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11 Attorneys for Defendants  
12 GENUINE PARTS INC., BALKAMP INC.  
and ULLMAN DEVICES CORPORATION  
13

14  
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF MARIN  
17 UNLIMITED CIVIL JURISDICTION  
18

19 JOHN MOORE,

20 Plaintiff,

21 v.

22 GENUINE PARTS COMPANY, *et al.*,

23 Defendants.  
24  
25  
26  
27  
28

Case No. CIV1801416

**CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and  
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore”) and  
4 defendants Balkamp Inc. (“Balkamp”), Genuine Parts Company (“Genuine Parts”), and Ullman  
5 Devices Corporation (“Ullman”) with Balkamp, Genuine Parts and Ullman collectively referred to as  
6 “Defendants” and with Moore and Defendants each individually referred to as a “Party” and  
7 collectively as the “Parties.”

8 **1.2 Plaintiff**

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

12 **1.3 Defendants**

13 Genuine Parts, Balkamp and Ullman each employ ten or more individuals and are each a  
14 “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic  
15 Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

16 **1.4 General Allegations**

17 Moore alleges that Defendants import, sell, or distribute for sale in California, tool pouches  
18 that contain lead without first providing the exposure warning required by Proposition 65. Lead is  
19 listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive  
20 harm.

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are tool pouches manufactured by or for  
23 Ullman and imported, distributed, sold and/or offered for sale in California by Genuine Parts and/or  
24 Balkamp that contain lead, including, but not limited to, the *Napa Service Tools Professional 1500*  
25 *Series 4 Piece hook Set, 3121, UPC #6 64766 42126 6* (“Products”).

26 **1.6 Notices of Violation**

27 On February 14, 2018, Moore served Genuine Parts and Balkamp, and the requisite public  
28 enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that Genuine Parts and

1 Balkamp violated Proposition 65 by failing to warn their customers and consumers in California of  
2 the health hazards associated with exposures to lead from the Products.

3 On October 24, 2018, Moore served Ullman, Genuine Parts and Balkamp, and the requisite  
4 public enforcement agencies with a 60-Day Notice of Violation (“Supplemental Notice”) alleging  
5 that Ullman, Genuine Parts and Balkamp violated Proposition 65 by failing to warn their customers  
6 and consumers in California of the health hazards associated with exposures to lead from the  
7 Products. The Notice and Supplemental Notice are collectively referred to herein as the “Notices.”  
8 No public enforcer has commenced and is diligently prosecuting an action to enforce the violations  
9 alleged in the Notices.

### 10 **1.7 Complaint**

11 On April 27, 2018, Moore filed the instant action (“Complaint”), naming Genuine Parts and  
12 Balkamp as defendants for the alleged violations of Health and Safety Code section 25249.6 that are  
13 the subject of the Notice. Thereafter, Moore filed a First Amended Complaint (“Complaint”) naming  
14 Ullman as a defendant for the alleged violations of Health and Safety Code section 25249.6 that are  
15 the subject of the Supplemental Notice.

### 16 **1.8 No Admission**

17 Each of Ullman, Genuine Parts and Balkamp denies the material, factual, and legal allegations  
18 contained in the Notices and Complaint, and maintains that all of the products it has sold and  
19 distributed for sale in California, including the Products, have been, and are, in compliance with all  
20 laws. Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,  
21 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment  
22 constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or  
23 violation of law. This Section shall not, however, diminish or otherwise affect Ullman’s, Genuine  
24 Parts’ or Balkamp’s obligations, responsibilities, and duties under this Consent Judgment.

### 25 **1.9 Jurisdiction**

26 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
27 jurisdiction over Ullman, Genuine Parts and Balkamp as to the allegations in the Complaint, that  
28 venue is proper in the County of Marin, and that the Court has jurisdiction to enter and enforce the

1 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section  
2 664.6.

### 3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term “Effective Date” means the date on which  
5 the Court approves this Consent Judgment, including any unopposed tentative ruling granting  
6 approval of this Consent Judgment.

