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3 BRODSKY & SMITH, LLC  
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6 Telephone: (877) 534-2590  
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8 *Attorneys for Plaintiff*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,

11 Plaintiff,

12 vs.

13 STANLEY BLACK & DECKER, INC.,

14 Defendant.

Case No. RG16809883

**[PROPOSED] CONSENT JUDGMENT**

Judge:

Dept.:

Hearing Date:

Hearing Time:

Reservation #:

1           **1.     Introduction**

2           1.1     On June 3, 2015, Ema Bell (“Bell”) served The Black & Decker Corporation,  
3 Black & Decker (U.S.), Inc. (collectively, “Stanley Black & Decker”), Wal-Mart Stores, Inc.  
4 (“Wal-Mart”), and various public enforcement agencies with a document entitled “Notice of  
5 Violation of California Health & Safety Code § 25249.6, *et seq.*” (the “Notice”). The Notice  
6 provided Stanley Black & Decker and such others, including public enforcers, with notice that  
7 alleged that Stanley Black & Decker was in violation of California Health & Safety Code §  
8 25249.6 (“Proposition 65”), for failing to warn consumers and customers that the hoses in Black  
9 & Decker Flex Cordless Flexible Vacs exposed users in California to the chemical Diisononyl  
10 phthalate (DiNP). No public enforcer has diligently prosecuted the allegations set forth in the  
11 Notice.

12           1.2     **Products Covered by this Consent Judgement.**     The products covered by this  
13 Consent Judgment are those products with a household flexible vacuum hose including but not  
14 limited to the 16V Max Lithium Flex w/ Floor Head, the 20V Max Lithium Ion Flex Vac, the  
15 20V Lithium Flex Floor Head, the 12V Automotive Flex Vac and the Flex Cordless Flexible Vac,  
16 hereinafter the “Products.”

17           1.3     On April 1, 2016, Bell filed a Complaint for Civil Penalties and Injunctive Relief  
18 (“Complaint”) in Alameda County Superior Court, Case No. RG16809883, against Stanley Black  
19 & Decker alleging violations of Proposition 65.

20           1.4     Stanley Black & Decker is a corporation that employs more than ten persons under  
21 California Health and Safety Code §25249.6 and offered the Product for sale within the State of  
22 California.

23           1.5     Bell’s Complaint alleges, among other things, that Stanley Black & Decker sold  
24 the Product in California and/or to California citizens, that the Product contains DiNP, and that  
25 the resulting exposure violated provisions of Proposition 65, by knowingly and intentionally  
26 exposing persons to chemicals known to the State of California to cause cancer without first  
27 providing a clear and reasonable warning to such individuals.

28

1           1.6     For purposes of this Consent Judgment only, the parties stipulate that this Court  
2 has jurisdiction over the allegations of violations contained in the Complaint and personal  
3 jurisdiction over Stanley Black & Decker as to the acts alleged in the Complaint, that venue is  
4 proper in the County of Alameda, and that this Court has jurisdiction to enter this Consent  
5 Judgment as a resolution of the allegations contained in the Complaint.

6           1.7     The parties enter into this Consent Judgment pursuant to a full settlement of  
7 disputed claims between the parties as alleged in the Complaint for the purpose of avoiding  
8 prolonged litigation. By execution of this Consent Judgment, Stanley Black & Decker does not  
9 admit any violation of Proposition 65 and specifically denies that it has committed any such  
10 violation. Nothing in this Consent Judgment shall be construed as an admission by Stanley Black  
11 & Decker of any fact, issue of law or violation of law, nor shall compliance with the Consent  
12 Judgment constitute or be construed as an admission by Stanley Black & Decker of any fact, issue  
13 of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive, or impair  
14 any right, remedy or defense that Stanley Black & Decker may have in any other future legal  
15 proceeding. However, this paragraph shall not diminish or otherwise affect the obligations,  
16 responsibilities and duties of Stanley Black & Decker under this Consent Judgment.

17           1.8     For purposes of this Consent Judgment, the term "Effective Date" shall mean the  
18 date that the Consent Judgment is entered by the Court.

