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Clifford A. Chanler, State Bar No. 135534
Gregory M. Sheffer, State Bar No. 173124
THE CHANLER GROUP
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Attorneys for Plaintiff
JOHN MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

 Plaintiff,

 v.

GENERAL TOOLS & INSTRUMENTS
COMPANY, LLC and DOES 1-150,

 Defendants.

Case No. CIV 1203099

**CONSENT TO JUDGMENT AS TO
DEFENDANT GENERAL TOOLS &
INSTRUMENTS COMPANY, LLC**

Action Filed: July 5, 2012
Trial Date: Not Assigned

1 **1. INTRODUCTION**

2 **1.1 Parties to Consent To Judgment:**

3 This Consent To Judgment is entered into by and between John Moore (“Moore” or
4 “Plaintiff”) on the one hand, and General Tools & Instruments Company, LLC (“General Tools” or
5 “Defendant”) on the other hand, with Plaintiff and Defendant collectively referred to as the
6 “Parties.”

7 **1.2 John Moore**

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

11 **1.3 General Tools & Instruments Company, LLC**

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

15 **1.4 General Allegations**

16 Moore alleges that General Tools manufactured, distributed and/or sold, in the State of
17 California, certain types of hand tools that exposed users to DEHP (Di(2-ethylhexyl) phthalate), DBP
18 (Dibutyl phthalate) and/or lead without first providing “clear and reasonable warning” under
19 Proposition 65. DEHP, DBP and lead are listed as reproductive and developmental toxicants
20 pursuant to Proposition 65, and are referred to hereinafter collectively as the “Listed Chemicals.”

21 **1.5 Product Description**

22 The products covered by this Consent To Judgment are all hand tools with grips or
23 vinyl/PVC cases containing DEHP, DBP or lead distributed and/or sold by General Tools,
24 including but not limited to the General Tools Revolving Punch, No. 72s (“Model 72”), General 22
25 Piece Precision Knife & Blade Set (No. 75622) and General Pocket Magnifier (No. 532). Such hand
26 tools are hereinafter referred to as the “Products” or “Covered Products.”

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1 **1.6 Notices of Violations**

2 On or about January 12, 2012, Moore served General Tools and various public enforcement
3 agencies, with a document entitled “60-Day Notice of Violation” (“Notice” or “Notice of Violation”)
4 that alleged violations of Proposition 65 based on General Tools’s alleged failure to warn consumers
5 that the Covered Products exposed users in California to DEHP. General Tools received the Notice.
6 To the best of the Parties’ knowledge, no public enforcer is diligently prosecuting a Proposition 65
7 action regarding the allegations set forth in the Notice.

8 On or about May 1, 2013, Moore served General Tools and various public enforcement
9 agencies, with a document entitled “Supplemental 60-Day Notice of Violation” (“Supp. Notice” or
10 “Supp. Notice of Violation”) that alleged violations of Proposition 65 based on General Tools’s
11 alleged failure to warn consumers that the Covered Products exposed users in California to DEHP,
12 DBP and lead. General Tools received the Notice and Supp. Notice. To the best of the Parties’
13 knowledge, no public enforcer is diligently prosecuting a Proposition 65 action regarding the
14 allegations set forth in the Supp. Notice. This agreement is contingent upon no public enforcer
15 diligently prosecuting a Proposition 65 action regarding the allegations set forth in the Supp. Notice
16 within 60 days of service of the Supp. Notice.

17 **1.7 Complaint**

18 On July 5, 2012, Moore filed a Complaint against General Tools in the Marin County
19 Superior Court, *Moore v. General Tools & Instruments Company, LLC*, Case No. CIV 1203099
20 (“Complaint” or “Action”). The Complaint alleges violations by General Tools of Proposition 65
21 based on the alleged exposures to DEHP by use of referenced products and seeks civil penalties and
22 injunctive relief.

