

1 Clifford A. Chanler, State Bar No. 135534
2 Gregory M. Sheffer, State Bar No. 173124
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 JOHN MOORE

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12
13 IN AND FOR THE COUNTY OF MARIN
14
15 UNLIMITED CIVIL JURISDICTION

16 JOHN MOORE,
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18 Plaintiff,
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20 v.
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22 IDEAL INDUSTRIES, INC. and DOES 1-150,
23
24 Defendants.

25 Case No. CIV 1203642
26
27 **CONSENT TO JUDGMENT AS TO**
28 **DEFENDANT IDEAL INDUSTRIES, INC.**

Action Filed: August 8, 2012
Trial Date: Not Assigned

1 **I. 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 Ideal Industries, Inc. (hereafter "Ideal" or "Defendant")
5 with Moore and Ideal 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 Ideal 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 Ideal manufactured, distributed and/or sold, in the State of California,
16 certain types of hand tools with grips containing DEHP, including, but not limited to, Buchanan
17 Construction Products 6" needle nose pliers (#35-1071), that exposed users to DEHP without first
18 providing "clear and reasonable warning" under Proposition 65. DEHP is listed as a
19 reproductive and developmental toxicant pursuant to Proposition 65 and are collectively
20 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 their
26 hand tool products sold in California. Defendant received such 60-Day Notices of Violation.
27 Ideal represents that, as of the date it executes this Consent Judgment, it believes that no public
28

1 enforcer is diligently prosecuting a Proposition 65 enforcement action related to the Proposition
2 65 listed phthalate chemicals in its products, as identified in their respective Notices.

3 **1.6 Complaint**

4 On August 8, 2012, Moore, acting, in the interest of the general public in California, filed
5 a Complaint in the Superior Court of the State of California for the County of San Francisco,
6 alleging violations by Defendant of Health & Safety Code § 25249.6 based, *inter alia*, on the
7 alleged exposures to DEHP contained in the referenced hand tool products (the "Action").

8 **1.7 No Admission**

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

23 **1.8 Consent to Jurisdiction**

24 For the limited and express purposes of this Consent To Judgment only, the Parties
25 stipulate that this Court has jurisdiction over Ideal as to the allegations contained in the
26 Complaint, that venue is proper in County of San Francisco, and that this Court has jurisdiction
27 to enter and enforce the provisions of this Consent Judgment. As an express part of this
28 Agreement, pursuant to C.C.P. §664.6 the Court in which this action was filed shall retain

1 jurisdiction over the parties to enforce the settlement until performance in full of the terms of the
2 settlement.

3 **2. DEFINITIONS**

4 2.1 The term "Complaint" shall mean the Complaint.

5 2.2 The term "Covered Products" means any hand tools with grips containing DEHP,
6 including, but not limited to, Buchanan Construction Products 6" needle nose pliers (#35-1071).

7 2.3 The term "Effective Date" shall mean December 31, 2012.

8 2.4 "Accessible Component" means a metal or a poly vinyl chloride or other soft
9 plastic, vinyl, or synthetic leather component of a Covered Product that could be touched by a
10 person during reasonably foreseeable use.

11 2.5 The term "DEHP Free" Covered Products shall mean Covered Products
12 containing Accessible Components, materials or other components that may be handled,
13 touched or mouthed by a consumer, and which components contain less than or equal to 1,000
14 parts per million ("ppm") of DEHP as determined by a minimum of duplicate quality controlled
15 test results using Environmental Protection Agency ("EPA") testing methodologies 3580A and
16 8270C.

17 2.6 "Manufactured" and "Manufactures" have the meaning defined in Section
18 3(a)(10) of the Consumer Product Safety Act ("CPSA") [15 U.S.C. § 2052(a)(10)], as amended
19 from time to time.

20 **3. INJUNCTIVE RELIEF**

21 **3.1 Formulation Commitment**

22 **3.1.1** No later than ten (10) days after the Effective Date, Defendant shall provide the
23 DEHP Free phthalate concentration standard of Section 2.5 to its then-current vendors of
24 Covered Products that will be sold or offered for sale to United States consumers and instruct its
25 vendors not to incorporate any raw or component materials that do not meet or exceed the
26 DEHP Free concentration standard of Section 2.5 into Covered Products. In addressing the
27 obligation set forth in the preceding sentence, Settling Defendants shall not employ statements
28 that will encourage a Vendor to delay compliance with the Reformulation Standard. Upon

1 request, each Settling Defendant shall provide Plaintiffs with copies of such Vendor notification
2 and Plaintiffs shall regard such copies as confidential business information.

