



1       **1.     INTRODUCTION**

2               **1.1     Parties**

3               The parties to this Consent Judgment (“Consent Judgment”) are Plaintiff John Moore  
4 (“Moore”) on the one hand, and Defendant True Value Company (“True Value”) on the other  
5 hand (each a “Party” and collectively “Parties”).

6               **1.2     Plaintiff**

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

10              **1.3     Defendant**

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

14              **1.4     General Allegations**

15              Moore alleges that True Value sells tools with vinyl/PVC grips containing di(2-  
16 ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable warning required  
17 by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of  
18 California to cause birth defects or other reproductive harm.

19              **1.5     Product Description**

20              The products that are covered by this Consent Judgment are private label and/or True  
21 Value-branded tools with vinyl/PVC grips containing DEHP that are sold or distributed for sale in  
22 California by True Value, including, but not limited to, the grips of certain tools offered in  
23 connection with the *GTV 36 Piece Household Tool Kit, #123197 (#0 52088 00268 1)*.

24              **1.6     Notice of Violation**

25              On or about April 5, 2012, Moore served True Value and certain requisite public  
26 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that True Value  
27 was in violation of Proposition 65 for failing to warn its customers and consumers in California  
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1 that the Covered Products expose users to DEHP. To the best of the Parties' knowledge, no public  
2 enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice

3 **1.7 Complaint**

4 On September 21, 2012, Moore filed the instant action against True Value ("Complaint")  
5 for the alleged violations of Health and Safety Code section 25249.6 that are the subject of the  
6 Notice.

7 **1.8 No Admission**

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

16 **1.9 Consent to Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
18 jurisdiction over True Value as to the allegations in the Complaint, that venue is proper in Santa  
19 Clara County and that this Court has jurisdiction to enter and enforce the provisions of this  
20 Consent Judgment.

21 **2. DEFINITIONS**

22 2.1 "Accessible Component" means a polyvinyl chloride or other soft plastic, vinyl, or  
23 synthetic leather component of a Covered Product that could be used to grip the Covered Product  
24 by a person during reasonably foreseeable use.

25 2.2 "Covered Products" means and is limited to hand tools with vinyl/PVC grips that  
26 are sold or offered for retail sale, including internet and/or catalogue sales, as a Private Label  
27 Covered Product (as defined in Section 2.4).

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2.3 “Effective Date” means date this Consent Judgment is approved by the court.

2.4 “Private Label Covered Product” means a Product that bears a True Value brand or trademark and the brand or trademark of the manufacturer of such product does not appear on such label. A product is not a Private Label Covered Product due solely to the fact that True Value’s name, brand, or trademark is visible on a sign or on the price tag of a product that is not labeled with a True Value brand or trademark

2.5 “Vendor” means a person or entity that manufactures, imports, distributes, or otherwise supplies a Covered Product to True Value.

**3. INJUNCTIVE RELIEF: REFORMULATION**

**3.1 Vendor Notification**

No more than 30 days after the Effective Date, True Value shall provide the Reformulation Standard to its then-current Vendors of Covered Products that will be sold or offered for sale to California consumers, and shall instruct each Vendor to use reasonable efforts to provide Covered Products that comply with the Reformulation Standard of Section 3.2 expeditiously. In addressing the obligation set forth in the preceding sentence, True Value shall not employ statements that will encourage a Vendor to delay compliance with the Reformulation Standard.

**3.2 Reformulation Standard**

Commencing on January 1, 2014, True Value shall not, purchase for sale, import for sale, or manufacture for sale, any Covered Product that will be sold or offered for sale to California consumers with any Accessible Component that contains DEHP in concentrations exceeding 0.1 percent (1,000 parts per million) when analyzed pursuant to any methodology utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance unless such Covered Product is sold with clear and reasonable warnings pursuant to Section 3.3.

**3.3 Clear and Reasonable Warnings.**

For Covered Products that True Value ships, sells or offers for sale in California that are not Reformulated Products, True Value shall provide a clear and reasonable health hazard

1 warning. True Value shall provide such warning affixed to the packaging or labeling, or directly  
2 to the Covered Product with the following statement:

3  
4                   WARNING: This product contains chemicals known to the State  
5                   of California to cause [cancer,] birth defects and  
6                   other reproductive harm.

