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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

UNLIMITED CIVIL JURISDICTION

JOHN MOORE, Plaintiff, v. ILLINOIS INDUSTRIAL TOOL, INC.; and DOES 1-150, inclusive, Defendants.	Case No. 113CV242951 **[PROPOSED] CONSENT JUDGMENT** Dept: Judge: Date: None set Action Filed: March 14, 2013

1. INTRODUCTION

1.1 John Moore and Illinois Industrial Tool, Inc.

This Consent Judgment is entered into by and between plaintiff John Moore ("Moore" or "Plaintiff") and defendant Illinois Industrial Tool, Inc. ("Illinois Industrial" or "Defendant"), with Plaintiff and Defendant collectively referred to as the "parties."

1.2 John Moore

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

1.3 Illinois Industrial Tool, Inc.

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

1.4 General Allegations

Moore alleges that Illinois Industrial has manufactured, imported, distributed and/or sold: (1) cases for CDs/DVDs containing lead and di(2-ethylhexyl)phthalate ("DEHP"); (2) hand tool grips containing DEHP; and (3) tape measures containing lead without the requisite Proposition 65 warnings. DEHP and lead are on the Proposition 65 list as known to cause birth defects and other reproductive harm.

1.5 Product Description

The products that are covered by this Consent Judgment are defined as: (1) cases for CDs/DVDs containing lead and DEHP including, but not limited to, *JMK CD WALLET, #02000 (#0 39593 02000 3)*; (2) hand tool grips containing DEHP including, but not limited to, *8" Wire Stripper, #45815 (#0 39593 45815 8)* and *6" Ladies Long Nose Pliers, #88000 (#0 39593 88000 3)*; and (3) tape measures containing lead including, but not limited to, *16' x ¾" Tape Measure, #75675 (#0 39593 75675 9)*, which are manufactured, imported, distributed, sold, and/or offered for sale by Illinois Industrial in the State of California, collectively hereinafter the "Products."

1.6 Notices of Violation

On April 19, 2011, Moore served Illinois Industrial and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice") that provided the recipients with notice that Illinois Industrial was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers that its cases for CDs/DVDs exposed users in California to DEHP.

On December 20, 2012, Moore served Illinois Industrial and various public enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation" ("Supplemental Notice") that provided the recipients with notice that Illinois Industrial was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers that its cases for CDs/DVDs and hand tool grips exposed users in California to DEHP and that its tape measures and cases for CDs/DVDs exposed users in California to lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice or Supplemental Notice. The Notice and Supplemental Notice shall collectively be referred to hereinafter as the "Notices."

1.7 Complaint

On March 14, 2013, Moore filed a complaint in the Superior Court in and for the County of Santa Clara against Illinois Industrial Tool, Inc. and Does 1 through 150, *Moore v. Illinois Industrial Tool, Inc., et al.*, Case No. 113CV242951 (the "Action"), alleging violations of California Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain cases for CDs/DVDs and hand tool grips and lead contained in certain cases for CDs/DVDs and tape measures sold by Illinois Industrial.

1.8 No Admission

Illinois Industrial denies the material, factual and legal allegations contained in Moore's Notices and Complaint and maintains that all products that it has sold, manufactured, imported and/or distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Illinois Industrial of any fact, finding, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Illinois Industrial of any fact, finding, conclusion,

issue of law or violation of law. However, this section shall not diminish or otherwise affect Illinois Industrial's obligations, responsibilities and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction over Illinois Industrial as to the allegations contained in the Complaint, that venue is proper in the County of Santa Clara and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean August 1, 2013.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards

"Reformulated Products" are defined as:

(a) Products that contain a total lead content of less than or equal to 100 parts per million ("ppm") when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B in each accessible component;

(b) Products which yield no more than 1.0 micrograms of lead when analyzed pursuant to NIOSH Test Method 9100 performed on any accessible component (i.e. any component part that may be handled, touched or mouthed during the reasonably foreseeable use or misuse by a consumer); *and*

(c) Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date, all Products manufactured, imported, distributed, sold, or offered for sale in the State of California by Illinois Industrial shall be Products that qualify as Reformulated Products as defined in Section 2.1 above, or shall carry the Proposition 65 warnings specified in Section 2.3 below.

2.3 Product Warnings

As of the Effective Date, all Products manufactured, imported, distributed, sold, or offered for sale in the State of California that do not qualify as Reformulated Products shall contain a warning label, as set forth in subsections 2.3(a) and (b). 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 before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales.

