as a Proposition 65 listed
7 chemical, the requirements in Section 3 shall be of no further force or effect.

8
9 **4. MONETARY PAYMENTS**

10 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

11 Stanley shall make a payment of \$16,000.00 to be apportioned in accordance with Health
12 & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked
13 for the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")
14 and the remaining 25% of these penalty monies earmarked for Moore.

15 **4.2 Reduction in Penalty Payments**

16 Stanley may reduce the total penalty payment due pursuant to section 4.1 above by
17 satisfying the following penalty offset options (in which event the division of remaining total
18 penalties due shall be proportioned between OEHHA and Moore in the same ratio as set forth in
19 section 4.1 above). Defendant may realize a \$6,000.00 reduction in the total penalty amount due
20 under section 4.1 above if that party agrees, by express, written confirmation to counsel for
21 plaintiff, that, no later the Effective Date, the term "in California" in section 3.1 above shall be
22 deemed to have been replaced by the term "within the United States."

23 **4.3 Reimbursement of Plaintiff's Fees and Costs**

24 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
25 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
26 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
27 However, independent from the penalties negotiated in Section 4.1, the Parties have reached an
28 accord on the payment of Moore's reasonable attorney's fees under general contract principles,

1 the private attorney general doctrine codified at California Code of Civil Procedure section
2 1021.5 and the private enforcement regulations governing Proposition 65, for all reasonable fees
3 necessary to obtain the relief described herein, except fees that may be incurred on appeal.
4 Under these legal principles, Stanley shall pay the amount of \$35,500.00 for fees and costs
5 incurred investigating, litigating and enforcing this matter, including the fees and costs incurred
6 (and yet to be incurred) negotiating, drafting, and obtaining the Court's approval of this
7 Consent Judgment in the public interest.

8 **4.4 Payment Procedures**

9 **4.4.1 Funds Moore In Trust:** All payments required by Sections 4.1 and
10 4.3 shall be delivered on or before October 5, 2012, to either The Chanler Group or the attorney
11 of record for Stanley, and shall be placed by said attorney to the benefit of Moore in trust
12 pending the Court's approval of this Consent Judgment.

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

- 14 (a) One check made payable to "The Chanler Group in Trust for OEHHA" in
15 the amount of \$12,000.00 (or 75% of any contractually reduced penalty);
16 (b) One check made payable to "The Chanler Group in Trust for Moore" in
17 the amount of \$4,000.00 (or 25% of any contractually reduced penalty); and
18 (c) One check made payable to "The Chanler Group in Trust" in the amount
19 of \$35,500.00.

20 Payments delivered to Thompson Hine LLP shall be made payable, as follows:

- 21 (a) One check made payable to "Thompson Hine LLP in Trust for OEHHA"
22 in the amount of \$12,000.00 (or 75% of any contractually reduced penalty);
23 (b) One check made payable to "Thompson Hine LLP in Trust for Moore" in
24 the amount of \$4,000.00 (or 25% of any contractually reduced penalty); and
25 (c) One check made payable to "Thompson Hine LLP in Trust for The
26 Chanler Group" in the amount of \$35,500.00.

27 If Stanley elects to deliver payments to its attorney of record, such attorney of
28 record shall: (a) confirm in writing within five days of receipt that the funds have been

1 deposited in a trust account; and (b) within two days of the date of the hearing on which
2 the Court approves the Consent Judgment, deliver the payment to The Chanler Group
3 in three separate checks, as follows:

- 4 (a) One check made payable to "The Chanler Group in Trust for OEHHA" in
5 the amount of \$12,000.00 (or 75% of any contractually reduced penalty);
- 6 (b) One check to "The Chanler Group in Trust for Moore" in the amount of
7 \$4,000.00 (or 75% of any contractually reduced penalty); and
- 8 (c) One check to "The Chanler Group" in the amount of \$35,500.00.

9 Any failure by defendant to deliver the above-referenced payments to The Chanler
10 Group within two days of the date of the hearing on which the Court approves the
11 Consent To Judgment shall result in imposition of a 10% simple interest assessment on
12 the undelivered payment(s) until delivery.