23 As part of, and upon execution of, this Consent To Judgment, the parties stipulate and agree
24 that Moore shall lodge, as an exhibit to his motion to approve this settlement, an amended
25 complaint to include the parties, recitals, and allegations against General Tools in conformity with
26 the Notice and Supp. Notice served by Moore upon General Tools (“Amended Complaint”). As
27 part of Moore’s motion to approve this settlement and enter judgment, Moore shall also move this
28 Court for an order either deeming the Amended Complaint filed as of the date of the hearing on the

1 motion to approve or an order permitting Plaintiff to immediately file the Amended Complaint
2 with the Court.

3 General Tools stipulates to such filing of the Amended Complaint as part of Moore's motion
4 to approve the settlement and agrees to waive any service of the Amended Complaint other than
5 such service of the Amended Complaint as an exhibit to the motion to approve this settlement sent
6 by mail to General Tools's counsel of record. The parties hereby stipulate that General Tools's
7 Amended Answer to the Complaint already on file in this action shall be deemed to be its Answer
8 to the Amended Complaint, stipulate that the Amended Complaint shall be deemed at issue as to
9 General Tools upon issuance of the order of the Court either deeming the Amended Complaint
10 filed or permitting its immediate filing, and stipulate that this Court may and shall immediately
11 enter judgment on the Amended Complaint, as against General Tools, but only pursuant to these
12 stipulations and after approval of this Consent To Judgment.

13 **1.8 No Admission**

14 General Tools denies the material factual and legal allegations contained in the Notice,
15 Supp. Notice, the Complaint, and the Amended Complaint, and maintains that all products that it
16 has sold, imported and/or distributed in California, including the Covered Products, have been and
17 are in compliance with all laws. Nothing in this Consent To Judgment shall be construed as an
18 admission by General Tools of any fact, finding, issue of law, or violation of law, nor shall compliance
19 with this Consent To Judgment constitute or be construed as an admission by General Tools of any
20 fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish
21 or otherwise affect General Tools's obligations, responsibilities and duties under this Consent To
22 Judgment.

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent To Judgment only, the Parties stipulate that this Court has
25 jurisdiction over General Tools as to the allegations contained in the Complaint, that venue is proper
26 in the County of Marin, and that this Court has jurisdiction to enter Judgment upon the provisions of
27 this Consent To Judgment and to enforce the Consent To Judgment and Judgment under Code of
28 Civil Procedure, section 664.6.

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1.10 Effective Date

For purposes of this Consent To Judgment, the term “Effective Date” shall mean two days after a Notice of Entry of Judgment is served upon General Tools, where the Judgment has been entered in conformity with this Consent To Judgment.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standard

“Reformulated Products” are defined as those Covered Products that meet the DEHP Free, DBP Free and Lead Free standards.

“DEHP Free” shall mean that any accessible component of the Products contains DEHP in concentrations less than .1 percent (1,000 parts per million (“ppm”)) when analyzed by a NVLAP accredited laboratory 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.

“DBP Free” shall mean that any accessible component of the Products contains DBP in concentrations less than .1 percent (1,000 parts per million (“ppm”)) when analyzed by a NVLAP accredited laboratory 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 DBP content in a solid substance.

“Lead Free” shall mean that any accessible component of the Products contains lead in concentrations less than 1.0 microgram of lead per square centimeter when using a wipe test pursuant to NIOSH Test Method 9100 or CPSC test method for accessible lead in vinyl products or each yield less than 100 parts per million (“ppm”) lead when each such component material is analyzed by an ISO accredited laboratory pursuant to EPA testing methodologies 3050B and 6010B or any other methodology utilized by federal or state agencies for the purpose of determining lead content in a solid substance.

