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Josh Voorhees, State Bar No. 241436  
THE CHANLER GROUP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
Facsimile: (510) 848-8118  
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Attorneys for Plaintiff  
MARK MOORBERG

2016 APR -5 A 10:07  
S. ACKARD

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

MARK MOORBERG,  
  
Plaintiff,  
  
v.  
  
REXNORD CORPORATION, *et al.*,  
  
Defendants.

Case No. 115CV288688  
  
**[PROPOSED] JUDGMENT PURSUANT  
TO TERMS OF PROPOSITION 65  
SETTLEMENT AND CONSENT  
JUDGMENT**  
  
Date: April 5, 2016  
Time: 9:00 a.m.  
Dept.: 7  
Judge: Hon. Beth McGowen

1 In the above-entitled action, plaintiff Mark Moorberg, and defendants Rexnord  
2 Corporation, RBS Global, Inc. and Zurn Industries, LLC, formerly known as Zurn  
3 Industries, Inc., having agreed through their respective counsel that Judgment be entered  
4 pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and  
5 following this Court's issuance of an Order approving this Proposition 65 settlement and  
6 Consent Judgment:

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

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**IT IS SO ORDERED.**

APR - 5 2016

Dated: \_\_\_\_\_

**Beth McGowen**

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

# **EXHIBIT A**

1 Josh Voorhees, State Bar No. 241436  
Christopher Tuttle, State Bar No. 264545  
2 THE CHANLER GROUP  
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5 Attorneys for Plaintiff  
6 MARK MOORBERG

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

MARK MOORBERG,  
Plaintiff,  
v.  
REXNORD CORPORATION; RBS  
GLOBAL, INC.; ZURN INDUSTRIES, INC.;  
and DOES 1 – 150, inclusive,  
Defendants.

Case No. 115CV288688  
**[PROPOSED] CONSENT JUDGMENT**  
(Health and 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 Rexnord Corporation, RBS Global, Inc., and Zurn Industries, LLC, formerly  
5     known as Zurn Industries, Inc. (collectively, "Defendants"), with Moorberg and Defendants each  
6     individually referred to as 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 Defendants**

12            For the purposes of this Consent Judgment only, Defendants stipulate that each employs  
13    ten or more individuals and each is a "person in the course of doing business" for purposes of the  
14    Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code  
15    section 25249.6 *et seq.* ("Proposition 65").

16            **1.4 General Allegations**

17            Moorberg alleges that Defendants manufacture, import, sell, offer for sale, distribute for  
18    sale or purchase for resale in California tools with vinyl/PVC grips that contain di(2-  
19    ethylhexyl)phthalate ("DEHP") without first providing the exposure warning required by  
20    Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of  
21    California to cause (i) cancer and (ii) birth defects or other reproductive harm.

22            **1.5 Product Description**

23            The products covered by this Consent Judgment are tools with vinyl/PVC grips containing  
24    DEHP that are manufactured, imported, sold, offered for sale, distributed for sale or purchased for  
25    resale in California by Defendants including, but not limited to, *Zurn Multi-Head Crimp Tool Kit*  
26    (hereinafter the "Products").

1           **1.6     Notice of Violation**

2           On or about July 31, 2015, Moorberg served Defendants and certain requisite public  
3 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Defendants  
4 violated Proposition 65 by failing to warn their customers and consumers in California that the  
5 Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has  
6 commenced and is diligently prosecuting the allegations set forth in the Notice.

7           **1.7     Complaint**

8           On November 23, 2015, Moorberg filed the instant action (“Complaint”) naming Rexnord  
9 Corporation, RBS Global, Inc., and Zurn Industries, INC. as defendants for the alleged violations  
10 of Health and Safety Code section 25249.6 that are the subject of the Notice.

11          **1.8     No Admission**

12          Defendants deny the material, factual, and legal allegations contained in the Notice and  
13 Complaint, and maintain that all of the products they have sold and distributed for sale in  
14 California, including the Products, have been and are in compliance with Proposition 65. Nothing  
15 in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of  
16 law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute  
17 or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation  
18 of law. This Section shall not, however, diminish or otherwise affect Defendants’ obligations,  
19 responsibilities, and duties under this Consent Judgment.

20          **1.9     Jurisdiction**

21          For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
22 jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is proper  
23 in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the  
24 provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil  
25 Procedure section 664.6.

26          **1.10    Effective Date**

27          For purposes of this Consent Judgment, the term “Effective Date” means the date on  
28 which the Motion for Approval of the Consent Judgment is granted by the Court.

