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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  
13 forth 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,  
17 among other things, that the named Defendant violated Proposition 65 by failing to give clear  
18 and 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  
23 venue is proper in the City and County of Alameda and that this Court has jurisdiction to enter  
24 this Consent Judgment as a full settlement and resolution of the allegations contained in the  
25 Complaint and of all claims which were or could have been raised by any person or entity based  
26 in whole or in part, directly or indirectly, on the prior conduct of the parties or on the facts  
27 alleged in the 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  
5 shall not constitute an admission with respect to any material allegation of the Complaint, each  
6 and every allegation of which Defendant denies including jurisdiction, nor may this Consent  
7 Judgment or compliance with it be used as evidence of any wrongdoing, misconduct, culpability  
8 or liability 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-  
18 262’; 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’;  
20 UPC # 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  
25 of 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) (“Reformulation Standard”), Defendant shall test  
3 annually two random samples from two different lots of the Covered Products sold or offered for  
4 sale in California to ensure the level of DINP does not exceed 0.1 % by weight or 1,000 ppm.  
5 Such testing shall be performed in the United States by an accredited laboratory, and utilize U.S.  
6 Environmental Protection Agency (“EPA”) test preparation method 3550C and test method EPA  
7 8270C, and Defendant shall provide written certification that the results of this testing meet the  
8 Reformulation Standard above for only the first shipment of Covered Products that Defendant  
9 sells or offers for sale in California; or (2) provided a Proposition 65 compliant warning on the  
10 Covered Products. Any warning provided pursuant to this section shall be affixed to the  
11 packaging of, or directly on, the Covered Products, and be prominently placed with such  
12 conspicuousness as compared with other words, statements, designs, or devices as to render it  
13 likely to be read and understood by an ordinary individual under customary conditions before  
14 purchase or use. The Parties agree that product labeling stating that:

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

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

#### 19 **4. SETTLEMENT PAYMENT**

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

22           **4.1 Civil Penalties.** Defendant shall issue two separate checks for a total amount of  
23 eighteen thousand dollars (\$18,000.00) as penalties pursuant to Health & Safety Code §  
24 25249.12: (a) one check made payable to the State of California’s Office of Environmental  
25 Health Hazard Assessment (OEHHA) in the amount of \$13,500.00 representing 75% of the total  
26 penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of \$4,500.00  
27 representing 25% of the total penalty. Two separate 1099s shall be issued for the above  
28 payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184

1 (EIN: 68-0284486) in the amount of \$13,500.00. The second 1099 shall be issued in the amount  
2 of \$4,500.00 to CAG and delivered to: Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard,  
3 Suite 240W, Beverly Hills, California 90212.

4 **4.2 Payments in Lieu of Civil Penalties**

5 Defendant also shall separately pay twelve thousand dollars (\$12,000.00) to CAG as a  
6 payment in lieu of civil penalty pursuant to Health & Safety Code §25249.7(b) and California  
7 Code of Regulations, Title 11 § 3203(b). CAG will use this payment for investigation of the  
8 public's exposure to Proposition 65 listed chemicals through various means, laboratory fees for  
9 testing for Proposition 65 listed chemicals, expert fees for evaluating exposures through various  
10 mediums, including but not limited to consumer product, occupational, and environmental  
11 exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retained  
12 experts who assist with the extensive scientific analysis necessary for those files in litigation, as  
13 well as administrative costs incurred during the litigation, in order to reduce the public's  
14 exposure to Proposition 65 listed chemicals by notifying those persons and/or entities believed to  
15 be responsible for such exposures and attempting to persuade those persons and/or entities to  
16 reformulate their products or the source of exposure to completely eliminate or lower the level of  
17 Proposition 65 listed chemicals, thereby addressing the same public harm as allegedly in the  
18 instant Action.

19 **4.3 Reimbursement of Attorneys' Fees and Costs:** Defendant shall pay sixty-five  
20 thousand dollars (\$65,000.00) to "Yeroushalmi & Associates" as reimbursement for the  
21 investigation fees and costs, testing costs, expert fees, attorney fees, and other litigation costs and  
22 expenses for all work performed through the approval of this Consent Judgment.