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1 **2.2 Reformulation Commitment**

2 No later than the Effective Date, General Tools shall expressly instruct its then-current
3 suppliers of Covered Products that will be sold to customers that General Tools knows maintain
4 any retail outlets in the United States not to incorporate, after July 1, 2014 (the “Reformulation
5 Deadline”), any raw or component materials that do not meet the DEHP Free, DBP Free and Lead
6 Free concentration standards of Section 2.1 into Covered Products. In addressing the obligation set
7 forth in the preceding sentence, General Tools shall not employ statements that will encourage a
8 supplier to delay compliance with the DEHP Free, DBP Free and Lead Free concentration
9 standards. On or after the Reformulation Deadline, each time General Tools secures a new or
10 different supplier for any Covered Product or any component part thereof, General Tools shall
11 immediately instruct that supplier not to incorporate any raw or component materials that do not
12 meet the DEHP Free, DBP Free and Lead Free concentration standards of Section 2.1 into Covered
13 Products. Upon request, General Tools shall provide Plaintiff with copies of such Supplier
14 notification, and Plaintiff and his counsel shall regard such copies as confidential business
15 information.

16 No later than the Reformulation Deadline, all Covered Products obtained by General Tools
17 for sale or resale in the United States shall qualify as Reformulated Products as defined in Section
18 2.1 above.

19 **2.3 Warnings For Previously Obtained Products**

20 Commencing on the Effective Date, and until such date twelve (12) months thereafter,
21 General Tools shall not sell, ship, or offer to be sold or shipped for sale into the United States, or to
22 any entity or company that has retail store locations in the United States, any Covered Products
23 unless such Covered Products are DEHP Free, DBP Free and Lead Free under Section 2.1, or are
24 sold or shipped with one of the clear and reasonable warnings set forth hereafter.

25 Each warning shall be prominently placed with such conspicuousness as compared with
26 other words, statements, designs, or devices as to render it likely to be read and understood by an
27 ordinary individual under customary conditions *before* purchase or use. Each warning shall be
28 provided in a manner such that the consumer or user understands to which *specific* Covered

1 Product the warning applies, so as to minimize the risk of consumer confusion.

2 In General Tools's discretion, any of the warnings set forth below may be amended to state
3 additionally that the product(s) contain chemicals known to the State of California to cause cancer.

4 (a) **Retail Store Customers**

5 (i) **Product Labeling.** General Tools will be deemed to have provided a
6 warning which complies with Section 2.3 above if it affixes a visible warning to the packaging,
7 labeling, or directly on any Covered Products sold to any retailer that General Tools knows
8 maintains retail outlets in the United States, that states:

9 **WARNING:** This product contains one or more
10 chemicals known to the State of California
11 to cause birth defects and other
12 reproductive harm.

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

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

22 **WARNING:** This product contains one or more
23 chemicals known to the State of California
24 to cause birth defects and other
25 reproductive harm.

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

1 **WARNING:** Certain products identified with this
2 symbol ▼ and offered for sale in this
3 catalog contain one or more chemicals
4 known to the State of California to cause
 birth defects and other reproductive
 harm.

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

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

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

20 **WARNING:** This product contains one or more
21 chemicals known to the State of California
22 to cause birth defects and other
 reproductive harm.

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

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1 **WARNING:** Products identified on this page with the
2 following symbol ▼ contain one or more
3 chemicals known to the State of California
 to cause birth defects and other
 reproductive harm.

4 Commencing twelve (12) months after the Effective Date, General Tools shall discontinue all
5 distribution or sale to the United States, or to any business or entity that it knows has retail store
6 locations within the United States, of any Covered Products that are not DEHP Free, DBP Free and
7 Lead Free, regardless of compliance with Section 2.3.

8 General Tools shall maintain records of compliance correspondence, inventory reports or
9 other communication confirming compliance with this section for three (3) years from the Effective
10 Date and shall produce copies of such records upon written request by Moore, and Moore and his
11 counsel shall regard such copies as confidential business information.

12 **2.4 Opportunities to Cure**

13 In the event that General Tools, after the Reformulation Deadline, sells any Covered Product
14 that is found by Moore or his representatives not to comply with Section 2.2 or Section 2.3 above,
15 General Tools may, upon 30 days' notice bring the Covered Product into compliance with such
16 section by providing Moore's counsel with written certification from an officer of the company that
17 General Tools has corrected the alleged violation by recalling or removing the Product from the
18 retail marketplace.