13 **4.5.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
14 and the settlement funds have been transmitted to plaintiff's counsel, Stanley shall issue three
15 separate 1099 forms, as follows:

- 16 (a) The first 1099 shall be issued to the Office of Environmental Health
17 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in
18 the amount of \$12,000.00 (or 75% of any contractually reduced penalty);
- 19 (b) The second 1099 shall be issued to Moore in the amount of \$4,000.00 (or
20 25% of any contractually reduced penalty), whose address and tax identification
21 number shall be furnished upon request; and
- 22 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in
23 the amount of \$35,500.00

24 **4.5.3 Payment Address:** All payments to the Chanler Group shall be delivered
25 to the following payment address:

26 The Chanler Group
27 Attn: Proposition 65 Controller
28 2560 Ninth Street
Parker Plaza, Suite 214

Berkeley, CA 94710

5. CLAIMS COVERED AND RELEASE

5.1 Moore's Releases of Stanley

5.1.1 This Consent To Judgment is a full, final, and binding resolution between Moore, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, and Stanley and its attorneys, successors, licensors and assigns ("Defendant Releasees"), and all entities to whom Stanley directly or indirectly distributes or sells Specific or Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream Defendant Releasees") of any violation of Proposition 65 that has been or could have been asserted against Defendant Releasees and Downstream Defendant Releasees regarding the failure to warn about exposure to the Listed Chemical arising in connection with Specific or Covered Products manufactured, sourced, distributed, or sold by Defendant Releasees prior to the Effective Date. Stanley's compliance with this Consent To Judgment shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Specific and Covered Products after the Effective Date.

5.1.2 Moore on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives with respect to Specific and Covered Products all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"), against Defendant Releasees and Downstream Defendant Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in the public interest, as such claims relate to Defendant Releasees' and Downstream Defendant Releasees' alleged failure to warn about exposures to the Listed Chemical contained in the Specific or Covered Products.

1 5.1.3 Moore also, in his individual capacity only and *not* in his representative capacity,
2 provides a general release herein which shall be effective as a full and final accord and
3 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
4 damages, losses, claims, liabilities and demands of Moore of any nature, character or kind,
5 known or unknown, suspected or unsuspected, arising out of the subject matter of the
6 Complaint as to Specific or Covered Products manufactured, distributed or sold by Defendant
7 Releasees. Moore acknowledges that he is familiar with Section 1542 of the California Civil
8 Code, which provides as follows:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
10 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
11 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
12 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
13 WITH THE DEBTOR.

14 Moore, in his individual capacity only and *not* in his representative capacity, expressly
15 waives and relinquishes any and all rights and benefits which he may have under, or which may
16 be conferred on him by the provisions of Section 1542 of the California Civil Code as well as
17 under any other state or federal statute or common law principle of similar effect, to the fullest
18 extent that he may lawfully waive such rights or benefits pertaining to the released matters. In
19 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
20 complete release notwithstanding the discovery or existence of any such additional or different
21 claims or facts arising out of the released matters.

22 This Section 5.1 release is expressly limited to those claims that arise under Proposition
23 65, as such claims relate to Defendant's alleged failure to warn about exposures to or
24 identification of the Listed Chemical contained in the Specific or Covered Products and as such
25 claims are identified in the Proposition 65 60-Day Notice to Defendant.

26 This Section 5.1 release is expressly limited to any alleged violations that occur prior to
27 eight months after the Effective Date and does not release any person, party or entity from any
28 liability for any violation of Proposition 65 regarding the Specific Products or Covered Products
that occur more than eight months after the Effective Date.

1 The Parties further understand and agree that this Section 5.1 release shall not extend
2 upstream to any entities, other than Defendant, that manufactured the Covered Products or any
3 component parts thereof, or any distributors or suppliers who sold the Covered Products or any
4 component parts thereof to Defendant.

5 5.1.4 Upon court approval of the Consent To Judgment, the Parties waive their
6 respective rights to a hearing or trial on the allegations of the Complaint.

7 **5.2 Stanley's Release of Moore**

8 5.2.1 Stanley waives any and all claims against Moore, his attorneys, and other
9 representatives for any and all actions taken or statements made (or those that could have been
10 taken or made) by Moore and his attorneys and other representatives, whether in the course of
11 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
12 and/or with respect to the Covered Products.

13 5.2.2 Stanley also provides a general release herein which shall be effective as a full
14 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
15 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Stanley of any
16 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the
17 subject matter of the Action. Stanley acknowledges that it is familiar with Section 1542 of the
18 California Civil Code, which provides as follows:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
20 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
21 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
WITH THE DEBTOR.