## 7 **2. INJUNCTIVE RELIEF: PRODUCT REFORMULATION AND WARNINGS**

### 8 **2.1 Commitment to Reformulate or Warn**

9 Commencing on the Effective Date and continuing thereafter, Ullman, Genuine Parts and  
10 Balkamp agree to only distribute, sell or offer for sale in California, Products that are either  
11 (a) Reformulated Products as defined by Section 2.2, below, or (b) Products that bear a clear and  
12 reasonable health hazard warning pursuant to Section 2.3 below, except as provided in Section 2.4,  
13 below.

### 14 **2.2 Reformulation Standard**

15 “Reformulated Products” are Products that: (a) contain no more than 100 parts per million  
16 (“ppm”) lead when analyzed pursuant to U.S. Environmental Protection Agency testing  
17 methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies  
18 for the purpose of determining lead content in a solid substance; and (b) yield no more than 1.0  
19 microgram (“ug”) of lead when a wipe is applied to all surfaces according to NIOSH Test Method  
20 No. 9100.

### 21 **2.3 Clear and Reasonable Warnings**

22 For any non-Reformulated Product manufactured by or for Ullman and/or purchased by  
23 Genuine Parts or Balkamp after the Effective Date that are sold or distributed for sale in California,  
24 Ullman, Genuine Parts and Balkamp agree to only sell or distribute such Products for sale in  
25 California with a clear and reasonable warning in accordance with this Section or Title 27 California  
26 Code of Regulations section 25602 and 25603. Ullman, Genuine Parts and Balkamp further agree  
27 that any warning used will be prominently placed in relation to the Products with such  
28 conspicuousness when compared with other words, statements, designs, or devices as to render it

1 likely to be read and understood by an ordinary individual under customary conditions of purchase or  
2 use. For purposes of this Consent Judgment, a warning satisfying the above criteria that is affixed  
3 directly to a Product or its accompanying labeling or packaging containing either of the following  
4 statements shall be deemed clear:

5 **⚠WARNING:** This product can expose you to chemicals  
6 including lead, which is known to the State  
7 of California to cause cancer and birth  
8 defects or other reproductive harm. For  
9 more information go to  
10 [www.P65Warning.ca.gov](http://www.P65Warning.ca.gov).

11 **⚠ WARNING:** Cancer and Reproductive Harm -  
12 [www.P65Warning.ca.gov](http://www.P65Warning.ca.gov).

13 Where the label is not printed using the color yellow, the symbol may be printed in black and  
14 white.

## 15 **2.4 Covered Products in the Stream of Commerce**

16 Any Products that have been distributed, shipped, or sold by Ullman to Genuine Parts,  
17 Balkamp, or Downstream Releasees (as defined in Section 4.1) prior to the July 1, 2018, shall not be  
18 subject to the requirements of Section 2.1, 2.2 or 2.3.

## 19 **3. MONETARY SETTLEMENT TERMS**

### 20 **3.1 Civil Penalty Payments**

21 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all the claims  
22 referred to in the Notice, Complaint, and this Consent Judgment, Ullman, Genuine Parts or Balkamp  
23 shall pay \$5,000 in civil penalties. The civil penalty payment shall be allocated according to Health  
24 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid  
25 to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining  
26 twenty-five percent (25%) of the penalty retained by Moore. Moore’s counsel shall be responsible  
27 for delivering OEHHA’s portion of any penalty payment(s) made under this Consent Judgment. The  
28 payment shall be by a check made payable to “John Moore, Client Trust Account” in the amount of  
\$1,250 and a check made payable to “OEHHA” in the amount of \$3,750 to be delivered to the  
address provided in Section 3.3, below.

///

1           **3.2     Reimbursement of Attorney’s Fees and Costs**

2           The parties acknowledge that Moore and his counsel offered to resolve this dispute without  
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to  
4 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the  
5 other settlement terms had been finalized, the Parties negotiated the compensation due to Moore and  
6 his counsel under general contract principles and the private attorney general doctrine codified at  
7 California Code of Civil Procedure section 1021.5 for all work performed through the mutual  
8 execution of this Consent Judgment, and court approval of the same, but exclusive of fees and costs  
9 on appeal, if any. Under these legal principles, Ullman, Genuine Parts or Balkamp shall pay \$35,000  
10 for all fees and costs incurred by Moore investigating, bringing this matter to Ullman’s, Genuine  
11 Parts’ and Balkamp’s attention, litigating and negotiating a settlement in the public interest. The  
12 payment shall be delivered to the address in Section 3.4 in a check payable to “The Chanler Group.”

