

1 Christopher Tuttle, State Bar No. 264545  
2 THE CHANLER GROUP  
3 2560 Ninth Street  
4 Parker Plaza, Suite 214  
5 Berkeley, CA 94710-2565  
6 Telephone: (510) 848-8880  
7 Facsimile: (510) 848-8118

8 Attorneys for Plaintiff  
9 MARK MOORBERG

(ENDORSED)  
FILED

MAR - 1 2016

CLERK OF SUPERIOR COURT  
COUNTY OF SANTA CLARA

T. NGO  
Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SANTA CLARA

12 UNLIMITED CIVIL JURISDICTION

13 MARK MOORBERG,

14 Plaintiff,

15 v.

16 STANLEY BLACK & DECKER, INC., *et al.*,

17 Defendants.

Case No. 115CV286435

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

Date: March 1, 2016

Time: 9:00 a.m.

Dept. 27

Judge: Hon. ~~Patricia M. Lucas~~


**Judge Beth McGowen**

1 In the above-entitled action, plaintiff Mark Moorberg and defendants Stanley Black &  
2 Decker, Inc., The Black & Decker Corporation, Black & Decker (U.S.) Inc., having agreed through  
3 their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement  
4 in the form of a [Proposed] Consent Judgment (“Consent Judgment”), and following this Court’s  
5 issuance of an Order approving this Proposition 65 settlement and Consent Judgment on March 1,  
6 2016;

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

12  
13 **IT IS SO ORDERED.**

14  
15 Dated: 3-1-16

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17 \_\_\_\_\_  
18 JUDGE OF THE SUPERIOR COURT  
19 **Judge Beth McGowen**  
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# **EXHIBIT A**

1 Christopher Tuttle, State Bar No. 264545  
2 THE CHANLER GROUP  
3 2560 Ninth Street  
4 Parker Plaza, Suite 214  
5 Berkeley, CA 94710-2565  
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8 Attorneys for Plaintiff  
9 MARK MOORBERG

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SANTA CLARA  
12 UNLIMITED CIVIL JURISDICTION

13 MARK MOORBERG,  
14 Plaintiff,

15 v.

16 STANLEY BLACK & DECKER, INC., *et al*,  
17 Defendants.

Case No. 115CV286435

**CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.*)

1     **1.     INTRODUCTION**

2             **1.1     Parties**

3             This Consent Judgment is entered into by and between plaintiff Mark Moorberg  
4     (“Moorberg”), and Stanley Black & Decker, Inc., The Black & Decker Corporation, Black & Decker  
5     (U.S.) Inc., (collectively, “Stanley”), with Moorberg and Defendants each individually referred to as  
6     a “Party” and collectively as the “Parties.”

7             **1.2     Plaintiff**

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

11            **1.3     Defendant**

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

15            **1.4     General Allegations**

16            Moorberg alleges that Stanley manufactures, imports, sells, or distributes for sale in  
17    California, vinyl/PVC tool pouches that contain di(2-ethylhexyl)phthalate (“DEHP”) without first  
18    providing the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition  
19    65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

20            **1.5     Product Description**

21            The products covered by this Consent Judgment are vinyl/PVC tool pouches containing  
22    DEHP that are manufactured, imported, sold, or distributed for sale in California by Stanley  
23    including, but not limited to, *DeWalt 6 Pc. Spade Bit Set, #620103-00, UPC #0 28877 47572 1*,  
24    hereinafter the “Products”.

25            **1.6     Notice of Violation**

26            On or about June 26, 2015, Moorberg served Stanley, and certain requisite public  
27    enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Stanley violated  
28    Proposition 65 by failing to warn its customers and consumers in California that the Products expose

1 users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is  
2 diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On October 2, 2015 Moorberg filed the instant action ("Complaint") naming Stanley as a  
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of  
6 the Notice.

7 **1.8 No Admission**

8 Stanley denies the material, factual, and legal allegations contained in the Notice and  
9 Complaint, and maintains that all of the products it has sold and distributed for sale in California,  
10 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent  
11 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or  
12 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an  
13 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall  
14 not, however, diminish or otherwise affect Stanley's obligations, responsibilities, and duties under  
15 this Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
18 jurisdiction over Stanley as to the allegations contained in the Complaint, that venue is proper in the  
19 County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of this  
20 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" means the date on which  
23 the Motion for Approval of the Consent Judgment is granted by the Court.

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

25 **2.1 Commitment to Reformulate or Warn**

26 Commencing on March 1, 2016, and continuing thereafter, Stanley agrees to only  
27 manufacture, distribute or purchase for sale in California: (a) "Reformulated Products", or (b)  
28 Products that bear a clear and reasonable health hazard warning, pursuant to Section 2.2 below. For

1 purposes of this Consent Judgment, "Reformulated Products" are defined as Products with a  
2 maximum concentration of 0.1 percent (1,000 parts per million) of DEHP when analyzed pursuant to  
3 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or other  
4 methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a  
5 solid substance.

## 6 **2.2 Reformulation Commitment**

7 All Products manufactured, distributed, sold or offered for sale in the State of California by  
8 Stanley on or after March 1, 2016, shall either qualify as Reformulated Products or otherwise shall be  
9 accompanied by a Proposition 65 warning as set forth in Section 2.3 below.

## 10 **2.3 Clear and Reasonable Warnings**

11 Stanley agrees that on or after March 1, 2016, all Products it sells and/or distributes in  
12 California which do not qualify as Reformulated Products, will bear a clear and reasonable warning  
13 pursuant to this Section. Stanley further agrees that the warning will be prominently placed with such  
14 conspicuousness when compared with other words, statements, designs, or devices as to render it  
15 likely to be read and understood by an ordinary individual under customary conditions before  
16 purchase or use. For purposes of this Consent Judgment, a clear and reasonable warning for the  
17 Products shall consist of a warning affixed to the packaging, or, if no packaging exists, directly on,  
18 each non reformulated Product sold in California, and shall contain one of the following statements:

19 **WARNING:** This product contains DEHP, a chemical  
20 known to the State of California to cause  
21 birth defects or other reproductive harm.

22 **or**

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

## 26 **3. MONETARY SETTLEMENT TERMS**

### 27 **3.1 Civil Penalty Payments**

28 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in  
this Consent Judgment, Stanley shall pay \$13,200 in civil penalties. The civil penalty payment shall  
be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five

1 percent (75%) of the funds remitted to the California Office of Environmental Health Hazard  
2 Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Moorberg.  
3 Moorberg shall be responsible for remitting Stanley’s civil penalty payment under this Consent  
4 Judgment to OEEHA. Stanley shall provide its payment in a single check made payable to “Mark  
5 Moorberg Client Trust Account” as set forth in Sections 3.3 and 3.4.

6 **3.2 Reimbursement of Attorney’s Fees and Costs**

7 The parties acknowledge that Moorberg and his counsel offered to resolve this dispute  
8 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the  
9 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after  
10 the other settlement terms had been finalized, Stanley expressed a desire to resolve Moorberg’s fees  
11 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to  
12 Moorberg and his counsel under general contract principles and the private attorney general doctrine  
13 codified at California Code of Civil Procedure section 1021.5 for all work performed through the  
14 mutual execution of this Consent Judgment. Within five (5) business days of the Effective Date,  
15 Stanley shall pay \$24,600 for the fees and costs incurred by Moorberg investigating, bringing this  
16 matter to Stanley’s attention, litigating and negotiating a settlement in the public interest.

17 **3.3 Payments Held in Trust**

18 All payments due under this Consent Judgment shall be held in trust until such time as the  
19 Court approves the Parties’ settlement. All payments due under this agreement shall be delivered  
20 within fifteen (15) days of the date that this Consent Judgment is fully executed by the Parties, and  
21 held in trust by Stanley’s counsel until the Court grants the motion for approval of this Consent  
22 Judgment contemplated by Section 5. Within five business days of the Court’s approval of this  
23 Consent Judgment, Stanley’s counsel shall tender the civil penalty payments and attorneys’ fee and  
24 costs reimbursements required by Sections 3.1 and 3.2.

25 **3.4 Payment Address**

26 All payments required by this Consent Judgment shall be delivered to the following  
27 address:  
28



1 The Chanler Group  
2 Attn: Proposition 65 Controller  
3 2560 Ninth Street  
4 Parker Plaza, Suite 214  
5 Berkeley, CA 94710

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 Moorberg's Public Release of Proposition 65 Claims**

8 Moorberg, acting on his own behalf and in the public interest, releases Stanley and it's  
9 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,  
10 and attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the  
11 Products including, but not limited to, it's downstream distributors, wholesalers, customers,  
12 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for  
13 any violations arising under Proposition 65 for unwarned exposures to DEHP from Products sold by  
14 Stanley prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this  
15 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to failures  
16 to warn about DEHP from the Products sold by Stanley before the Effective Date, as set forth in the  
17 Notice.

18 **4.2 Moorberg's Individual Release of Claims**

19 Moorberg, in his individual capacity only and *not* in his representative capacity, also provides  
20 a release to Stanley, Releasees, and Downstream Releasees which shall be effective as a full and final  
21 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
22 attorneys' fees, damages, losses, claims, liabilities and demands of Moorberg of any nature, character  
23 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual  
24 exposures to DEHP in the Products sold or distributed for sale by Stanley before the Effective Date.

25 **4.3 Stanley's Release of Moorberg**

26 Stanley, on its own behalf, and on behalf of its past and current agents, representatives,  
27 attorneys, successors, and assignees, hereby waives any and all claims against Moorberg and his  
28 attorneys and other representatives, for any and all actions taken or statements made by Moorberg  
and his attorneys and other representatives, whether in the course of investigating claims, otherwise

1 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

2 **5. COURT APPROVAL**

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

6 **6. SEVERABILITY**

7 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any  
8 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be  
9 adversely affected.

10 **7. GOVERNING LAW**

11 The terms of this Consent Judgment shall be governed by the laws of the state of California  
12 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is  
13 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Stanley may  
14 provide written notice to Moorberg of any asserted change in the law, and shall have no further  
15 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
16 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Stanley  
17 from any obligation to comply with any pertinent state or federal toxics control laws.

18 **8. NOTICE**

19 Unless specified herein, all correspondence and notice required by this Consent Judgment  
20 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,  
21 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

22 For Stanley:

with a copy to:

23 James M. Loree, Chief Operating  
24 Officer & President  
25 Stanley Black & Decker, Inc.  
1000 Stanley Drive  
New Britain, CT 06053

Lee Marshall, Esq.  
Haight Brown & Bonesteel LLP  
555 South Flower Street  
Forty-Fifth Floor  
Los Angeles, CA 90071

26 James M. Loree, President  
27 The Black & Decker Corporation  
701 East Joppa Road  
28 *TM* Towpison, MD 21286

1 Jeffery D. Ansell, President  
2 Black & Decker (U.S.) Inc.  
3 701 East Joppa Road  
4 Towson, MD 21286

5 For Moorberg:

6 Proposition 65 Coordinator  
7 The Chanler Group  
8 2560 Ninth Street  
9 Parker Plaza, Suite 214  
10 Berkeley, CA 94710-2565

11 Any Party may, from time to time, specify in writing to the other, a change of address to which all  
12 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 portable  
15 document format (PDF) signature, each of which shall be deemed an original, and all of which, when  
16 taken together, shall constitute one and the same document.

17 **10. POST EXECUTION ACTIVITIES**

18 Moorberg agrees to comply with the reporting form requirements referenced in Health and  
19 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety  
20 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In  
21 furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and  
22 those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial  
23 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall  
24 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,  
25 supporting the motion, and appearing at the hearing before the Court.

26 **11. MODIFICATION**

27 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
28 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any  
Party, and the entry of a modified consent judgment by the Court.

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**12. AUTHORIZATION**


The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein

**AGREED TO:**

**AGREED TO:**

Date: 12/5/15

Date: \_\_\_\_\_

By:   
MARK MOORBERG

By: \_\_\_\_\_  
Theodore C. Morris, Assistant Secretary  
STANLEY BLACK & DECKER, INC.

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Theodore C. Morris, Assistant Secretary  
THE BLACK & DECKER CORPORATION

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Theodore C. Morris, Assistant Secretary  
BLACK & DECKER (U.S.) INC.

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The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein


**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

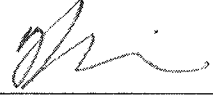
Date: December 10, 2015

By: \_\_\_\_\_  
MARK MOORBERG

By:   
Theodore C. Morris, Assistant Secretary  
STANLEY BLACK & DECKER, INC.

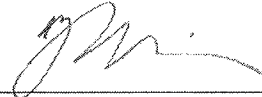
**AGREED TO:**

Date: December 10, 2015

By:   
Theodore C. Morris, Assistant Secretary  
THE BLACK & DECKER CORPORATION

**AGREED TO:**

Date: December 10, 2015

By:   
Theodore C. Morris, Assistant Secretary  
BLACK & DECKER (U.S.) INC.