3 **3.1.2** No more than thirty (30) days after the Effective Date, Defendant shall not order,
4 cause to be ordered, manufacture or cause to be manufactured any Covered Product that will be
5 sold or offered for sale in the United States, or to any entity or company that has retail store
6 locations in the United States, that is not DEHP Free.

7 **3.1.3** For every Covered Product ordered, caused to be ordered, manufactured or
8 caused to be manufactured for distribution to or sale in the United States after the Effective Date,
9 Defendant shall maintain copies of all testing of such products demonstrating compliance with
10 this section and shall maintain copies of all vendor correspondence relating to the DEHP
11 concentration standard.

12 **3.2 Previously Obtained or Distributed Covered Products.**

13 **3.2.1 Product Warnings**

14 Commencing on the Effective Date, and until such date six (6) months thereafter, Ideal
15 shall not sell, ship, or offer to be sold or shipped for sale in California any Covered Products
16 unless such Covered Products are DEHP Free under Section 2.5 or are sold or shipped with one
17 of the clear and reasonable warnings set forth hereafter.

18 Each warning shall be prominently placed with such conspicuousness as compared with
19 other words, statements, designs, or devices as to render it likely to be read and understood by
20 an ordinary individual under customary conditions *before* purchase or use. Each warning shall
21 be provided in a manner such that the consumer or user understands to which *specific* Covered
22 Product the warning applies, so as to minimize the risk of consumer confusion.

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

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

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

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

7 **WARNING:** This product contains DEHP, a chemical
8 known to the State of California to cause birth
9 defects and other reproductive harm.

10 (b) **Mail Order Catalog and Internet Sales.** In the event that Ideal sells any
11 Covered Products via mail order catalog or the Internet to customers located in California any
12 such catalog or Internet site offering any Covered Product for sale shall include a warning in the
13 catalog or within the website, identifying the specific Covered Product to which the warning
14 applies, as specified in Sections 3.2.2(b)(i) and (ii).

15 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
16 order catalog must be in the same type size or larger than the Covered Product description text
17 within the catalog. The following warning shall be provided on the same page and in the same
18 location as the display and/or description of the Covered Product:

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

22 Where it is impracticable to provide the warning on the same page and in the same
23 location as the display and/or description of the Covered Product, Defendant may utilize a
24 designated symbol to cross reference the applicable warning and shall define the term
25 "designated symbol" with the following language on the inside of the front or back cover of the
26 catalog or on the same page as any order form for the Covered Product(s):

27 **WARNING:** Certain products identified with this
28 symbol ▼ and offered for sale in this
catalog contain DEHP, a chemical known

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to the State of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Covered Product. On each page where the designated symbol appears, Ideal must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

If Defendant elects to provide warnings in any mail order catalog, then the warnings must be included in all catalogs offering to sell one or more Covered Products printed after the Effective Date.

(ii) **Internet Website Warning.** A warning must be given in

conjunction with the sale of any Covered Products via the Internet, provided it appears either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page as the price for any Covered 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 Covered Product for which it is given in the same type size or larger than the Covered Product description text:

WARNING: This product contains DEHP, a chemical 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 Covered 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: Products identified on this page with the following symbol ▼ contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

1 **3.2.2** Commencing six (6) months after the Effective Date, Ideal shall discontinue all
2 distribution or sale to California, or to any business or entity that has retail store locations within
3 California, of any Covered Products that are not DEHP Free, regardless of compliance with
4 Section 3.2.1.

5 **3.2.3** No later than one year after the Effective Date, Ideal shall destroy, in a manner
6 compliant with any environmental or other waste disposal regulations, all Covered Products that
7 are not DEHP Free in the custody, control or possession of Defendant or otherwise remaining in
8 the possession of any retail store or internet distribution warehouse controlled, owned or
9 operated by Defendant in the United States.

10 **3.2.4** Ideal shall maintain records of compliance correspondence, inventory reports or
11 other communication confirming compliance with §§ 3.2.1 through 3.2.3 for three (3) years from
12 the Effective Date and shall produce copies of such records upon written request by Moore.

13 **4. MONETARY PAYMENTS**

14 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

15 Ideal shall make a payment of \$10,000.00 to be apportioned in accordance with Health &
16 Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for
17 the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and
18 the remaining 25% of these penalty monies earmarked for Moore. This penalty reflects a credit
19 of \$32,000 in light of each Settling Defendant's commitment to reformulate its product lines to
20 essentially, if not entirely, remove the presence of the Listed Chemicals and to commit to such
21 reformulation throughout not just California but the entire United States.