7 The bracketed language is optional. The warning shall be prominently placed with such  
8 conspicuousness as compared with other words, statements, designs, or devices as to render it  
9 likely to be read and understood by an ordinary individual under customary conditions of  
10 purchase or use.

11 **4.     ENFORCEMENT**

12           Any Party may, by motion or application for an order to show cause before this Court,  
13 enforce the terms and conditions contained in this Consent Judgment.

14 **5.     PAYMENTS**

15           **5.1     Payments Pursuant to Health and Safety Code § 25249.7(b)**

16           Pursuant to Health and Safety Code section 25249.7(b)(2), except as provided in Section  
17 5.1.2, True Value shall pay \$22,500 in civil penalties. Each Penalty payment shall be allocated  
18 according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent of  
19 the penalty amount remitted to the California Office of Environmental Health Hazard Assessment  
20 (“OEHHA”) and the remaining twenty-five percent of each penalty payment remitted to Moore.

21                   **5.1.1    Initial Civil Penalty**

22                   True Value shall pay an initial civil penalty of \$7,500.

23                   **5.1.2    Additional Civil Penalties; Waiver on Certification of Compliance**

24 **with 3.1**

25                   (a)     On or before October 1, 2013, True Value shall pay an additional  
26 civil penalty of \$5,000, except that, the final civil penalty will be waived, in its entirety, if,  
27 no later than September 15, 2013, True Value provides Moore’s counsel with written  
28 confirmation that all units of the *GTV 36 Piece Household Tool Kit, #123197 (#0 52088*

1 00268 1) imported for sale, purchased for sale, or offered for sale by True Value in  
2 California on and after September 1, 2013 comply with the Reformulation Standard, and  
3 that all such products offered for sale in California in the future will comply with the  
4 Reformulation Standard.

5 (b) On or before June 1, 2014, True Value shall pay a final civil penalty  
6 of \$10,000, except that, the final civil penalty will be waived, in its entirety, if, no later  
7 than May 15, 2014, an officer of True Value provides Moore's counsel with written  
8 confirmation that all of the Covered Products imported for sale or, purchased for sale in  
9 California after May 1, 2014 comply with the Reformulation Standard, and that all  
10 Covered Products purchased for sale, imported for sale, or manufactured for sale on and  
11 after May 1, 2014, and offered by True Value for sale in California in the future will  
12 comply with the Reformulation Standard.

13 **5.2 Reimbursement of Attorneys' Fees and Costs**

14 The Parties acknowledge that Moore and his counsel offered to resolve this dispute  
15 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
16 the issue to be resolved after the material terms of the agreement had been settled. Shortly after  
17 all other settlement terms had been finalized, True Value expressed a desire to resolve the fees  
18 and costs. The Parties then attempted to (and did) reach an accord on the compensation due  
19 Moore and his counsel under general contract principles and the private attorney general doctrine  
20 codified at Code of Civil Procedure section 1021.5 for all work performed in this matter exclusive  
21 of fees and costs incurred on appeal, if any. Under these legal principles, on or before the  
22 Effective Date, True Value shall pay \$34,500 for the fees and costs incurred investigating,  
23 litigating, and enforcing this matter, including the fees and costs incurred (and to be incurred)  
24 drafting, negotiating, and obtaining the Court's approval of this Consent Judgment in the public  
25 interest.

1           **5.3    Payment Procedures.**

2                   **5.3.1    Payments**

3           All payments required by Sections 5.1.1 and 5.2 shall be delivered within 10 days of the  
4 Effective Date. The initial settlement funds shall be provided in three checks made payable to:  
5 (a) "The Chanler Group in Trust for OEHHA" in the amount of \$5,625; (b) "The Chanler Group  
6 in Trust for John Moore" in the amount of \$1,875; and (d) "The Chanler Group" in the amount  
7 required pursuant to section 5.2 above. The additional civil penalty, if due under Section 5.1.2(a),  
8 shall be provided in two checks made payable to: (a) "The Chanler Group in Trust for OEHHA"  
9 in the amount of \$3,750; and (b) "The Chanler Group in Trust for John Moore" in the amount of  
10 \$1,250. The final penalty, if due under Section 5.1.2(b), shall be provided in two checks made  
11 payable to: (a) "The Chanler Group in Trust for OEHHA" in the amount of \$7,500; and (b) "The  
12 Chanler Group in Trust for John Moore" in the amount of \$2,500.