19 **3. MONETARY PAYMENTS**

20 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.12**

21 In settlement of all the claims referred to in this Consent To Judgment, General Tools shall
22 pay a total civil penalty of \$30,000.00 under this Section, as follows:

23 General Tools shall pay an initial civil penalty of \$15,000.00 to be apportioned in accordance
24 with Health & Safety Code § 25249.12, subdivisions (c)(1) and (d), with 75% of these funds
25 earmarked for the State of California's Office of Environmental Health Hazard Assessment
26 ("OEHHA") and the remaining 25% of these penalty monies earmarked for Moore.

27 On or before the Reformulation Deadline, General Tools shall pay an additional civil
28 penalty of \$15,000.00, unless such civil penalty payment is waived. This additional \$15,000.00 civil

1 penalty shall be waived in its entirety if an Officer of General Tools provides Moore, care of his
2 counsel, with written certification that, as of the Reformulation Deadline, General Tools has met
3 and will continue to meet the DEHP Free, DBP Free and Lead Free standards specified in Section
4 2.1 above. Moore or his current counsel, the Chanler Group, must receive any such certification
5 within 5 business days after the Reformulation Deadline, and time is of the essence. Absent waiver,
6 the additional \$15,000.00 civil penalty shall be apportioned in accordance with California Health &
7 Safety Code § 25249.12 (c)(1) & (d), with 75% of these funds remitted to OEHHA and the remaining
8 25% of the penalty remitted to Moore, as provided by California Health & Safety Code
9 § 25249.12(d).

10 **3.2 Attorneys' Fees and Costs**

11 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
12 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
13 issue to be resolved after the material terms of the agreement had been settled. Moore agreed to
14 negotiate the fee and cost issue shortly after the other settlement terms had been finalized. The
15 parties then attempted to (and did) reach an accord on the compensation due to Moore and his
16 counsel under general contract principles and the private attorney general doctrine codified at
17 California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual
18 execution of this agreement. General Tools shall pay \$85,000.00 for fees and costs incurred as a
19 result of investigating, bringing this matter to General Tools's attention, and negotiating a
20 settlement in the public interest.

21 **3.3 Payment Procedures**

22 **3.3.1 Issuance of Payments.** The initial penalty payment of Section 3.1 and
23 attorney fee and cost payment of section 3.2 shall be delivered within five (5)
24 business days of the Effective Date, as follows:

- 25 (a) All payments owed to Moore, pursuant to Section 3.1 shall be made
26 payable to "The Chanler Group In Trust For John Moore" and delivered
27 to the following payment address:

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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 Section 3.1 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 3.3.1(a), as proof of payment to OEHHA.

(c) All Payments owed to The Chanler Group pursuant to Section 3.2 shall be made payable to "The Chanler Group" and delivered to the following payment address:

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

Any failure by General Tools to deliver the above-referenced payments to either OEHHA or The Chanler Group within five business days of the required date shall result in the imposition of a 10% simple interest assessment on the undelivered payment(s) until delivery.

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1 **3.3.2 Issuance of 1099 Forms.** After each payment, General Tools shall issue
2 separate 1099 forms for each payment, as follows:

- 3 (a) For each penalty payment owed OEHHA pursuant to Section 3.1, a
4 1099 shall be issued to the Office of Environmental Health Hazard
5 Assessment, 1001 I Street, Sacramento, CA 95814 (EIN: 68-0284486) in
6 the amount of 75% of the total penalty payment;
- 7 (b) For each penalty payment owed to Moore pursuant to Section 3.1, a
8 1099 shall be issued to Moore, whose address and tax identification
9 number shall be furnished upon request, in the amount of 25% of the
10 total penalty payment.
- 11 (c) For each penalty payment owed to The Chanler Group pursuant to
12 Section 3.2, a 1099 shall be issued to The Chanler Group (EIN: 94-
13 3171522).