22 **4.2 Augmentation of Penalty Payments**

23 For purposes of the penalty assessment under this Consent To Judgment, plaintiff is
24 relying entirely upon defendant and its counsel for accurate, good faith reporting to plaintiff of
25 the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date,
26 plaintiff discovers and presents to Defendant evidence that the Covered Products have been
27 distributed by Ideal in sales volumes materially different than those identified by Defendant
28 prior to execution of this Agreement, then Defendant shall be liable for an additional penalty

1 amount of \$150 per quantity of Covered Product sold prior to execution of this Agreement but
2 not identified by Defendant to plaintiff. Defendant shall also be liable for any reasonable,
3 additional attorney fees expended by plaintiff in discovering such additional retailers or sales.
4 Plaintiff agrees to provide Defendant with a written demand for all such additional penalties
5 and attorney fees under this Section. After service of such demand, defendant shall have thirty
6 (30) days to agree to the amount of fees and penalties owing by Defendant and submit such
7 payment to plaintiff in accordance with the method of payment of penalties and fees identified
8 in Sections 4.5. Should this thirty (30) day period pass without any such resolution between the
9 parties and payment of such additional penalties and fees, plaintiff shall be entitled to file a
10 formal legal claim for damages for breach of this contract and shall be entitled to all reasonable
11 attorney fees and costs relating to such claim.

12 **4.3 Reimbursement of Plaintiff's Fees and Costs**

13 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
14 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
15 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
16 Ideal then expressed a desire to resolve the fee and cost issue shortly after the other settlement
17 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
18 compensation due to Moore and his counsel under general contract principles and the private
19 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all
20 work performed in this matter, except fees that may be incurred on appeal. Under these legal
21 principles, Ideal shall pay the amount of \$40,000.00 for fees and costs incurred investigating,
22 litigating and enforcing this matter, including the fees and costs incurred (and yet to be
23 incurred) negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in
24 the public interest.

25 **4.4 Payment Procedures**

26 **4.4.1 Funds Moore In Trust:** All payments required by Sections 4.1 and 4.3
27 shall delivered on or before January 31, 2013, to either The Chanler Group or the attorney of
28 record for Ideal , and shall be Moore in trust pending the Court's approval of this Consent

1 Judgment.

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

- 3 (a) One check made payable to "The Chanler Group in Trust for OEHHA" in
4 the amount of \$7,500.00 (or 75% of any contractually reduced penalty);
5 (b) One check made payable to "The Chanler Group in Trust for Moore" in
6 the amount of \$2,500.00 (or 25% of any contractually reduced penalty); and
7 (c) One check made payable to "The Chanler Group in Trust" in the amount
8 of \$40,000.00.

9 Payments delivered to Gordon & Rees LLP shall be made payable, as follows:

- 10 (a) One check made payable to "Gordon & Rees LLP in Trust for OEHHA"
11 in the amount of \$7,500.00 (or 75% of any contractually reduced penalty);
12 (b) One check made payable to "Gordon & Rees LLP in Trust for Moore" in
13 the amount of \$2,500.00 (or 25% of any contractually reduced penalty); and
14 (c) One check made payable to "Gordon & Rees LLP in Trust for The
15 Chanler Group" in the amount of \$40,000.00.

16 If Ideal elects to deliver payments to its attorney of record, such attorney of
17 record shall: (a) confirm in writing within five days of receipt that the funds have been
18 deposited in a trust account; and (b) within two days of the date of the hearing on which
19 the Court approves the Consent Judgment, deliver the payment to The Chanler Group
20 in three separate checks, as follows:

- 21 (a) One check made payable to "The Chanler Group in Trust for OEHHA" in
22 the amount of \$7,500.00 (or 75% of any contractually reduced penalty);
23 (b) One check to "The Chanler Group in Trust for Moore" in the amount of
24 \$2,500.00 (or 75% of any contractually reduced penalty); and
25 (c) One check to "The Chanler Group" in the amount of \$40,000.00.

26 Any failure by defendant to deliver the above-referenced payments to The Chanler
27 Group within two days of the date of the hearing on which the Court approves the
28 Consent To Judgment shall result in imposition of a 10% simple interest assessment on

1 the undelivered payment(s) until delivery.