13           **3.3     Payment Timing; Payments Held in Trust**

14           All payments due under this Consent Judgment shall be held in trust until such time as the  
15 Court approves the Parties’ settlement. Within five business (5) days of the date that this Consent  
16 Judgment is fully executed by the Parties, all payments due under this agreement shall be delivered  
17 to Defendants’ counsel and held in trust until the Effective Date. Defendants’ counsel shall provide  
18 Moore’s counsel with written confirmation upon its receipt of the settlement payments. Within five  
19 business days of the Effective Date, Defendants’ counsel shall deliver the civil penalty and  
20 attorneys’ fee reimbursement payments to Moore’s counsel.

21           **3.4     Payment Address**

22           All payments required by this Consent Judgment shall be delivered to:

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

26           ///

27           ///

28           ///

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Moore’s Public Release of Proposition 65 Claims**

3 Moore, acting on his own behalf and in the public interest, releases Ullman, Genuine Parts  
4 and Balkamp and their parents, subsidiaries, affiliated entities under common ownership, directors,  
5 officers, employees, and attorneys (“Releasees”), and each entity to whom either of them directly or  
6 indirectly distribute or sell the Products including, without limitation, their downstream customers,  
7 distributors, wholesalers, franchisees, and retailers (“Downstream Releasees”) for any violation  
8 arising under Proposition 65 pertaining to the failure to warn about exposures to lead from Products  
9 sold or distributed for sale by Releasees prior to the Effective Date, as described in the Notice. The  
10 release in this Section 4.1 shall not extend upstream, and it shall remain limited to the Products.  
11 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
12 with respect to exposures to lead from Products sold or distributed for sale by Releasees or  
13 Downstream Releasees after the Effective Date.

14 **4.2 Moore’s Individual Release of Claims**

15 Moore, in his individual capacity only and *not* in any representative capacity, also provides a  
16 general release to Releasees and Downstream Releasees, which shall be effective as a full and final  
17 accord and satisfaction, as a bar to all actions, causes of action in law or in equity, obligations, costs,  
18 expenses, attorneys’ fees, damages, fines, penalties, losses, claims, liabilities and demands of Moore  
19 of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of  
20 alleged or actual exposures, or failure to warn of, to lead in Products sold or distributed for sale by  
21 Releasees or Downstream Releasees before the Effective Date. The release in this Section 4.2 shall  
22 not extend upstream, and it shall remain limited to the Products.

23 **4.3 Defendants’ Release of Moore**

24 Ullman, Genuine Parts and Balkamp, on their own behalf, and on behalf of their past and  
25 current agents, representatives, attorneys, successors, and assignees, hereby waives any and all  
26 claims against Moore, and his attorneys and other representatives, for any and all actions taken or  
27 statements made by Moore, and his attorneys and other representatives, whether in the course of  
28

1 investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with  
2 respect to the Products.

3 **4.4 Release of Known and Unknown Claims**

4 It is possible that other Claims not known to Moore or Defendants arising out of the facts  
5 relating to the Claims released, discharged, and waived in Sections 4.1, 4.2 or 4.3 will subsequently  
6 be developed or be discovered. Moore and Defendants acknowledge that the Claims in this Consent  
7 Judgment include all known and unknown Claims within the scope of the claims released,  
8 discharged, and waived in Sections 4.1, 4.2 or 4.3 except as provided in Sections 4.1 and 4.2  
9 hereinabove, and they each waive the provisions of California Civil Code § 1542 as to any unknown  
10 Claims that may have existed prior to and including the Effective Date, except as provided in  
11 Sections 4.1 and 4.2 hereinabove. California Civil Code § 1542 reads as follows:

12 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
13 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
14 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
15 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
DEBTOR OR RELEASED PARTY.**

16 Moore and Defendants acknowledge and understand the significance and consequences of this  
17 specific waiver of California Civil Code § 1542.

18 **5. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
20 be null and void if it is not approved and entered by the Court within one year after it has been fully  
21 executed by the Parties, or by such additional time as the Parties may agree in writing.

22 **6. SEVERABILITY**

23 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any  
24 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be  
25 adversely affected.

26 **7. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the state of California  
28 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise  
rendered inapplicable by reason of law generally or as to the Products, then Genuine Parts may



1 provide written notice to Moore of any asserted change in the law, and shall have no further  
2 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
3 Products are so affected.