13                   **5.3.2    Issuance of 1099 Forms**

14           After the Consent Judgment has been approved, and upon receiving appropriate W9  
15 information from Moore's counsel, True Value shall issue a 1099 form to each of the following  
16 entities: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA  
17 95814 (EIN: 68-0284486) for the civil penalties paid to OEHHA; (b) John Moore, whose address  
18 and tax identification number shall be furnished upon request, for the civil penalties paid to John  
19 Moore; and (c) The Chanler Group (EIN: 94-3171522) for the associated amounts to be paid to  
20 each pursuant to Sections 5.1 and 5.2 above.

21                   **5.3.3    Payment Addresses**

22                   (a)    All payments and tax documentation to Moore and The Chanler  
23 Group shall be delivered to the following address:

24                           The Chanler Group  
25                           Attn: Proposition 65 Controller  
26                           2560 Ninth Street  
27                           Parker Plaza, Suite 214  
28                           Berkeley, CA 94710

1 (b) All payments and tax documentation to OEHHA (EIN: 68-  
2 0284486) shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the  
3 following address:  
4

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

10 With a copy of the check(s) payable to OEHHA mailed to The Chanler Group at the  
11 address payment address provided in section 5.3.3(a), as proof of payment to OEHHA.

12 **6. CLAIMS COVERED AND RELEASED**

13 **6.1 Public Release of Proposition 65 Claims**

14 In consideration of the promises and commitments herein contained, Moore, on his own  
15 behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or  
16 assignees, and in the public interest, hereby waives and releases True Value, its parents,  
17 subsidiaries, affiliated entities under common ownership or control, directors, officers,  
18 employees, and attorneys ("Releasees"); and each entity to whom it directly or indirectly  
19 distributes or sells Covered Products, including but not limited to distributors, wholesalers,  
20 customers, retailers, franchisees, cooperative members, licensors, and licensees ("Downstream  
21 Defendant Releasees"), from all claims for violations of Proposition 65 based on exposures to  
22 DEHP from the Covered Products through the Effective Date. This waiver and release is limited  
23 to those claims arising under Proposition 65 for unwarned exposures to DEHP from Covered  
24 Products manufactured, imported, purchased, or sold by True Value before the Effective Date.  
25 True Value's and Releasees' compliance with this Consent Judgment constitute compliance with  
26 Proposition 65.

27 **6.2 Private Release in Plaintiff's Individual, Non-representative Capacity**

28 Moore, in his individual capacity only and not in his representative capacity, also provides  
a release to True Value, Releasees, and Downstream Defendant Releasees which shall be  
effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,

1 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of  
2 Moore of any nature, character or kind, whether known or unknown, suspected or unsuspected,  
3 arising out of alleged or actual unwarned exposures to DEHP from the Products.

4 **6.3 True Value Company's Release of Moore**

5 True Value waives any and all claims against Moore and his attorneys and other  
6 representatives, for any and all actions taken or statements made (or those that could have been  
7 taken or made) by Moore and his attorneys and other representatives, whether in the course of  
8 investigating claims, otherwise seeking enforcement of Proposition 65 against it in this matter, or  
9 with respect to the Covered Products.

10 **7. NOTICE**

11 When any Party is entitled to receive any notice under this Consent Judgment, the notice  
12 shall be sent by: (a) first class, registered or certified mail; (b) personal delivery; or (c) a  
13 recognized overnight courier on any one party by the other party at the following addresses:

14 For Moore:

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

19 For True Value:

20 Robert Bridge  
21 True Value Company  
22 8600 West Bryn Mawr Avenue  
Chicago, IL 60631-3579

23 With a copy to:

24  
25 Jeffrey B. Margulies, Esq.  
26 Fulbright & Jaworski, L.L.P.  
27 555 South Flower Street, Forty-First Floor  
28 Los Angeles, CA 90071