19           2.       **Injunctive Relief**

20           2.1     Commencing ninety (90) days after the Effective Date, and continuing thereafter,  
21 Stanley Black & Decker shall only ship, sell, or offer for sale in California, Reformulated Product  
22 pursuant to Section 2.2 or Product that is labeled with a clear and reasonable warning pursuant to  
23 Section 2.3. Stanley Black & Decker and its downstream retailers shall have no obligation to  
24 label Product that entered the stream of commerce prior to ninety (90) days after the Effective  
25 Date. For purposes of this Settlement Agreement, a "Reformulated Product" is Product that is in  
26 compliance with the standard set forth below in section 2.2.

1           2.2    “Reformulated Product” shall mean Product that contains less than or equal to  
2 1,000 parts per million (“ppm”) of DiNP when analyzed pursuant to CPSC-CH-C1001-09.3  
3 Standard Operating Procedure for Determination of Phthalates method.

4           2.3    Commencing ninety (90) days after the Effective Date, Stanley Black & Decker  
5 shall, for all Product it sells or distributes and which is intended for sale in California, and which  
6 is not a Reformulated Product, provide clear and reasonable warnings as set forth in subsections  
7 2.3(a) and (b) below. The warning shall be prominently placed with such conspicuousness as  
8 compared with other words, statements, designs, or devices as to render it likely to be read and  
9 understood by an ordinary individual under customary conditions before purchase or use. Each  
10 warning shall be provided in a manner such that the consumer or user understands to which  
11 specific Product the warning applies, so as to minimize the risk of consumer confusion.

12                   **(a)    Retail Store Sales**

13                           **(i)    Product Labeling.**   Stanley Black & Decker shall affix a warning  
14 to the packaging, labeling or directly on each Product sold in retail outlets in  
15 California by Stanley Black & Decker or any person selling the Product that states:

16                   **[PROPOSITION 65] WARNING:**

17                   This product contains a chemical known to the State of California to cause cancer.

18                   The bracketed text may, but is not required to, be used.

19                           **(ii)   Point of Sale Warnings.**   Alternatively, Stanley Black

20                           & Decker may provide warning signs in the form below to its customers in  
21 California with instructions to post the warnings in close proximity to the  
22 point of display of the Product. Such instruction sent to Stanley Black &  
23 Decker customers shall be sent by certified mail, return receipt requested.

24                   **[PROPOSITION 65] WARNING:**

25                   This product contains chemicals known to the State of California to cause cancer.

26                   The bracketed text may, but is not required to, be used.

27           2.4    The warning requirements set forth in Section 2.3 shall not apply to any  
28 Reformulated Product.

1           **3.     Entry of Consent Judgment**

2           3.1     The parties hereby request that the Court promptly enter this Consent Judgment.  
3     Upon entry of this Consent Judgment, Bell and Stanley Black & Decker waive their respective  
4     rights to a hearing or trial on the allegations of the Bell Complaint and 60-Day Notice.

5           3.2     In the event that the Attorney General objects or otherwise comments on one or  
6     more provisions of this Consent Judgment, Bell and Stanley Black & Decker agree to take  
7     reasonable steps to satisfy such concerns or objections.

8           **4.     Matters Covered By This Consent Judgment**

9           4.1     **Plaintiff's Public Release of Proposition 65 Claims.**     This Consent  
10     Judgment is a final and binding resolution between Plaintiff Bell, acting on her own behalf, and  
11     on behalf of the public and in the public interest, and Defendant Stanley Black & Decker, and  
12     shall have preclusive effect such that no other person or entity, whether purporting to act in his,  
13     her, or its interests or the public interest shall be permitted to pursue and/or take any action with  
14     respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have  
15     been brought pursuant to the Notice.

16          4.2     **Plaintiff's Release of Additional Claims.**     As to Plaintiff Bell for and in her  
17     individual capacity only, this Consent Judgment shall have preclusive effect such that she shall  
18     not be permitted to pursue and/or take any action with respect to any other statutory or common  
19     law claim, to the fullest extent that any of the foregoing were or could have been asserted by her  
20     against Stanley Black & Decker, including any and all downstream retailers of the Product  
21     including but NOT limited to Wal-Mart, based on their exposure of persons to DiNP in the  
22     Product, or their failure to provide a clear and reasonable warning of exposure to such individuals  
23     or, as to alleged exposures to DiNP in the Product, any other claim based on whole or in part on  
24     the facts alleged in the Complaint and the Notice, whether based on actions committed by Stanley  
25     Black & Decker or its downstream retailers of the Product including but NOT limited to Wal-  
26     Mart. As to alleged exposures to DiNP in the Product, compliance with the terms of this Consent  
27     Judgment is deemed sufficient to satisfy all obligations concerning, compliance by Stanley Black  
28     & Decker and Wal-Mart with the requirements of Proposition 65 with respect to the Product, and

1 any alleged resulting exposure.