23 **4.4** Payments pursuant to 4.1, 4.2 and 4.3 shall be delivered to: Reuben Yeroushalmi,  
24 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212 within  
25 the time agreed upon by the Parties.

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

27 **5.1** This Consent Judgment is a full, final, and binding resolution between CAG on  
28 behalf of itself and in the public interest and Defendant and its officers, directors, insurers,

1 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister  
2 companies, agents, contractors, vendors, licensors, and their successors and assigns (“Defendant  
3 Releasees”), and each of their suppliers, customers, distributors, wholesalers, retailers, including  
4 but not limited to Lowe’s Companies, Inc. and Lowe’s Home Centers, LLC., and the successors  
5 and assigns of any of them who may use, maintain, distribute or sell Covered Products  
6 (“Downstream Defendant Releasees”), for all conduct of the named Defendant prior to the  
7 Effective Date based on alleged exposure to DINP from Covered Products as set forth in the  
8 Notice. Defendant and Defendant Releasees’ compliance with this Consent Judgment shall  
9 constitute compliance with Proposition 65 with respect to exposure to DINP from Covered  
10 Products.

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

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
28 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT  
THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,

1 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
2 DEBTOR.

3 CAG understands and acknowledges that the significance and consequence of this waiver of  
4 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or  
5 resulting from, or related directly or indirectly to, in whole or in part, the Claims arising from  
6 any alleged violation of Proposition 65 or any other statutory or common law regarding the  
7 failure to warn about exposure to DINP from Covered Products, including but not limited to any  
8 exposure to, or failure to warn with respect to exposure to DINP from the Covered Products,  
9 CAG will not be able to make any claim for those damages against Defendant or the Defendant  
10 Releasees or Downstream Defendant Releasees. Furthermore, CAG acknowledges that it intends  
11 these consequences for any such Claims arising from any alleged violation of Proposition 65 or  
12 any other statutory or common law regarding the failure to warn about exposure to DINP from  
13 Covered Products as may exist as of the date of this release but which CAG does not know exist,  
14 and which, if known, would materially affect their decision to enter into this Consent Judgment,  
15 regardless of whether their lack of knowledge is the result of ignorance, oversight, error,  
16 negligence, or any other cause.

16 **6. ENFORCEMENT OF JUDGMENT**

17 **6.1** For purposes of this Consent Judgment only, the Parties stipulate that this Court  
18 has jurisdiction over Defendant as to the allegations contained in the Complaint, that venue of  
19 the action in Alameda County is proper, and that this Court has jurisdiction to enter and enforce  
20 the provisions of this Consent Judgment, pursuant to Code of Civil Procedure section 664.6, as a  
21 full and binding resolution of all claims that were or could have been raised in the Complaint  
22 against Defendant based on the facts alleged therein and in the Notices

23 **6.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other  
24 proceeding to enforce any alleged violation of Section 3.1 of this Consent Judgment, CAG shall  
25 provide a Notice of Violation (“NOV”) to Defendant. The NOV shall include for each of the  
26 Newly Alleged Products (“Newly Alleged Products” means any Covered Product for which CAG  
27 alleges a violation of the Consent Judgment after the Effective Date): the date(s) the alleged  
28 violation(s) was observed and the location at which the Newly Alleged Products were offered for

1 sale, and shall be accompanied by all test data obtained by CAG regarding the Newly Alleged  
2 Products, including an identification of the component(s) of the Newly Alleged Products that  
3 were tested. Before any destructive testing of any Newly Alleged Products is conducted by or on  
4 behalf of CAG, CAG shall give Defendant(s) an opportunity to inspect and verify at reasonable  
5 times and places the authenticity of any Newly Alleged Product in violation of this Consent  
6 Judgment.

7           **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the  
8 alleged violation if, within 60 days of receiving such NOV, Defendant serves a Notice of  
9 Election (“NOE”) that meets one of the following conditions:

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

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

17           **6.2.2 Contested NOV.** Defendant may serve an NOE informing CAG of its  
18 election to contest the NOV within 60 days of receiving the NOV.