4 **8. NOTICE**

5 Unless specified herein, all correspondence and notice required by this Consent Judgment  
6 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,  
7 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

8 For Genuine Parts:

9 Paul D. Donahue, President  
10 Genuine Parts Company  
11 2999 Wildwood Pkwy  
Atlanta, GA 30339

For Moore:

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

12 For Balkamp:

13 Balkamp, Inc.  
14 c/o Genuine Parts Company  
15 Attn. Corporate Counsel  
2999 Wildwood Pkwy  
Atlanta, GA 30339

16 For Ullman:

17 Doug Spitler, President  
18 Ullman Devices Corporation  
29 E. Madison, Suite 900  
Chicago, IL 60602

19 with a copy on behalf of Defendants to:

20 Jeffrey Parker  
21 Sheppard, Mullin, Richter & Hampton LLP  
22 333 S. Hope Street, 43rd Floor  
Los Angeles, CA 90071

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

25 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

26 This Consent Judgment may be executed in counterparts and by facsimile signature, each of  
27 which shall be deemed an original, and all of which, when taken together, shall constitute one and the  
28 same document.

1 **10. POST EXECUTION ACTIVITIES**

2 Moore agrees to comply with the reporting form requirements referenced in Health and Safety  
3 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code  
4 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which  
5 motion Moore shall draft and file. In furtherance of obtaining such approval, the Parties agree to  
6 mutually employ their best efforts, and those of their counsel, to support the entry of this agreement  
7 as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of  
8 this Section, "best efforts" shall include, at a minimum, supporting the motion for approval,  
9 responding to any objection that any third-party may file or lodge, and appearing at the hearing  
10 before the Court if so requested.

11 **11. MODIFICATION**

12 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
13 entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or application  
14 of any Party, and the entry of a modified consent judgment thereon by the Court.

15 **12. AUTHORIZATION**

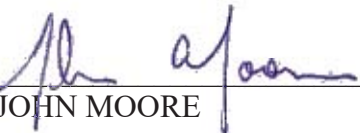
16 The undersigned are authorized to execute this Consent Judgment and acknowledge that they  
17 have read, understand, and agree to all of the terms and conditions contained herein.

18 **AGREED TO:**

**AGREED TO:**

19 Date: 1/25/2019

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

20  
21 By:  \_\_\_\_\_  
22 JOHN MOORE

By: \_\_\_\_\_  
Kathleen Eidbo, Assistant VP and Senior Counsel  
GENUINE PARTS COMPANY

23 **AGREED TO:**

**AGREED TO:**

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

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

25  
26 By: \_\_\_\_\_  
27 Doug Spitler, President  
ULLMAN DEVICES CORPORATION

By: \_\_\_\_\_  
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BALKAMP INC.

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17 have read, understand, and agree to all of the terms and conditions contained herein.

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

20  
21 By: \_\_\_\_\_  
22 JOHN MOORE

**AGREED TO:**

23 Date: 2/15/19

24 By:   
25 Kathleen Eidbo, Assistant VP and Senior Counsel  
26 GENUINE PARTS COMPANY

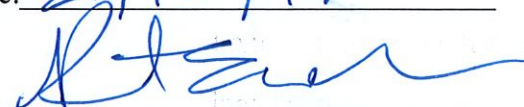
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28 Date: \_\_\_\_\_

By: \_\_\_\_\_  
Doug Spitler, President  
ULLMAN DEVICES CORPORATION

**AGREED TO:**

Date: 2/15/19

By:   
Kathleen Eidbo, Counsel  
BALKAMP INC.

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18 **AGREED TO:**

19 Date: \_\_\_\_\_  
20

21 By: \_\_\_\_\_  
22 JOHN MOORE

**AGREED TO:**

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

By: \_\_\_\_\_  
Kathleen Eidbo, Assistant VP and Senior Counsel  
GENUINE PARTS COMPANY

23 **AGREED TO:**

24 Date: 2/12/2019  
25

26 By: D. J. Spitzer  
27 Doug Spitzer, President  
ULLMAN DEVICES CORPORATION

**AGREED TO:**

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

By: \_\_\_\_\_  
Kathleen Eidbo, Counsel  
BALKAMP INC.