22 Stanley expressly waives and relinquishes any and all rights and benefits that it
23 may have under, or which may be conferred on it by the provisions of Section 1542 of the
24 California Civil Code as well as under any other state or federal statute or common law
25 principle of similar effect, to the fullest extent that it may lawfully waive such rights or
26 benefits pertaining to the released matters. In furtherance of such intention, the release
27 hereby given shall be and remain in effect as a full and complete release notwithstanding
28

1 the discovery or existence of any such additional or different claims or facts arising out of
2 the released matters.

3 **6. SEVERABILITY**

4 If, subsequent to court approval of this Consent To Judgment, any of the provisions of
5 this Consent To Judgment are held by a court to be unenforceable, the validity of the
6 enforceable provisions remaining shall not be adversely affected, unless the Court finds that any
7 unenforceable provision is not severable from the remainder of the Consent To Judgment.

8 **7. COURT APPROVAL**

9 This Consent To Judgment is effective upon execution but must also be approved by the
10 Court. The Consent to Judgment shall become null and void if, for any reason, it is not approved
11 and entered by the Court within nine months after it has been fully executed by all Parties. If the
12 Consent to Judgment becomes null and void after any payment of monies under this agreement
13 to The Chanler Group in trust, such monies shall be returned to defendant by payment of such
14 monies to its counsel, in trust for Stanley.

15 **8. GOVERNING LAW**

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

18 **9. NOTICES**

19 When any Party is entitled to receive any notice under this Consent To Judgment, the
20 notice shall be sent by certified mail and electronic mail to the following:

21 For Stanley to:

22 Theodore Morris, Esq.
23 Assistant General Counsel and Assistant Secretary
24 Stanley Black & Decker, Inc.
25 701 E. Joppa Rd.
26 Towson, MD 21286

27 With copy to their counsel at

28 Heidi B. Goldstein, Esq.
Thompson Hine LLP
3900 Key Center, 127 Public Square
Cleveland, OH 44114-1291

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

For Moore to:

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

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

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

Moore agrees to comply with the reporting form requirements referenced, in California Health & Safety Code §25249.7(f) and to file a motion for approval of this Consent Judgment.

11. MODIFICATION

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

12. ADDITIONAL POST-EXECUTION ACTIVITIES

The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent To Judgment. In furtherance of obtaining such approval, Moore and Stanley and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent To Judgment and obtain approval of the Consent To Judgment - sufficient to render a formal judgment approving this agreement - by the Court in a timely manner. Any effort by plaintiff or Stanley to impede judicial approval of this Consent To Judgment shall subject such impeding party to liability for attorney fees and costs incurred by plaintiff or his counsel in their efforts to meet or oppose Stanley's impeding conduct.

13. ENTIRE AGREEMENT

This Consent To Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or

1 otherwise, express or implied, other than those contained herein have been made by any Party
2 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
3 deemed to exist or to bind any of the Parties.

4 **14. ATTORNEY'S FEES**

5 14.1 Should Moore prevail on any motion, application for order to show cause or other
6 proceeding to enforce a violation of this Agreement, Moore shall be entitled to his reasonable
7 attorney fees and costs incurred as a result of such motion, order or application, consistent with
8 C.C.P. §1021.5. Should Defendant prevail on any motion, application for order to show cause or
9 other proceeding to enforce a violation of this Consent Judgment, Defendant shall be entitled to
10 its reasonable attorney fees and costs incurred as a result of such motion, order or application
11 upon a finding that Brimer's prosecution of the motion or application lacked substantial
12 justification. For purposes of this Agreement, the term substantial justification shall carry the
13 same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

14 14.2 Except as specifically provided in the above paragraph and in Section 5.1, each
15 Party shall bear its own costs and attorney's fees in connection with this action.

16 14.3 Nothing in this Section 14 shall preclude a Party from seeking an award of
17 sanctions pursuant to law.

18 **15. COUNTERPARTS, FACSIMILE SIGNATURES**

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

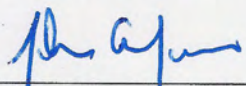
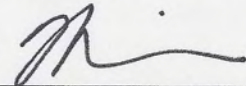
22 **16. AUTHORIZATION**

23 The undersigned parties and their counsel are authorized to execute this Consent To
24 Judgment on behalf of their respective Parties and have read, understood, and agree to all of the
25 terms and conditions of this Consent To Judgment.

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO AGREED

| | |
|--|--|
| <p>Dated: September <u>18</u>, 2012</p> <p></p> <p>_____ Plaintiff John Moore</p> | <p>Dated: September <u>7</u>, 2012</p> <p></p> <p>_____ Theodore Morris, Esq. Stanley Black & Decker, Inc.</p> |
|--|--|