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Brian C. Johnson, State Bar No. 235965
Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
JOHN MOORE

(PROPOSED)
FILED
AUG 29 2013

County of Santa Clara, California
D. W. Radel

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,
Plaintiff,
v.
TRUE VALUE COMPANY; *et al.*,
Defendants.

Case No. 112CV232816

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**

Date: August 29, 2013
Time: 9:00 a.m.
Dept. 9
Judge: Hon. Mark Pierce

1 Plaintiff John Moore and Defendant True Value Company, having agreed through
2 their respective counsel that Judgment be entered pursuant to the terms of their settlement
3 agreement in the form of a Consent Judgment, and following this Court's issuance of an
4 order approving the Proposition 65 settlement and Consent Judgment,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
6 Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6,
7 judgment is hereby entered in accordance with the terms of the Consent Judgment attached
8 hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to
9 enforce the terms of the settlement under Code of Civil Procedure section 664.6.

10 **IT IS SO ORDERED.**

11
12
13 Dated: 'AUG 29 2013

Mark H. Pierce

JUDGE OF THE SUPERIOR COURT

Exhibit 1

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1. INTRODUCTION

1.1 Parties

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

1.2 Plaintiff

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

1.3 Defendant

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

1.4 General Allegations

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

1.5 Product Description

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

1.6 Notice of Violation

On or about April 5, 2012, Moore served True Value and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that True Value was in violation of Proposition 65 for failing to warn its customers and consumers in California

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).

1 2.3 “Effective Date” means date this Consent Judgment is approved by the court.

2 2.4 “Private Label Covered Product” means a Product that bears a True Value brand or
3 trademark and the brand or trademark of the manufacturer of such product does not appear on such
4 label. A product is not a Private Label Covered Product due solely to the fact that True Value’s name,
5 brand, or trademark is visible on a sign or on the price tag of a product that is not labeled with a True
6 Value brand or trademark

7 2.5 “Vendor” means a person or entity that manufactures, imports, distributes, or
8 otherwise supplies a Covered Product to True Value.

9 **3. INJUNCTIVE RELIEF: REFORMULATION**

10 **3.1 Vendor Notification**

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

18 **3.2 Reformulation Standard**

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

25 **3.3 Clear and Reasonable Warnings.**

26 For Covered Products that True Value ships, sells or offers for sale in California that are
27 not Reformulated Products, True Value shall provide a clear and reasonable health hazard
28

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

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

11 **6. CLAIMS COVERED AND RELEASED**

12 **6.1 Public Release of Proposition 65 Claims**

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

26 **6.2 Private Release in Plaintiff's Individual, Non-representative Capacity**

27 Moore, in his individual capacity only and not in his representative capacity, also provides
28 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
28

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.

28

1 10.4 Nothing in this Consent Judgment shall release, or in any way affect any rights that
2 True Value might have against any other party.

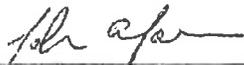
3 10.5 This Consent Judgment may be executed in counterparts and by facsimile or
4 portable document format (PDF) signature, each of which shall be deemed an original, and all of
5 which, when taken together, shall constitute one and the same document.

6 10.6 Each signatory to this Consent Judgment certifies that he or she is fully authorized
7 by the party he or she represents to agree to the terms and conditions of this Consent Judgment,
8 and to enter into and execute the Consent Judgment on behalf of the party represented and to
9 legally bind that party.

10 10.7 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 section 1654.

19 **AGREED TO:**

20 Plaintiff, JOHN MOORE

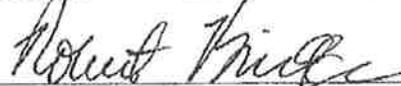
21 

22 Signature

23 Date: JUNE 21, 2013

20 **AGREED TO:**

21 Defendant, TRUE VALUE COMPANY

22 

23 Signature

24 By: ROBERT BRIDGE

25 Print Name

26 Its: Asst General Counsel

27 Title

28 Date: 6/21/2013