2 **4.4.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
3 and the settlement funds have been transmitted to plaintiff's counsel, Ideal shall issue three
4 separate 1099 forms, as follows:

5 (a) The first 1099 shall be issued to the Office of Environmental Health
6 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in
7 the amount of \$7,500.00 (or 75% of any contractually reduced penalty);

8 (b) The second 1099 shall be issued to Moore in the amount of \$2,500.00 (or
9 25% of any contractually reduced penalty), whose address and tax identification
10 number shall be furnished upon request; and

11 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in
12 the amount of \$40,000.00.

13 **4.4.3 Payment Address:** All payments to the Chanler Group shall be delivered
14 to 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

20 **5. CLAIMS COVERED AND RELEASE**

21 **5.1 Moore's Releases of Proposition 65 Claims Against Ideal**

22 5.1.1 This Consent To Judgment is a full, final, and binding resolution between Moore,
23 on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
24 assignees, and in the interest of the general public, and Ideal and its directors, officers,
25 shareholders, attorneys, successors, licensors and assigns ("Defendant Releasees"), and all
26 entities to whom Ideal directly or indirectly distribute or sell Covered Products, including but
27 not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members,
28 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

1 Releasees regarding the failure to warn about exposure to the Listed Chemical arising in
2 connection with Covered Products manufactured, sourced, distributed, or sold by Defendant
3 Releasees prior to the Effective Date. Ideal 's compliance with this Consent To Judgment shall
4 constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered
5 Products after the Effective Date.

6 5.1.2 Moore on behalf of himself, his past and current agents, representatives,
7 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives
8 with respect to Covered Products all rights to institute or participate in, directly or indirectly,
9 any form of legal action and releases all claims, including, without limitation, all actions, and
10 causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
11 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
12 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
13 (collectively "claims"), against Defendant Releasees and Downstream Defendant Releasees that
14 arise under Proposition 65 or any other statutory or common law claims that were or could have
15 been asserted in the public interest, as such claims relate to Defendant Releasees' and
16 Downstream Defendant Releasees' alleged failure to warn about exposures to the Listed
17 Chemical contained in the Covered Products.

18 5.1.3 Moore also, in his individual capacity only and *not* in his representative capacity,
19 provides a general release herein which shall be effective as a full and final accord and
20 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
21 damages, losses, claims, liabilities and demands of Moore of any nature, character or kind,
22 known or unknown, suspected or unsuspected, arising out of the subject matter of the
23 Complaint as to Covered Products manufactured, distributed or sold by Defendant Releasees.
24 Moore acknowledges that he is familiar with Section 1542 of the California Civil Code, which
25 provides as follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
27 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
28 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.

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

9 This Section 5.1 release is expressly limited to those claims that arise under Proposition
10 65, as such claims relate to Defendant's alleged failure to warn about exposures to or
11 identification of the Listed Chemical contained in the Covered Products and as such claims are
12 identified in the Proposition 65 60-Day Notice to Defendant.

13 This Section 5.1 release is expressly limited to any alleged violations that occur prior to
14 thirty (30) days after the Effective Date and does not release any person, party or entity from any
15 liability for any violation of Proposition 65 regarding the Covered Products that occur more than
16 thirty (30) days after the Effective Date.

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

21 5.1.4 Upon court approval of the Consent To Judgment, the Parties waive their
22 respective rights to a hearing or trial on the allegations of the Complaint.

23 **5.2 Ideal's Release of Moore**

24 5.2.1 Ideal waives any and all claims against Moore, his attorneys, and other
25 representatives for any and all actions taken or statements made (or those that could have been
26 taken or made) by Moore and his attorneys and other representatives, whether in the course of
27 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
28 and/or with respect to the Covered Products.

1 5.2.2 Ideal also provides a general release herein which shall be effective as a full and
2 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
3 attorneys' fees, damages, losses, claims, liabilities and demands of Ideal of any nature, character
4 or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the
5 Action. Ideal acknowledges that it is familiar with Section 1542 of the California Civil Code,
6 which provides as follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
8 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
9 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.

10 Ideal expressly waives and relinquishes any and all rights and benefits that it may
11 have under, or which may be conferred on it by the provisions of Section 1542 of the
12 California Civil Code as well as under any other state or federal statute or common law
13 principle of similar effect, to the fullest extent that it may lawfully waive such rights or
14 benefits pertaining to the released matters. In furtherance of such intention, the release
15 hereby given shall be and remain in effect as a full and complete release notwithstanding
16 the discovery or existence of any such additional or different claims or facts arising out of
17 the released matters.

