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10 Attorneys for Plaintiffs,  
11 Consumer Advocacy Group, Inc.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

14 CONSUMER ADVOCACY GROUP, INC.,  
15 in the interest of the Public,

16 Plaintiff,

17 v.

18 IDEAL INDUSTRIES, INC., a Delaware  
19 Corporation; LOWE'S COMPANIES, INC.,  
20 a North Carolina Corporation; LOWE'S  
21 HOME CENTERS, INC., a North Carolina  
22 Corporation; and DOES 1-20;

23 Defendants.

CASE NO. RG15782913

ASSIGNED FOR ALL PURPOSES TO  
JUDGE Julia Spain  
DEPARTMENT 19

**CONSENT JUDGMENT [PROPOSED]**

Complaint filed: August 21, 2015

24 **1. INTRODUCTION**

25 **1.1** This Consent Judgment is entered into by and between plaintiff Consumer  
26 Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public, and  
27 defendant IDEAL INDUSTRIES, INC. ("IDEAL" or "Defendant") with each a "Party" and  
28 collectively referred to as "Parties."

**1.2** It is alleged that Defendant named in the Complaint employs ten or more persons,  
is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic  
Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. ("Proposition

1 65”), and manufactured, distributed, and/or sold Coax Cable Strippers, including, but not limited  
2 to “IDEAL Stripmaster® Coax Cable Stripper; ‘RG-6’, ‘45-262’; Made in U.S.A of US and  
3 Global Components; ‘Diagram 1-3’; ‘1 4PCZ3’; ‘IDEAL INDUSTRIES, INC. Sycamore, IL  
4 60178, U.S.A.’; www.idealindustries.com; ‘ND 7903-1’; UPC # 7 83250 45262 0” before the  
5 Effective Date of this Consent Judgment.

6 **1.3 Notice of Violation.**

7 1.3.1 On or about May 7, 2015 CAG served the Defendant named in the Complaint and  
8 various public enforcement agencies with documents entitled “60-Day Notice of Violation” (the  
9 “Notice”) that provided the recipients with notice of alleged violations of Health & Safety Code §  
10 25249.6 for failing to warn individuals in California of exposures to DINP contained in the  
11 Covered Products.

12 1.3.2 No public enforcer has commenced or diligently prosecuted the allegations set forth  
13 in the Notices.

14 **1.4 Complaint.**

15 On August 21, 2015, CAG filed a Complaint for civil penalties and injunctive relief  
16 (“Complaint”) in Alameda Superior Court, Case No. RG15782913. The Complaint alleges, among  
17 other things, that the named Defendant violated Proposition 65 by failing to give clear and  
18 reasonable warnings of exposure to DINP from the Covered Products.

19 **1.5 Consent to Jurisdiction**

20 While otherwise disputed, for purposes of this Consent Judgment, the parties consent that  
21 this Court has jurisdiction over the allegations of violations contained in the Complaint and  
22 personal jurisdiction over the named Defendant as to the acts alleged in the Complaint, that venue  
23 is proper in the City and County of Alameda and that this Court has jurisdiction to enter this  
24 Consent Judgment as a full settlement and resolution of the allegations contained in the Complaint  
25 and of all claims which were or could have been raised by any person or entity based in whole or  
26 in part, directly or indirectly, on the prior conduct of the parties or on the facts alleged in the  
27 Complaint or arising therefrom or related to.

1           **1.6 No Admission**

2           1.6.1 This Consent Judgment resolves claims that are denied and disputed. The parties  
3 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims  
4 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall  
5 not constitute an admission with respect to any material allegation of the Complaint, each and  
6 every allegation of which Defendant denies including jurisdiction, nor may this Consent Judgment  
7 or compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability  
8 on the part of Defendant.

9           1.6.2 Nothing in this Consent Judgment shall prejudice, waive or impair any right,  
10 remedy, argument, or defense the Parties may have in any other or future legal proceeding,  
11 except as expressly provided in this Consent Judgment.

12           1.6.3 This Consent Judgment is the product of negotiation and compromise and is  
13 accepted by the Parties, for purposes of settling, compromising, and resolving issues disputed in  
14 this Action, including future compliance by Defendants with Section 2 of this Consent Judgment.

15           **2. DEFINITIONS**

16           **2.1** "Covered Products" means all Cable/wire Strippers and pliers with rubber/plastic  
17 grips, including, but not limited to "IDEAL Stripmaster® Coax Cable Stripper; 'RG-6', '45-262';  
18 Made in U.S.A of US and Global Components; 'Diagram 1-3'; '1 4PCZ3'; 'IDEAL  
19 INDUSTRIES, INC. Sycamore, IL 60178, U.S.A.'; www.idealindustries.com; 'ND 7903-1'; UPC  
20 # 7 83250 45262 0" sold, distributed, processed, packaged, produced, manufactured, and/or  
21 handled by Defendant.