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

3 **8. POST SETTLEMENT ACTIVITIES AND COURT APPROVAL**

4 8.1 Moore agrees to comply with the reporting form requirements referenced in Health  
5 and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and  
6 Safety Code section 25249.7(f), a noticed motion ("Motion") is required to obtain judicial  
7 approval of this Consent Judgment, which True Value shall draft and Moore and True Value shall  
8 jointly file. True Value shall provide draft moving papers including, but not limited to, the notice  
9 of motion, memorandum of points authorities, and necessary supporting papers to Moore's  
10 counsel within 15 days of the date that this Consent Judgment is fully executed by the parties.  
11 Moore's counsel will draft and finalize the supporting declaration of counsel. Thereafter, within  
12 15 days of receiving draft moving papers from True Value, Moore's counsel agrees to file the  
13 Motion and all supporting papers with the Court, and to serve a copy of the Consent Judgment  
14 and all moving papers on the Attorney General pursuant to California Code of Regulations title  
15 11, section 3000 et seq.

16 8.2 If this Consent Judgment is not approved by the Court in its entirety, (a) this  
17 Consent Judgment and any and all prior agreements between the parties as to the Notice or  
18 Complaint referenced herein shall terminate and become null and void, and the action shall revert  
19 to the status that existed prior to the execution date of this Consent Judgment; (b) no term of this  
20 Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or  
21 aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be  
22 admissible in evidence for any purpose in this action, or in any other proceeding; and (c) the  
23 parties agree to meet and confer to determine whether to modify the terms of the Consent  
24 Judgment and to resubmit it for approval.

25 **9. ATTORNEYS' FEES**

26 Except as otherwise provided in this Consent Judgment including a successful  
27 enforcement of this Consent Judgment under section 4, which may entitle Moore to attorney's  
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1 fees under Code of Civil Procedure section 1021.5 or any other applicable law, each Party and  
2 their privies, shall bear its own attorneys' fees and costs.

3 **10. OTHER TERMS**

4 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
5 California and apply within the state of California. In the event that Proposition 65 is repealed,  
6 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Covered  
7 Products, then True Value may provide written notice to Moore of any asserted change in the law,  
8 and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the  
9 extent that, the Covered Products are so affected. Nothing in this Consent Judgment shall be  
10 interpreted to relieve True Value from any obligation to comply with any pertinent state or federal  
11 toxics control laws.

12 10.2 This Consent Judgment contains the sole and entire agreement and understanding  
13 of the Parties with respect to the entire subject matter set forth in this Consent Judgment, and any  
14 and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are  
15 deemed merged. There are no warranties, representations, or other agreements between the  
16 Parties except as expressly set forth in this Consent Judgment. No representations, oral or  
17 otherwise, express or implied, other than those specifically referred to in this Consent Judgment  
18 have been made by any Party. No other agreements not specifically contained or referenced in  
19 this Consent Judgment, oral or otherwise, shall be deemed to exist or to bind any of the Parties.  
20 No supplementation, modification, waiver, or termination of this Consent Judgment shall be  
21 binding unless executed in writing by the Party to be bound. No waiver of any of the provisions  
22 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
23 provisions whether or not similar, nor shall such waiver constitute a continuing waiver.

24 10.3 This Consent Judgment may be modified only by: (a) an agreement or stipulation  
25 of the Parties and the entry of a modified consent judgment by the Court, or (b) by the successful  
26 motion, application, or such other procedure as is available at law to any party, and the entry of a  
27 modified consent judgment by the Court thereon.

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10.4 Nothing in this Consent Judgment shall release, or in any way affect any rights that True Value might have against any other party.

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

10.6 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to agree to the terms and conditions of this Consent Judgment, and to enter into and execute the Consent Judgment on behalf of the party represented and to legally bind that party.

10.7 The Parties, including their counsel, have participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code section 1654.

**AGREED TO:**

Plaintiff, JOHN MOORE

  
\_\_\_\_\_  
Signature

Date: JUNE 21, 2013

**AGREED TO:**

Defendant, TRUE VALUE COMPANY

  
\_\_\_\_\_  
Signature

By: ROBERT BRIDGE  
Print Name

Its: Asst General Counsel  
Title

Date: 6/21/2013