2 As to alleged exposures to DiNP in the Product, Bell acting in her individual capacity  
3 waives all rights to institute any form of legal action, and releases all claims against Stanley Black  
4 & Decker, Wal-Mart (including their parents, subsidiaries or affiliates, and assigns of any of  
5 them, who may use, maintain, distribute or sell the Product) whether under Proposition 65 or  
6 otherwise, arising out of or resulting from, or related directly or indirectly to, in whole or in part,  
7 the Product, including but not limited to any exposure to, or failure to warn with respect to, DiNP  
8 in the Product (referred to collectively in this Section as the "Claims"). In furtherance of the  
9 foregoing, as to alleged exposures to DiNP in the Product, Bell waives any and all rights and  
10 benefits which she now has, or in the future may have, conferred upon her with respect to the  
11 Claims by virtue of the provisions of § 1542 of the California Civil Code, which provides as  
12 follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
14 CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS OR HER  
15 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
16 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
17 SETTLEMENT WITH THE DEBTOR.

18 Bell understands and acknowledges that the significance and consequence of this waiver of  
19 California Civil Code § 1542 is that even if Bell suffers future damages arising out of or resulting  
20 from, or related directly or indirectly to, in whole or in part, the Product, including but not limited  
21 to any exposure to, or failure to warn with respect to exposure to, DiNP in the Product, Bell will  
22 not be able to make any claim for those damages against Stanley Black & Decker.

23 4.3 **Stanley Black & Decker's Release of Plaintiff Bell.** Stanley Black &  
24 Decker, on behalf of itself, its past and current agents, representatives, attorneys, successors  
25 and/or assignees, hereby waives any and all claims against Bell, her attorneys, and other  
26 representatives for any and all actions taken or statements made (or those that could have been  
27 taken or made) by Bell and her attorneys and other representatives, whether in the course of  
28 investigating claims or otherwise seeking enforcement of Proposition 65 against Stanley Black &

1 Decker in this matter.

2 **5. Enforcement of Judgment**

3 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties  
4 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of  
5 Alameda County, giving the notice required by law, enforce the terms and conditions contained  
6 herein. In any proceeding brought by either party to enforce this Consent Judgment, such party  
7 may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation  
8 of Proposition 65 or this Consent Judgment.

9 **6. Modification of Judgment**

10 6.1 This Consent Judgment may be modified only by written agreement of the parties  
11 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as  
12 provided by law and upon an entry of a modified Consent Judgment by the Court.

13 6.2 Should any court enter final judgment in a case brought by Bell or the People  
14 involving the Product that sets forth standards defining when Proposition 65 warnings will or will  
15 not be required ("Alternative Standards"), or if the California Attorney General's office otherwise  
16 provides written endorsement (i.e., a writing that is circulated by the Attorney General that is not  
17 intended for the purpose of soliciting further input or comments) of Alternative Standards  
18 applicable to the products that are of the same general type and function as the Product and  
19 constructed from the same materials, Stanley Black & Decker shall be entitled to seek a  
20 modification of this Consent Judgment on sixty (60) days' notice to Bell so as to be able to utilize  
21 and rely on such Alternative Standards in lieu of those set forth in Section 2 of this Consent  
22 Judgment. Bell shall not unreasonably contest any proposed application to effectuate such a  
23 modification provided that the Product for which such a modification is sought are of the same  
24 general type and function as those to which the Alternative Standards apply.

1           7.     Settlement Payment

2           7.1     In settlement of all the claims referred to in this Consent Judgment, and without  
3 any admission of liability therefore, Stanley Black & Decker shall make the following monetary  
4 payments:

5                 7.1.1   Stanley Black & Decker shall pay a total of \$7,500.00 in civil penalties in  
6 accordance with this Section. The civil penalty payment will be allocated in accordance with  
7 California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the  
8 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining  
9 25% of the civil penalty remitted to Bell.