22           **2.2** "Effective Date" means the date that this Consent Judgment is approved by the  
23 Court.

24           **2.3** "DINP" means Di Isononyl Phthalate, a chemical compound known to the State of  
25 California to cause cancer.

26           **3. INJUNCTIVE RELIEF/REFORMULATION**

27           **3.1** After the Effective Date, Defendant shall not sell, offer for sale in California, or  
28 ship for sale in California any Covered Products unless Defendant has either (1) reformulated the

1 Covered Products to the point where the level of DINP does not exceed more than 0.1 % by  
2 weight or 1,000 ppm (parts per million); or (2) provided a Proposition 65 compliant warning on  
3 the Covered Products. Any warning provided pursuant to this section shall be affixed to the  
4 packaging of, or directly on, the Covered Products, and be prominently placed with such  
5 conspicuousness as compared with other words, statements, designs, or devices as to render it  
6 likely to be read and understood by an ordinary individual under customary conditions before  
7 purchase or use. The Parties agree that product labeling stating that:

8           **WARNING:** This product contains a chemical known to the State of California  
9           to cause cancer or birth defects or other reproductive harm;

10           shall constitute compliance with Proposition 65 with respect to the DINP in the Covered  
11 Products distributed and/or sold by the Defendant after the Effective Date.

12 **4. SETTLEMENT PAYMENT**

13           **Total Payment:** Within 10 days after the Effective Date, Defendant shall pay a total of  
14 ninety-five thousand dollars (\$95,000.00) as follows:

15           **4.1 Civil Penalties.** Defendant shall issue two separate checks for a total amount of  
16 eighteen thousand dollars (\$18,000.00) as penalties pursuant to Health & Safety Code § 25249.12:  
17 (a) one check made payable to the State of California's Office of Environmental Health Hazard  
18 Assessment (OEHHA) in the amount of \$13,500.00 representing 75% of the total penalty; and (b)  
19 one check to Consumer Advocacy Group, Inc. in the amount of \$4,500.00 representing 25% of the  
20 total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be  
21 issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of  
22 \$13,500.00. The second 1099 shall be issued in the amount of \$4,500.00 to CAG and delivered  
23 to: Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California  
24 90212.

25           **4.2 Payments in Lieu of Civil Penalties**

26           Defendant also shall separately pay twelve thousand dollars (\$12,000.00) to CAG as a  
27 payment in lieu of civil penalty pursuant to Health & Safety Code §25249.7(b) and California  
28 Code of Regulations, Title 11 § 3203(b). CAG will use this payment for investigation of the

1 public's exposure to Proposition 65 listed chemicals through various means, laboratory fees for  
2 testing for Proposition 65 listed chemicals, expert fees for evaluating exposures through various  
3 mediums, including but not limited to consumer product, occupational, and environmental  
4 exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retained  
5 experts who assist with the extensive scientific analysis necessary for those files in litigation, as  
6 well as administrative costs incurred during the litigation, in order to reduce the public's  
7 exposure to Proposition 65 listed chemicals by notifying those persons and/or entities believed to  
8 be responsible for such exposures and attempting to persuade those persons and/or entities to  
9 reformulate their products or the source of exposure to completely eliminate or lower the level of  
10 Proposition 65 listed chemicals, thereby addressing the same public harm as allegedly in the  
11 instant Action.

12 **4.3 Reimbursement of Attorneys' Fees and Costs:** Defendant shall pay sixty-five  
13 thousand dollars (\$65,000.00) to "Yeroushalmi & Associates" as reimbursement for the  
14 investigation fees and costs, testing costs, expert fees, attorney fees, and other litigation costs and  
15 expenses for all work performed through the approval of this Consent Judgment.

16 **4.4** Payments pursuant to 4.1, 4.2 and 4.3 shall be delivered to: Reuben Yeroushalmi,  
17 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212 within  
18 the time agreed upon by the Parties.

19 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

20 **5.1** This Consent Judgment is a full, final, and binding resolution between CAG on  
21 behalf of itself and in the public interest and Defendant and its officers, directors, insurers,  
22 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister  
23 companies, agents, contractors, vendors, licensors, and their successors and assigns ("Defendant  
24 Releasees"), and each of their suppliers, customers, distributors, wholesalers, retailers, including  
25 but not limited to Lowe's Companies, Inc. and Lowe's Home Centers, LLC., and the successors  
26 and assigns of any of them who may use, maintain, distribute or sell Covered Products  
27 ("Downstream Defendant Releasees"), for all conduct of the named Defendant prior to the  
28 Effective Date based on alleged exposure to DINP from Covered Products as set forth in the

1 Notice. Defendant and Defendant Releasees' compliance with this Consent Judgment shall  
2 constitute compliance with Proposition 65 with respect to exposure to DINP from Covered  
3 Products.