18 **6. SEVERABILITY**

19 If, subsequent to court approval of this Consent To Judgment, any of the provisions of
20 this Consent To Judgment are deemed by a court to be unenforceable, the validity of the
21 enforceable provisions remaining shall not be adversely affected, unless the Court finds that any
22 unenforceable provision is not severable from the remainder of the Consent To Judgment.

23 **7. COURT APPROVAL**

24 This Consent To Judgment is effective upon execution but must also be approved by the
25 Court to be enforceable. If this Consent Judgment is not approved by the Court in its entirety,
26 the Parties shall meet and confer to determine whether to modify the terms of the Consent
27 Judgment and to resubmit it for approval. In meeting and conferring, the Parties agree to
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1 undertake any actions reasonably necessary to amend and/or modify this Consent Judgment in
2 order to further the mutual intention of the Parties in entering into this Consent Judgment.

3 The Consent to Judgment shall become null and void if, for any reason, it is not approved
4 and entered by the Court within one year after it has been fully executed by all Parties. If the
5 Consent to Judgment becomes null and void after any payment of monies under this agreement
6 to The Chanler Group in trust, such monies shall be returned to defendant by payment of such
7 monies to its counsel, in trust for Ideal.

8 If this Consent Judgment is not entered by the Court, and the Parties have exhausted
9 their meet and confer efforts pursuant to this Section, upon 15 days written notice, the law firm
10 holding Defendant's funds in trust shall refund any and all payments made into its trust
11 account by Defendant as requested.

12 **8. GOVERNING LAW**

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

15 **9. NOTICES**

16 When any Party is entitled to receive any notice under this Consent To Judgment, the
17 notice shall be sent by: (i) first class registered or certified mail, return receipt requested; or (ii)
18 overnight courier, signature required, on any party by the other party to the following address:

19 For Ideal Industries, Inc. to:

20 Jim James, President
21 Ideal Industries Inc.
22 1 West Becker Place
Sycamore, IL 60178

23 With copy to their counsel at

24 Brian M. Ledger, Esq.
25 Gordon & Rees, LLP
101 W. Broadway, Suite 200
San Diego, CA 92101

26 For Moore to:

27 Proposition 65 Coordinator
28 The Chanler Group

1 2560 Ninth Street
2 Parker Plaza, Suite 214
3 Berkeley, CA 94710-2565

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

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

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

9 **11. MODIFICATION**

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

13 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

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

23 **13. ENTIRE AGREEMENT**

24 This Consent To Judgment contains the sole and entire agreement and understanding of
25 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
26 negotiations, commitments, and understandings related hereto. No representations, oral or
27 otherwise, express or implied, other than those contained herein have been made by any Party
28 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or

1 termination of this Consent Judgment shall be binding unless executed in writing by the Party to
2 be bound. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall
3 constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver
4 constitute a continuing waiver.

5 **14. ATTORNEY'S FEES**

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

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

17 14.3 Nothing in this Section 15 shall preclude a Party from seeking an award of
18 sanctions pursuant to law.

19 **15. NEUTRAL CONSTRUCTION**

20 Both Parties and their counsel have participated in the preparation of this Consent
21 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
22 Consent Judgment was subject to revision and modification by the Parties and has been
23 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
24 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
25 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
26 Consent Judgment agrees that any statute or rule of construction providing that ambiguities
27 are to be resolved against the drafting Party should not be employed in the interpretation of
28

1 this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code
2 Section 1654.

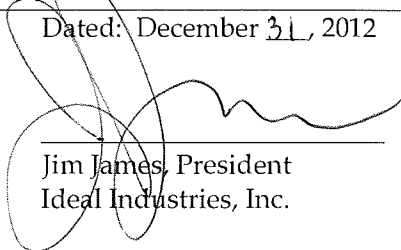
3 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

7 **17. AUTHORIZATION**

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

11 **IT IS SO AGREED**

12 Dated: December __, 2012 13 _____ 14 Plaintiff John Moore 15	12 Dated: December 31, 2012 13  14 _____ 15 Jim James, President 16 Ideal Industries, Inc.
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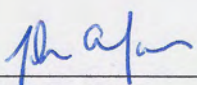
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11 **IT IS SO AGREED**

12 Dated: December <u>31</u> , 2012 13  14 _____ 15 Plaintiff John Moore 16	Dated: December __, 2012 _____ 17 Jim James, President 18 Ideal Industries, Inc. 19 20 21 22 23 24 25 26 27 28
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