10                7.1.2   Within seven (7) business days of the Effective Date, Stanley Black &  
11 Decker shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in  
12 the amount of \$5,625.00; and (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of  
13 \$1,875.00. Payment owed to Bell pursuant to this Section shall be delivered to the following  
14 payment address:

15                                 Evan J. Smith, Esquire  
16                                 Brodsky & Smith, LLC  
17                                 Two Bala Plaza, Suite 510  
  Bala Cynwyd, PA 19004

18 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly  
19 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

20                 For United States Postal Service Delivery:

21   Mike Gyurics  
22   Fiscal Operations Branch Chief  
  Office of Environmental Health Hazard Assessment  
  P.O. Box 4010  
23   Sacramento, CA 95812-4010

24                 For Non-United States Postal Service Delivery:

25   Mike Gyurics  
26   Fiscal Operations Branch Chief  
  Office of Environmental Health Hazard Assessment  
  1001 I Street  
27   Sacramento, CA 95814

28 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address

1 set forth above as proof of payment to OEHHA.

2 7.1.3 In addition to the payment above, Stanley Black & Decker shall pay  
3 \$57,500.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiff  
4 Bell's attorneys' fees and costs, including any investigation and laboratory costs or expert fees,  
5 incurred in the course of bringing the Bell action, and in enforcing Proposition 65, including  
6 without limitation, preparation of the 60-Day Notice letter and discussions with the office of the  
7 Attorney General. Payment shall be made within seven (7) business days of the Effective Date  
8 and sent to the address for Brodsky & Smith set forth in section 7.1.2, above.

9 **8. Notices**

10 8.1 Any and all notices between the parties provided for or permitted under this  
11 Agreement, or by law, shall be in writing and personally delivered or sent by: (i) first-class  
12 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any  
13 party by the other party to the following addresses:

14 For Stanley Black & Decker:

15 James M. Loree  
16 Chief Operating Officer and President  
17 Stanley Black & Decker, Inc.  
18 1000 Stanley Drive  
19 New Britain, CT 06053

18 -and-

19 Kevin Crisp, Esq.  
20 Haight Brown & Bonesteel LLP  
21 555 South Flower Street  
22 Forty-Fifth Floor  
23 Los Angeles, CA 90071

22 For Bell:

23 Evan J. Smith  
24 BRODSKY & SMITH, LLC  
25 9595 Wilshire Blvd., Suite 900  
26 Beverly Hills, CA 90212

26 Any party, from time to time, may specify in writing to the other party a change of address to  
27 which all notices and other communications shall be sent.  
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1           **9.     Authority to Stipulate**

2           9.1     Each signatory to this Consent Judgment certifies that he or she is fully authorized  
3 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
4 the party represented and legally to bind that party.

5           **10.    Counterparts**

6           10.1    This Stipulation may be signed in counterparts and shall be binding upon the  
7 parties hereto as if all said parties executed the original hereof.

8           **11.    Retention of Jurisdiction**

9           11.1    This Court shall retain jurisdiction of this matter to implement the Consent  
10 Judgment.

11          **12.    Service on the Attorney General**

12          12.1    Bell shall serve a copy of this Consent Judgment, signed by both parties, on the  
13 California Attorney General on behalf of the parties so that the Attorney general may review this  
14 Consent Judgment prior to its submittal to the Court for Approval. No sooner than forty-five (45)  
15 days after the Attorney General has received the aforementioned copy of this Consent Judgment,  
16 and in the absence of any written objection by the Attorney General to the terms of this Consent  
17 Judgment, the parties may then submit it to the Court for Approval.

18          **13.    Entire Agreement**

19          13.1    This Consent Judgment contains the sole and entire agreement and understanding  
20 of the parties with respect to the entire subject matter hereof, and any and all discussions,  
21 negotiations, commitment and understandings related thereto. No representations, oral or  
22 otherwise, express or implied, other than those contained herein have been made by any party  
23 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
24 to exist or to bind any of the parties.

25          **14.    Governing Law and Construction**

26          14.1    The validity, construction and performance of this Consent Judgment shall be  
27 governed by the laws of the State of California, without reference to any conflicts of law  
28 provisions of California law.

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**15. Court Approval**

15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

**IT IS SO STIPULATED:**

Dated: 5/17/16

Dated: \_\_\_\_\_

By:   
Ema Bell

By: \_\_\_\_\_  
Theodore C. Morris,  
Stanley Black & Decker, Inc.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court

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**15. Court Approval**

15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_

Dated: May 17, 2016

By: \_\_\_\_\_  
Ema Bell

By:   
Theodore C. Morris,  
Stanley Black & Decker, Inc.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court