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

2 **2.1 Commitment to Reformulate or Warn**

3 Commencing sixty (60) days after the Effective Date, and continuing thereafter,  
4 Defendants agree to only manufacture, import, sell, offer for sale, distribute for sale or purchase  
5 for resale in California: (a) "Reformulated Products" or (b) Products that bear a clear and  
6 reasonable health hazard warning, pursuant to Sections 2.2 and 2.3 below. For purposes of this  
7 Consent Judgment, "Reformulated Products" are defined as Products with a maximum  
8 concentration of 0.1 percent (1,000 parts per million) of DEHP when analyzed pursuant to U.S.  
9 Environmental Protection Agency testing methodologies 3580A and 8270C, or other  
10 methodologies utilized by state or federal agencies for the purpose of determining DEHP content  
11 in a solid substance.

12 **2.2 Reformulation or Warning Commitment**

13 All Products manufactured, imported, sold, offer for sale, distributed for sale or purchased  
14 for resale in the State of California by Defendants on or after the date that is sixty (60) days after  
15 the Effective Date shall either qualify as Reformulated Products or otherwise shall be  
16 accompanied by a Proposition 65 warning as set forth in Section 2.3 below.

17 **2.3 Clear and Reasonable Warnings**

18 Defendants agree that on or after the date that is sixty (60) days after the Effective Date,  
19 all Products they sell and/or distribute in California that do not qualify as Reformulated Products  
20 will bear a clear and reasonable warning pursuant to this Section. Defendants further agree that  
21 the warning will be prominently placed with such conspicuousness when compared with other  
22 words, statements, designs, or devices as to render it likely to be read and understood by an  
23 ordinary individual under customary conditions before purchase or use. For purposes of this  
24 Consent Judgment, a clear and reasonable warning for the Products shall consist of a warning  
25 affixed to the packaging, or, if no packaging exists, directly on each non-reformulated Product  
26 sold in California, and shall contain one of the statements below:

27 ///

28 ///



1 compensation due to Moorberg and his counsel under general contract principles and the private  
2 attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all  
3 work performed through the mutual execution of this Consent Judgment. On or before the  
4 Effective Date, Defendants shall pay \$29,000, to “The Chanler Group” to be held in trust, as set  
5 forth in Sections 3.3 and 3.4, for the fees and costs incurred by Moorberg investigating, bringing  
6 this matter to Defendants’ attention, litigating, and negotiating a settlement in the public interest.

7 **3.3 Payments Held in Trust**

8 Within five (5) days of the date that this agreement is fully executed by the Parties, all  
9 payments required by this Consent Judgment shall be delivered to Moorberg’s counsel at the  
10 address provided in Section 3.4. Moorberg’s counsel shall hold such payments in their trust  
11 account until such time as any of the events described in Section 5 occur. Plaintiff requested that  
12 the payments be held by the Defendants’ counsel but the Defendants’ counsel wanted the funds  
13 held by Plaintiff’s counsel.

14 **3.4 Payment Address**

15 All payments required by this Consent Judgment shall be delivered to the following  
16 address:

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

22 **4. CLAIMS COVERED AND RELEASED**

23 **4.1 Moorberg’s Public Release of Proposition 65 Claims**

24 Moorberg, acting on his own behalf and in the public interest, fully and finally releases  
25 Defendants and their parents, subsidiaries, affiliated entities under common ownership, directors,  
26 officers, employees, and attorneys (“Releasees”) and each entity to whom they directly or  
27 indirectly distribute or sell the Products, including, but not limited to, their downstream  
28 distributors, wholesalers, sales representatives, customers, retailers, franchisers, cooperative  
members, licensors and licensees (“Downstream Releasees”) for any actual or alleged violations  
arising under Proposition 65 for unwarned exposures to DEHP (including use of any intended or

1 purported Proposition 65 warning other than those listed in Section 2.3) from Products  
2 manufactured, imported, sold, offered for sale, distributed for sale or purchased for resale in  
3 California by the Defendants (as set forth in the Notice) prior to the date that is sixty (60) days  
4 after the Effective Date, or based on any other alleged violation by Defendants known to  
5 Moorberg on or before the date that is sixty (60) days after the Effective Date. Compliance with  
6 the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to  
7 exposures to failures to warn about DEHP from the Products sold by Defendants (as set forth in  
8 the Notice) prior to the date that is sixty (60) days after the Effective Date.

#### 9 **4.2 Moorberg's Individual Release of Claims**

10 Moorberg, in his individual capacity only and *not* in his representative capacity, also  
11 provides a release to Defendants, Releasees, and Downstream Releasees which shall be effective  
12 as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations,  
13 costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Moorberg of  
14 any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out  
15 of alleged or actual exposures to DEHP in the Products manufactured, imported, sold, offered for  
16 sale, distributed for sale or purchased for resale by Defendants, or based on any other alleged  
17 violation by Defendants known to Moorberg, in each case on or before the date that is ninety (90)  
18 days after the Effective Date.

#### 19 **4.3 Defendants' Release of Moorberg**

20 Defendants, on their own behalf, and on behalf of their past and current agents,  
21 representatives, attorneys, successors, and assignees, hereby waive any and all claims against  
22 Moorberg and his attorneys and other representatives for any and all actions taken or statements  
23 made by Moorberg and his attorneys and other representatives, whether in the course of  
24 investigating claims, otherwise seeking to enforce Proposition 65 against them in this matter, or  
25 with respect to the Products.

### 26 **5. COURT APPROVAL**

#### 27 **5.1 Court Approval**

28 This Consent Judgment is not effective until it is approved and entered by the Court.

1           **5.2     Actions to be Taken Upon Court Approval**

2           Moorberg’s counsel shall, within five (5) days of the Court’s approval of this Consent  
3 Judgment, cause the payments described in Section 3 to be made.

4           **5.3     Failure by the Court to Approve Consent Judgment**

5           If this Consent Judgment is not approved and entered by the Court within one hundred  
6 eighty (180) days after it has been fully executed by the Parties, it shall be of no force or effect  
7 and shall never be introduced into evidence or otherwise used in any proceeding. Upon written  
8 request by the Defendants, all civil penalty payments and attorneys’ fee and cost reimbursements  
9 shall be returned to Defendants within five (5) days of Defendants counsel’s receipt of such  
10 request.

11       **6.     SEVERABILITY**

12           If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment,  
13 any provision is held by a court to be unenforceable, the validity of the remaining provisions shall  
14 not be adversely affected, so long as the Parties’ original intent remains intact.

15       **7.     GOVERNING LAW**

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

24       **8.     NOTICE**

25           Unless specified herein, all correspondence and notice required by this Consent Judgment  
26 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,  
27 return receipt requested; or (iii) a recognized overnight courier to the following addresses:  
28

1           **Defendants**

2           Todd Adams, President  
3           Rexnord Corporation  
4           247 Freshwater Way, Suite 200  
5           Milwaukee, WI 53204

            O'Melveny & Myers LLP  
            400 South Hope Street  
            Los Angeles, CA 90071-2899  
            Attn: Bob Nicksin

6           Todd Adams, President  
7           RBS Global, Inc.  
8           4701 West Greenfield Ave.  
9           Milwaukee, WI 53214

            General Counsel  
            Rexnord Corporation  
            247 Freshwater Way, Suite 200  
            Milwaukee, WI 53204

10          Craig Wehr, President  
11          Zurn Industries, LLC  
12          1801 Pittsburgh Avenue  
13          Erie, PA 16502

14           **Moorberg**

15          Proposition 65 Coordinator  
16          The Chanler Group  
17          2560 Ninth Street  
18          Parker Plaza, Suite 214  
19          Berkeley, CA 94710-2565

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

22          **9.        COUNTERPARTS; FACSIMILE SIGNATURES**

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

26          **10.       POST EXECUTION ACTIVITIES**

27                Moorberg agrees to comply with the reporting form requirements referenced in Health and  
28                Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and  
29                Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the  
30                settlement. Moorberg shall prepare and file a Motion for Approval of this Consent Judgment. In  
31                furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts,  
32                and those of their counsel, to support the entry of this agreement as judgment, and to obtain  
33                judicial approval of this Consent Judgment in a timely manner. For purposes of this Section,

1 "best efforts" shall include, at a minimum, cooperating on the drafting and filing of the necessary  
2 moving papers. Defendants' obligation to support a Motion for Approval of this Consent  
3 Judgment shall not necessarily apply to any proposed revisions to this Consent Judgment  
4 requested by the Court or the California Attorney General.

5 **11. MODIFICATION**

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

9 **12. ENFORCEMENT**

10 Any Party may, after meeting and conferring, for a period no longer than sixty (60) days,  
11 by motion or application for an order to show cause before this Court, enforce the terms and  
12 conditions contained in this Consent Judgment. This Court shall retain jurisdiction to implement  
13 or modify the Consent Judgment.

14 **13. AUTHORIZATION**

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

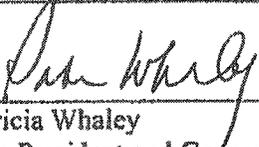
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18 **AGREED TO:**

19 Date: February 2, 2016

20  
21 By:   
22 MARK INGORBERG

18 **AGREED TO:**

19 Date: 2/3/16

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21 By:   
22 Patricia Whaley  
23 Vice President and General Counsel  
24 REXNORD CORPORATION  
25 RBS GLOBAL, INC.  
26 ZURN INDUSTRIES, LLC  
27 (formerly known as  
28 ZURN INDUSTRIES, INC.)