14 **4. CLAIMS COVERED AND RELEASED**

15 **4.1 Moore’s Public Release of Proposition 65 Claims**

16 Moore acting on his own behalf and in the public interest hereby releases and discharges
17 General Tools, its parent, subsidiary, and affiliated entities, its directors, officers, employees, and
18 attorneys, and each entity to whom General Tools directly or indirectly distributes or sells Covered
19 Products, including but not limited to downstream distributors, wholesalers, customers, retailers,
20 franchisees, cooperative members, licensors, and licensees (collectively “Releasees”) from any and
21 all claims for violations of Proposition 65 that have been or could have been asserted against
22 Releasees regarding the failure to warn about exposure to the Listed Chemicals arising in
23 connection with Covered Products manufactured, sourced, distributed, or sold by Releasees prior
24 to the Effective Date. Compliance with the terms of this Consent To Judgment constitutes
25 compliance with Proposition 65 with respect to exposures to Listed Chemicals from Covered
26 Products. It is intended that the Judgment entered pursuant to this Consent to Judgment shall act as
27 a full and final bar to any and all claims pursuant to Proposition 65 against General Tools with
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1 respect to the Covered Products under the doctrines of *res judicata* and collateral estoppel and any
2 other applicable doctrine, statute, or law.

3 **4.2 Moore's Individual Release of Claims**

4 Moore also, in his individual capacity only and *not* in his representative capacity, hereby
5 releases and discharges General Tools, its parent and subsidiary entities, its directors, officers,
6 employees, and attorneys, and each entity to whom General Tools directly or indirectly distributes
7 or sells Covered Products, including but not limited to downstream distributors, wholesalers,
8 customers, retailers, franchisees, cooperative members, licensors, and licensees (collectively
9 "Releasees") from any and all claims for violations of Proposition 65 and any and all claims, actions,
10 causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and
11 demands of Moore of any nature, character or kind, whether known or unknown, suspected or
12 unsuspected, against General Tools and Releasees, limited to and arising out of the manufacture,
13 distribution or sale of the Covered Products, including without limitation any exposure to DEHP,
14 DBP or lead caused thereby. It is intended that this release and discharge given by Moore in his
15 individual capacity shall be effective as a full and final accord and satisfaction, as a bar to all actions,
16 causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and
17 demands of Moore of any nature, character or kind, whether known or unknown, suspected or
18 unsuspected, against General Tools and Releasees, limited to and arising out of the manufacture,
19 distribution or sale of the Covered Products, including without limitation any exposure to DEHP,
20 DBP or Lead caused thereby.

21 This Section 4 release is expressly limited to those claims that arise under Proposition 65, as
22 such claims relate to Releasees' alleged failure to warn about exposures to or identification of the
23 Listed Chemicals contained in the Covered Products and as such claims are identified in the
24 Proposition 65 60-Day Notice and Supp. Notice to Defendant.

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

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4.3 General Tools’s Release of Moore

General Tools provides a release herein to Moore, his attorneys, and other representatives 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 General Tools of any nature, character or kind, known or unknown, suspected or unsuspected, against Moore, his attorneys, and other representatives, arising out of the allegations in the Notice pertaining to alleged exposure to DEHP, DBP or lead from the Covered Products.

4.4 Waiver of Civil Code Section 1542

Moore, in his individual capacity only and *not* in his representative capacity, and General Tools, having the specific intent to release all claims and potential claims described in Sections 4.1 through 4.3 herein, hereby acknowledge and expressly waive the provisions of § 1542 of the California Civil Code, which provides:

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

Notwithstanding the provisions of § 1542 of the California Civil Code, Moore, in his individual capacity only and *not* in his representative capacity, and General Tools, intend to release all claims described in Sections 4.1 through 4.3 of this Agreement, known or unknown, and asserted or not asserted as of the date hereof.