4 **5.2** CAG on behalf of itself, its past and current agents, representatives, attorneys,  
5 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
6 indirectly, any form of legal action and releases all claims, including, without limitation, all  
7 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,  
8 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert  
9 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or  
10 contingent (collectively "Claims"), against Defendant, Defendant Releasees, and Downstream  
11 Defendant Releasees arising from any allegations of violation of Proposition 65 or any other  
12 statutory or common law regarding the failure to warn about exposure to DINP from Covered  
13 Products manufactured, distributed, or sold by Defendant and Defendant Releasees. In furtherance  
14 of the foregoing, as to alleged exposures to DINP from Covered Products, CAG hereby waives  
15 any and all rights and benefits which it now has, or in the future may have, conferred upon it with  
16 respect to the Claims arising from any violation of Proposition 65 or any other statutory or common  
17 law regarding the failure to warn about exposure to DINP from Covered Products by virtue of the  
18 provisions of section 1542 of the California Civil Code, which provides as follows:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
20 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT  
21 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,  
MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
DEBTOR.

22 CAG understands and acknowledges that the significance and consequence of this waiver of  
23 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or  
24 resulting from, or related directly or indirectly to, in whole or in part, the Claims arising from any  
25 alleged violation of Proposition 65 or any other statutory or common law regarding the failure to  
26 warn about exposure to DINP from Covered Products, including but not limited to any exposure  
27 to, or failure to warn with respect to exposure to DINP from the Covered Products, CAG will not  
28 be able to make any claim for those damages against Defendant or the Defendant Releasees or

1 Downstream Defendant Releasees. Furthermore, CAG acknowledges that it intends these  
2 consequences for any such Claims arising from any alleged violation of Proposition 65 or any  
3 other statutory or common law regarding the failure to warn about exposure to DINP from Covered  
4 Products as may exist as of the date of this release but which CAG does not know exist, and which,  
5 if known, would materially affect their decision to enter into this Consent Judgment, regardless of  
6 whether their lack of knowledge is the result of ignorance, oversight, error, negligence, or any  
7 other cause.

8 **6. ENFORCEMENT OF JUDGMENT**

9 **6.1** For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
10 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue of the  
11 action in Alameda County is proper, and that this Court has jurisdiction to enter and enforce the  
12 provisions of this Consent Judgment, pursuant to Code of Civil Procedure section 664.6, as a full  
13 and binding resolution of all claims that were or could have been raised in the Complaint against  
14 Defendant based on the facts alleged therein and in the Notices

15 **6.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other  
16 proceeding to enforce any alleged violation of Section 3.1 of this Consent Judgment, CAG shall  
17 provide a Notice of Violation (“NOV”) to Defendant. The NOV shall include for each of the  
18 Newly Alleged Products (“Newly Alleged Products” means any Covered Product for which CAG  
19 alleges a violation of the Consent Judgment after the Effective Date): the date(s) the alleged  
20 violation(s) was observed and the location at which the Newly Alleged Products were offered for  
21 sale, and shall be accompanied by all test data obtained by CAG regarding the Newly Alleged  
22 Products, including an identification of the component(s) of the Newly Alleged Products that were  
23 tested. Before any destructive testing of any Newly Alleged Products is conducted by or on behalf  
24 of CAG, CAG shall give Defendant(s) an opportunity to inspect and verify at reasonable times and  
25 places the authenticity of any Newly Alleged Product in violation of this Consent Judgment.

26 **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the  
27 alleged violation if, within 60 days of receiving such NOV, Defendant serves a Notice of  
28 Election (“NOE”) that meets one of the following conditions:

1 (a) The Newly Alleged Products were shipped by Defendant for sale in  
2 California before the Effective Date, or

3 (b) Since receiving the NOV Defendant has taken corrective action by  
4 either (i) requesting that its customers in California remove the Newly Alleged Products  
5 identified in the NOV from sale in California and destroy or return the Newly Alleged  
6 Products to Defendant, or (ii) providing a clear and reasonable warning for the Newly  
7 Alleged Products identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

8 6.2.2 **Contested NOV.** Defendant may serve an NOE informing CAG of its  
9 election to contest the NOV within 60 days of receiving the NOV.

10 (a) In its election, Defendant may request that the sample(s) of Covered  
11 Products tested by CAG be subject to additional confirmatory testing at an EPA-accredited  
12 laboratory.