(i) Product Labeling. Illinois Industrial shall affix a warning to the packaging, labeling or directly on each Product provided for sale in retail outlets in California that states:

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

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

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

Where more than one Product is sold in proximity to other like items or to those that do not

require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement shall be used:[1]

> **WARNING:** The following products contain chemicals known to the State of California to cause birth defects and other reproductive harm:
>
> [*list products for which warning is required*]

(b) Internet Sales. In the event that Illinois Industrial sells Products via the internet, directly to customers located in California, after the Effective Date, that are not Reformulated Products, Illinois shall provide warnings for such Products sold via the internet to California residents. Warnings given on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

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

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

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

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

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[1]For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar 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.

3. MONETARY PAYMENTS

In settlement of all the claims referred to in this Consent Judgment, Illinois Industrial shall pay a total of $16,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Moore, as follows:

3.1 Initial Civil Penalty

Illinois Industrial shall pay an initial civil penalty in the amount of $5,000 on or before August 1, 2013. Illinois Industrial shall issue two separate checks to: (a) "OEHHA" in the amount of $3,750; and (b) "The Chanler Group in Trust for John Moore" in the amount of $1,250. All penalty payments shall be delivered to the addresses listed in Section 3.4 below.

3.2 Final Civil Penalty

Illinois Industrial shall pay a final civil penalty of $11,000 on or before February 28, 2014. The final civil penalty shall be waived in its entirety, however, if, no later than February 15, 2013, an officer of Illinois Industrial provides Moore with written certification that, as of the date of such certification and continuing into the future, Illinois Industrial has met the reformulation commitment specified in Section 2.2 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by Illinois Industrial are Reformulated Products. Moore must receive any such certification on or before February 15, 2014. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Unless the final civil penalty is waived, Illinois Industrial shall issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of $8,250; and (b) "The Chanler Group in Trust for John Moore" in the amount of $2,750.

3.3 Reimbursement of Fees and Costs

The parties acknowledge that Moore and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Moore then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been

finalized. The parties then attempted to (and did) reach an accord on the compensation due to Moore and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Illinois Industrial shall pay $27,000 for fees and costs incurred as a result of investigating, bringing this matter to Illinois Industrial's attention, and negotiating a settlement in the public interest. Illinois Industrial shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before August 1, 2013, to the address listed in Section 3.4.1(a) below.

3.4 Payment Procedures

3.4.1. Issuance of Payments. Payments shall be delivered as follows:

(a) All payments owed to Moore, pursuant to Sections 3.1 through 3.3, shall be delivered to the following payment address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1 through 3.3, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.4.1(a), as proof of payment to OEHHA.

3.4.2 Issuance of 1099 Forms. After each penalty payment, Illinois Industrial shall issue separate 1099 forms for each payment to Moore, whose address and tax identification number shall be furnished upon request after this Consent Judgment has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.4.1 above.

4. CLAIMS COVERED AND RELEASED

4.1 Moore's Public Release of Proposition 65 Claims

Moore acting on his own behalf and in the public interest releases Illinois Industrial from all claims for violations of Proposition 65 up through the Effective Date based on exposure to DEHP and lead from the Products as set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP and lead from the Products as set forth in the Notices.

4.2 Moore's Individual Release of Claims

Plaintiff also, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP and lead in the Products manufactured, distributed or sold by Illinois Industrial, as well as any claims against Illinois Industrial for any other violations of Proposition 65 that Plaintiff knew about on or before the Effective Date.

4.3 Illinois Industrial's Release of Moore

Illinois Industrial on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Moore, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Moore and his attorneys and other representatives, whether in the course of

investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

5. COURT APPROVAL

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

6. SEVERABILITY

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

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Illinois Industrial shall provide written notice to Moore of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Illinois Industrial from any obligation to comply with any pertinent state or federal toxics control law.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

To Illinois Industrial:	To John Moore:
Michael T. Stengel, General Manager Illinois Industrial Tool, Inc. 8811 South 77th Avenue Bridgeview, IL 60455	Proposition 65 Coordinator The Chanler Group 2560 Ninth Street Parker Plaza, Suite 214 Berkeley, CA 94710-2565

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

9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES

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

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

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

11. ADDITIONAL POST EXECUTION ACTIVITIES

Moore and Illinois Industrial agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Moore shall draft and file, and Illinois Industrial shall join. If any third party objection to the noticed motion is filed, Moore and Illinois Industrial shall work together to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

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: August 1, 2013	Date: _____
By: _____	By: _____
John Moore	Michael T. Stengel, General Manager Illinois Industrial Tool, Inc.

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: 7/29/13
By: _____ John Moore	By: _____ Michael T. Stengel, General Manager Illinois Industrial Tool, Inc.