5. COURT APPROVAL

This Consent To Judgment is effective upon execution but must also be approved by the Court to be enforceable. This Consent To Judgment 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. Any effort by Plaintiff or General Tools to impede judicial approval of this Consent To Judgment shall subject such impeding party to liability for attorneys’ fees and costs incurred by the other party in his or its efforts to meet or oppose the impeding party’s impeding conduct.

1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

6 The terms of this Consent To Judgment shall be governed by the laws of the State of
7 California and apply within the State of California. In the event that Proposition 65 is repealed,
8 preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the
9 provisions of this Consent To Judgment are rendered inapplicable or no longer required as a result of
10 any such repeal or preemption or rendered inapplicable by reason of law generally as to the
11 Covered Products, then General Tools may move the Court for relief from the injunctive terms of
12 this agreement and shall have no further obligations pursuant to this Consent To Judgment with
13 respect to, and to the extent of any Court order on such motion.

14 **8. NOTICES**

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

19 To General Tools:

20 Marc Epstein
21 David M. Berke
22 Gaims, Weil, West & Epstein, LLP
23 1875 Century Park East
Suite 1200
Los Angeles, CA 90067

To Moore:

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

24 and

25 Joseph Ennis
26 President, CEO
27 General Tools & Instruments
80 White Street
New York, NY 10013

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

3 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

7 **10. POST EXECUTION ACTIVITIES**

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

10 Moore and General Tools agree to mutually employ their best efforts to support the entry of
11 this agreement as a Consent To Judgment and obtain approval of the Consent To Judgment by the
12 Court in a timely manner. The Parties acknowledge that, pursuant to California Health & Safety
13 Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent To
14 Judgment, which motion Moore shall draft and file, and General Tools shall join. This motion will
15 not be set for hearing prior to 60 days after service of the Supp. Notice. If any third party objection to
16 the noticed motion is filed, Moore and General Tools shall work together to file a joint reply. This
17 provision is a material component of the Consent To Judgment and shall be treated as such in the
18 event of a breach.

19 **11. DRAFTING**

20 Each party hereto has cooperated in the drafting and preparation of this Consent To
21 Judgment. Hence, in any construction to be made of this Consent To Judgment, the same shall not
22 be construed against any party as drafter of this Consent To Judgment.

23 **12. ENTIRE AGREEMENT**

24 This Consent To Judgment contains the sole and entire agreement and understanding of the
25 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

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

6 **13. ATTORNEYS' FEES**

7 Should Moore prevail on any motion, application for order to show cause or other
8 proceeding to enforce a violation of this Agreement, Moore shall be entitled to his reasonable
9 attorneys' fees and costs incurred as a result of such motion, order or application, consistent with
10 CCP §1021.5. Should General Tools prevail on any motion, application for order to show cause or
11 other proceeding to enforce a violation of this Consent To Judgment, General Tools may be entitled
12 to its reasonable attorneys' fees and costs incurred as a result of such motion, order or application
13 upon a finding that Moore's prosecution of the motion or application lacked substantial
14 justification. For purposes of this Agreement, the term substantial justification shall carry the same
15 meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

16 Except as specifically provided herein, each Party shall bear its own costs and attorneys' fees
17 in connection with this action. Nothing in this Section shall preclude a Party from seeking an
18 award of sanctions pursuant to law.

19 **14. MODIFICATION**

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

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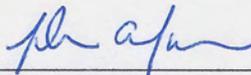
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1 **15. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent To Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent To Judgment.

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Dated: June <u>17</u> , 2013  _____ Plaintiff John Moore	Dated: June __, 2013 _____ Title: _____ Defendant General Tools & Instruments Company, LLC
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1 15. AUTHORIZATION

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3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
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Dated: June __, 2013 _____ Plaintiff John Moore	Dated: June 17, 2013  Title: <u>President/CEO</u> Defendant General Tools & Instruments Company, LLC
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