13 (b) If the confirmatory testing establishes that the Newly Alleged  
14 Products do not contain DINP in excess of the level allowed in Section 3.1, CAG shall take  
15 no further action regarding the alleged violation. If the testing does not establish  
16 compliance with Section 3.1, Defendant may withdraw its NOE to contest the violation  
17 and may serve a new NOE pursuant to Section 6.2.1.

18 (c) If Defendant does not withdraw an NOE to contest the NOV, the  
19 Parties shall meet and confer for a period of no less than 30 days before CAG may seek an  
20 order enforcing the terms of this Consent Judgment.

21 **6.3** In any proceeding brought by either Party to enforce this Consent Judgment, such  
22 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any  
23 violation of this Consent Judgment.

24 **7. ENTRY OF CONSENT JUDGMENT**

25 **7.1** CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
26 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and  
27 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.  
28

1           **7.2** If this Consent Judgment is not approved in full by the Court, (a) this Consent  
2 Judgment and any and all prior agreements between the parties merged herein shall terminate and  
3 become null and void, and the actions shall revert to the status that existed prior to the execution  
4 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the  
5 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall  
6 have any effect, nor shall any such matter be admissible in evidence for any purpose in this Action,  
7 or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to  
8 modify the terms of the Consent Judgment and to resubmit it for approval.

9           **7.3** CAG will file a request for a dismissal with prejudice as to Defendants Lowe's  
10 Companies, Inc. and Lowe's Home Centers, LLC within five days of the Effective Date.

11 **8. MODIFICATION OF JUDGMENT AND RIGHTS THEREUNDER**

12           **8.1** This Consent Judgment may be modified only upon written agreement of the  
13 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
14 any Party as provided by law and upon entry of a modified Consent Judgment by the Court. Any  
15 Party may waive in writing any right it may have under this Consent Judgment.

16           **8.2** Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
17 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

18 **9. RETENTION OF JURISDICTION**

19           **9.1** This Court shall retain jurisdiction of this matter to implement and enforce the terms  
20 of this Consent Judgment under Code of Civil Procedure § 664.6.

21 **10. DUTIES LIMITED TO CALIFORNIA**

22           This Consent Judgment shall have no effect on Covered Products sold outside the State of  
23 California.

24 **11. SERVICE ON THE ATTORNEY GENERAL**

25           **11.1** CAG shall serve a copy of this Consent Judgment, signed by both parties, on the  
26 California Attorney General so that the Attorney General may review this Consent Judgment prior  
27 to its submittal to the Court for approval. No sooner than forty five (45) days after the Attorney  
28 General has received the aforementioned copy of this Consent Judgment, and in the absence of

1 any written objection by the Attorney General to the terms of this Consent Judgment, the Parties  
2 may then submit it to the Court for approval.

3 **12. ATTORNEY FEES**

4 **12.1** Except as specifically provided in Section 4.3 and 6.3, each Party shall bear its own  
5 costs and attorney fees in connection with this action.

6 **13. GOVERNING LAW**

7 **13.1** The validity, construction and performance of this Consent Judgment shall be  
8 governed by the laws of the State of California, without reference to any conflicts of law provisions  
9 of California law.

10 **13.2** The Parties, including their counsel, have participated in the preparation of this  
11 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
12 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
13 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
14 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
15 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
16 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
17 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
18 this regard, the Parties hereby waive California Civil Code § 1654.

19 **14. EXECUTION AND COUNTERPARTS**

20 **14.1** This Consent Judgment may be executed in counterparts and by means of facsimile  
21 or portable document format (PDF), which taken together shall be deemed to constitute one  
22 document.

23 **15. NOTICES**

24 **15.1** Any notices under this Consent Judgment shall be by personal delivery or First  
25 Class Mail.

26 If to CAG:

27 Reuben Yeroushalmi  
28 9100 Wilshire Boulevard, Suite 240W

1 Beverly Hills, CA 90212  
2 (310) 623-1926

3 If to Ideal Industries, Inc.  
4 Anthony Cortez, Esq.  
5 GREENBERG TRAURIG, LLP  
6 1201 K Street, Suite 1100  
7 Sacramento, CA 95814-3938  
8 (916) 442-1111

9 **16. AUTHORITY TO STIPULATE**

10 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
11 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
12 the party represented and legally to bind that party.

13 AGREED TO:

14 Date: 4-13-16, 2016

13 AGREED TO:

14 Date: 4/13/16, 2016

15 By:  \_\_\_\_\_

16 Plaintiff, CONSUMER ADVOCACY  
17 GROUP, INC.

15 By:  \_\_\_\_\_

16 Defendant, IDEAL INDUSTRIES, INC.

17 **IT IS SO ORDERED.**

18 Date: \_\_\_\_\_

19 \_\_\_\_\_  
20 JUDGE OF THE SUPERIOR COURT