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

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

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

4 **6.3** In any proceeding brought by either Party to enforce this Consent Judgment, such  
5 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any  
6 violation of this Consent Judgment.

7 **7. ENTRY OF CONSENT JUDGMENT**

8 **7.1** CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
9 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and  
10 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.

11 **7.2** If this Consent Judgment is not approved in full by the Court, (a) this Consent  
12 Judgment and any and all prior agreements between the parties merged herein shall terminate  
13 and become null and void, and the actions shall revert to the status that existed prior to the  
14 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft  
15 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement  
16 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any  
17 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to  
18 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

19 **7.3** CAG will file a request for a dismissal with prejudice as to Defendants Lowe's  
20 Companies, Inc. and Lowe's Home Centers, LLC within five days of the Effective Date.

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

22 **8.1** This Consent Judgment may be modified only upon written agreement of the  
23 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
24 any Party as provided by law and upon entry of a modified Consent Judgment by the Court. Any  
25 Party may waive in writing any right it may have under this Consent Judgment.

26 **8.2** Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
27 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.  
28

1 **9. RETENTION OF JURISDICTION**

2 **9.1** This Court shall retain jurisdiction of this matter to implement and enforce the  
3 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

4 **10. DUTIES LIMITED TO CALIFORNIA**

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

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

8 **11.1** CAG shall serve a copy of this Consent Judgment, signed by both parties, on the  
9 California Attorney General so that the Attorney General may review this Consent Judgment  
10 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the  
11 Attorney General has received the aforementioned copy of this Consent Judgment, and in the  
12 absence of any written objection by the Attorney General to the terms of this Consent Judgment,  
13 the Parties may then submit it to the Court for approval.

14 **12. ATTORNEY FEES**

15 **12.1** Except as specifically provided in Section 4.3 and 6.3, each Party shall bear its  
16 own costs and attorney fees in connection with this action.

17 **13. GOVERNING LAW**

18 **13.1** The validity, construction and performance of this Consent Judgment shall be  
19 governed by the laws of the State of California, without reference to any conflicts of law  
20 provisions of California law.

21 **13.2** The Parties, including their counsel, have participated in the preparation of this  
22 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
23 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
24 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty  
25 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a  
26 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent  
27 Judgment agrees that any statute or rule of construction providing that ambiguities are to be  
28

1 resolved against the drafting Party should not be employed in the interpretation of this Consent  
2 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

3 **14. EXECUTION AND COUNTERPARTS**

4 **14.1** This Consent Judgment may be executed in counterparts and by means of  
5 facsimile or portable document format (PDF), which taken together shall be deemed to constitute  
6 one document.

7 **15. NOTICES**

8 **15.1** Any notices under this Consent Judgment shall be by personal delivery or First  
9 Class Mail.

10 If to CAG:

11 Reuben Yeroushalmi  
12 9100 Wilshire Boulevard, Suite 240W  
13 Beverly Hills, CA 90212  
(310) 623-1926

14 If to Ideal Industries, Inc.

15 Anthony Cortez, Esq.  
16 GREENBERG TRAURIG, LLP  
17 1201 K Street, Suite 1100  
18 Sacramento, CA 95814-3938  
(916) 442-1111

19 **16. AUTHORITY TO STIPULATE**

20 **16.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
21 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf  
22 of the party represented and legally to bind that party.

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AGREED TO:

AGREED TO:

Date: 5-19-16, 2016

Date: \_\_\_\_\_, 2016

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

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

Plaintiff, CONSUMER ADVOCACY  
GROUP, INC.

Defendant, IDEAL INDUSTRIES, INC.

**IT IS SO ORDERED.**

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

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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AGREED TO:  
Date: \_\_\_\_\_, 2016  
  
By: \_\_\_\_\_  
Plaintiff, CONSUMER ADVOCACY  
GROUP, INC.

AGREED TO:  
Date: May 24, 2016  
  
By:   
Defendant, IDEAL INDUSTRIES, INC.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT