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11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR ALAMEDA COUNTY  
14 UNLIMITED CIVIL JURISDICTION  
15

16 RUSSELL BRIMER,

17 Plaintiff,

18 v.

19 LOWE'S COMPANIES, INC.,  
20 HANGZHOU GREATSTAR TOOLS CO.,  
21 LTD. *et al.*,

22 Defendants.

Case No. RG15785253

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and  
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”)  
4 on one hand, and Hangzhou GreatStar Tools Co., Ltd. (“Hangzhou”), on the other hand, with  
5 Brimer and Hangzhou each referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Brimer is a resident of the State of California who seeks to promote awareness of exposures  
8 to toxic chemicals, and to improve human health by reducing or eliminating harmful substances  
9 contained in consumer and commercial products.

10 **1.3 Defendant**

11 Brimer alleges Hangzhou employ ten or more persons each and is a person in the course of  
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
13 California Health and Safety Code §25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Hangzhou manufactures, imports, sells and/or distributes for sale in  
16 California vinyl/PVC electrical tape that contains di(2-ethylhexyl) phthalate (“DEHP”), and that  
17 they do so without providing the health hazard warning that Brimer alleges is required by  
18 Proposition 65. DEHP is a chemical listed pursuant to Proposition 65 as a chemical known to cause  
19 birth defects or other reproductive harm.

20 **1.5 Notices of Violation**

21 On March 31, 2015, Brimer served Lowe’s Companies, Inc., Lowe’s HIW, Inc. and LG  
22 Sourcing, Inc. (collectively “Lowe’s”) and the requisite public enforcement agencies with a 60-Day  
23 Notice of Violation (“Notice”), alleging that Lowe’s violated Proposition 65 when it failed to warn  
24 its customers and consumers in California of the health hazards associated with exposures to DEHP  
25 from the Products, as defined in Section 2.1 below. On July 29, 2016, Brimer served Lowe’s,  
26 Hangzhou, and the requisite enforcement agencies with a Supplemental 60-Day Notice of Violation  
27 (“Supp. Notice”), alleging Hangzhou also violated Proposition 65 by failing to warn its customers  
28 and consumers in California of the health hazards associated with exposures to DEHP from the

1 Products. The Notice and the Supp. Notice shall hereinafter be referred to as the “Notices.” To the  
2 best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an  
3 action to enforce the allegations set forth in the Notices.

4 **1.6 Complaint**

5 On September 10, 2015, Brimer commenced the instant action, naming Lowe’s as a  
6 defendant for the alleged violations of Proposition 65 that are the subject of the Notice. Thereafter,  
7 on October 12, 2016, Brimer filed a First Amended Complaint (“Complaint”), the operative  
8 pleading in this action, adding Hangzhou as a defendant for the allegations contained in the Supp.  
9 Notice.

10 **1.7 No Admission**

11 Hangzhou and Lowe’s deny the material, factual, and legal allegations contained in the  
12 Notices and Complaint, and maintain that all of the products that they have sold or distributed for  
13 sale in California, including the Products, have been, and are, in compliance with all laws. Nothing  
14 in this Consent Judgment shall be construed as an admission by Hangzhou or Lowe’s of any fact,  
15 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent  
16 Judgment constitute or be construed as an admission by Hangzhou or Lowe’s of any fact, finding,  
17 conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or  
18 otherwise affect Hangzhou’s obligations, responsibilities, and duties under this Consent Judgment.

19 **1.8 Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
21 jurisdiction over Hangzhou as to the allegations in the Complaint, that venue is proper in Alameda  
22 County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent  
23 Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

24 **1.9 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that  
26 the Court grants the motion for approval of this Consent Judgment contemplated by Section 7.  
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1 **2. DEFINITIONS**

2 **2.1 Products**

3 Both “Product” and “Products” is defined as vinyl/PVC electrical tape containing DEHP,  
4 including, but not limited to, *Utilitech Electrical Tape, Model #54794, LW028001-102013, UPC #8*  
5 *20909 54794 5*, that is manufactured and offered for sale by Hangzhou and sold by retailer Lowe’s  
6 in California.

7 **2.2 Reformulated Products**

8 “Reformulated Products” means Products that meet the Reformulation Standard.

9 **2.3 Reformulation Standard**

10 “Reformulation Standard” means a maximum DEHP concentration of 1,000 parts per  
11 million (0.1%) by weight in a Product, when analyzed pursuant to U.S. Environmental Protection  
12 Agency testing methodologies 3580A and 8270C or other methodologies utilized by federal or state  
13 governmental agencies for purposes of determining DEHP content in a solid substance.

14 **3. INJUNCTIVE SETTLEMENT TERMS**

15 Commencing on April 1, 2017, and continuing thereafter, Hangzhou shall only manufacture,  
16 or cause to be manufactured for sale in California, Reformulated Products.

17 **4. MONETARY SETTLEMENT TERMS**

18 **4.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

19 Pursuant to Health and Safety Code §25249.7(b)(2), and in settlement of all the claims  
20 referred to in this Consent Judgment, Hangzhou shall pay \$30,000 in civil penalties in accordance  
21 with this Section. Each penalty payment will be allocated in accordance with California Health &  
22 Safety Code §§ 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of  
23 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty  
24 remitted to Brimer.

25 **4.1.1 Initial Civil Penalty**

26 Within one week from the date that this Consent Judgment is fully executed, Hangzhou  
27 shall provide its initial civil penalty payment to its counsel as follows: one check in the amount of  
28

1 \$7,500 paid to OEHHA, and a check in the amount of \$2,500 paid to “Russell Brimer, Client Trust  
2 Account.” Hangzhou’s counsel shall deliver both checks as set forth in Sections 4.3 and 4.4.

#### 3 **4.1.2 Final Civil Penalty; Accelerated Reformulation Waiver**

4 On April 1, 2017, Hangzhou shall pay a final civil penalty of \$20,000. Pursuant to title 11  
5 Cal. Code Regs. § 3203(c), Brimer agrees the final civil penalty will be waived in its entirety if, no  
6 later than March 15, 2017, an officer of Hangzhou provides Brimer’s counsel with a signed  
7 declaration certifying and verifying that the Products it is shipping for sale or distributing for sale in  
8 or into California as of the date of the declaration comply with the Reformulation Standard and that  
9 all Products sold or offered for sale in California in the future will continue to comply with the  
10 Reformulation Standard. The option to provide a declaration certifying complete reformulation of  
11 the Products in lieu of making the final civil penalty payment is a material term, and time is of the  
12 essence.

#### 13 **4.2 Reimbursement of Attorneys’ Fees and Costs**

14 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without  
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue  
16 to be resolved after the material terms of the agreement had been settled. Shortly after finalizing  
17 the other settlement terms, Hangzhou expressed a desire to resolve Brimer’s fees and costs. The  
18 Parties then negotiated a resolution of the compensation due to Brimer and his counsel as a final  
19 and independent term of this Consent Judgment pursuant to general contract principles and the  
20 private attorney general doctrine codified at California Code of Civil Procedure §1021.5. For all  
21 work performed through the mutual execution of this agreement and the Court’s approval of the  
22 same, but exclusive of fees and costs on appeal, if any, Hangzhou shall reimburse Brimer and his  
23 counsel \$40,000. Hangzhou’s payment shall be delivered to the address in Section 4.4 in the form  
24 of a check payable to “The Chanler Group.” The reimbursement shall cover all fees and costs  
25 incurred by Brimer investigating, bringing this matter to Hangzhou attention, litigating, and  
26 negotiating a settlement of the matter in the public interest.

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1           **4.3     Payment Timing; Payments Held In Trust**

2           Hangzhou shall deliver all payments required by this Consent Judgment to its counsel  
3 within one week of the date that this agreement is fully executed by the Parties. Hangzhou’s  
4 counsel shall confirm receipt of settlement funds in writing to Brimer’s counsel and, thereafter,  
5 hold the amounts paid in trust until such time as the Court grants the motion for approval of the  
6 Parties’ settlement contemplated by Section 7. Within two days of the Effective Date, Hangzhou’s  
7 counsel shall deliver all settlement payments to Brimer’s counsel at the address provided in  
8 Section 4.4.

9           **4.4     Payment Address**

10          All payments required by this Consent Judgment shall be delivered to the following  
11 address:

12                               The Chanler Group  
13                               Attn: Proposition 65 Controller  
14                               2560 Ninth Street  
                                  Parker Plaza, Suite 214  
                                  Berkeley, CA 94710

15       **5.     CLAIMS COVERED AND RELEASED**

16           **5.1     Brimer’s Release of Proposition 65 Claims**

17          Brimer, acting on his own behalf and in the public interest, releases Hangzhou and its  
18 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,  
19 and attorneys (“Releasees”) and each entity to whom they directly or indirectly distribute or sell the  
20 Products including, but not limited to, their downstream distributors, wholesalers, customers,  
21 retailers, franchisers, cooperative members, licensors and licensees, including without limitation  
22 Lowe’s Companies, Inc., LG Sourcing, Inc., Lowe’s Home Centers, LLC and their respective  
23 parents, subsidiaries, affiliates, employees, agents, and assigns (collectively “Downstream  
24 Releasees”) for any violations arising under Proposition 65 for unwarned exposures to DEHP from  
25 Products manufactured, imported, distributed or sold by Hangzhou or Downstream Releasees prior  
26 to the Effective Date, as set forth in the Notices. For purposes of this Consent Judgment,  
27 Downstream Releasees is specifically limited to Lowe’s Companies, Inc., LG Sourcing, Inc.,  
28 Lowe’s Home Centers, LLC and their respective parents, subsidiaries, affiliates, employees, agents,

1 and assigns and those entities in Hangzhou's chain of distribution directly resulting in sales of the  
2 Product in California by Downstream Releasees. This release is limited to those claims arising  
3 under Proposition 65 with respect to DEHP in Products manufactured, sold or distributed for sale  
4 by Hangzhou prior to April 1, 2017 and subsequently sold or distributed for sale in California by  
5 Downstream Releasees, as alleged in the Notices. Compliance with the terms of this Consent  
6 Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from  
7 Products sold or distributed for sale by Hangzhou or Downstream Releasees, after April 1, 2017.

### 8 **5.2 Brimer's Individual Release of Claims**

9 Brimer, in his individual capacity only and *not* in his representative capacity, also provides a  
10 release to Hangzhou, Releasees, and Downstream Releasees which shall be effective as a full and  
11 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
12 attorneys' fees, damages, losses, claims, liabilities and demands of Brimer of any nature, character  
13 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual  
14 exposures to DEHP in Products manufactured by Hangzhou before April 1, 2017 and subsequently  
15 sold by Lowe's.

### 16 **5.3 Hangzhou's Release of Brimer**

17 Hangzhou, on its own behalf and on behalf of its past and current agents, representatives,  
18 attorneys, successors and/or assignees, hereby waives any and all claims against Brimer and his  
19 attorneys and other representatives, for any and all actions taken or statements made by Brimer and  
20 his attorneys and other representatives in the course of investigating claims, seeking to enforce  
21 Proposition 65 against it in this matter, or with respect to the Products.

## 22 **6. ENFORCEMENT; ARBITRATION**

23 Either Party may, by motion or application for an order to show cause before this Court or  
24 by any other procedure available, enforce the terms and conditions contained in this Consent  
25 Judgment. In addition, any dispute, controversy or claim arising out of or relating to this Consent  
26 Judgment, including the formation, interpretation, breach or termination thereof, may, at the  
27 election of the Party seeking to enforce the terms contained herein, be referred to and finally  
28 determined by arbitration in accordance with the JAMS International Arbitration Rules. In such a

1 case, the tribunal will consist of a sole arbitrator. The place of arbitration will be in either San  
2 Francisco, California or Hong Kong, China, at the discretion of the Party alleging a breach or  
3 otherwise seeking to enforce the agreement. The language to be used in the arbitral proceedings  
4 will be English. Judgment upon the award rendered by the arbitrator may be entered by any court  
5 having jurisdiction thereof, including those in Hong Kong, China or the United States. Any award  
6 rendered may be executed by attachment to Hangzhou assets located in Hong Kong, China or  
7 elsewhere, as Hangzhou has represented it has such assets, totaling more than \$10 million, as of  
8 February 18, 2016, specifically in Hong Kong. If Brimer successfully enforces any provision of  
9 this Consent Judgment against Hangzhou, Brimer shall be entitled to the reimbursement of his  
10 reasonable attorneys' fees and costs incurred in obtaining such relief, pursuant to Code of Civil  
11 Procedure § 1021.5.

12 **7. COURT APPROVAL AND POST EXECUTION ACTIVITIES**

13 This Consent Judgment is not effective until it is approved and entered by the Court and  
14 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
15 after it has been fully executed by the Parties. Brimer and Hangzhou agree to support the entry of  
16 this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely  
17 manner. The Parties acknowledge that, pursuant to California Health and Safety Code §25249.7(f),  
18 a noticed motion is required for judicial approval of this Consent Judgment, which motion Brimer  
19 shall draft and file and Hangzhou shall support, including by appearing at the hearing if so  
20 requested. If any third-party objection to the motion is filed, Brimer and Hangzhou agree to work  
21 together to file a reply and appear at any hearing. This provision is a material component of the  
22 Consent Judgment and shall be treated as such in the event of a breach.

23 Brimer and his counsel agree to comply with the reporting form requirements referenced in  
24 California Health and Safety Code §25249.7(f).

25 **8. SEVERABILITY**

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



1 **9. NOTICE**

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

6 To Brimer:

7 Attn: Proposition 65 Coordinator  
8 The Chanler Group  
9 2560 Ninth Street  
10 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

To Hangzhou:

ZhuWei  
Hangzhou GreatStar Tools Co. Ltd  
No. 35 Jiuhan Road  
Jiubao Town, Hangzhou  
China 310019

11 With courtesy copies to:

12 Stuart Block, Esq.  
13 Stice Block, LLP  
14 2335 Broadway, Suite 201  
Oakland, CA 94612

With a copy to:

Robert D. Infelise, Esq.  
Cox, Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, California 94111

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16  
17  
18 Any Party may, from time to time, specify in writing to the other Party a change of address to  
19 which all notices and other communications shall be sent.

20 **10. DISMISSAL OF CO-DEFENDANTS LOWE’S COMPANIES, INC. AND LG**  
21 **SOURCING, INC.**

22 Brimer agrees that within fifteen (15) days after the Effective Date, Brimer shall file a  
23 request for dismissal without prejudice as to Lowe’s Companies, Inc. and LG Sourcing, Inc.

24 **11. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

1 **12. MODIFICATION**

2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
3 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of  
4 any party and the entry of a modified Consent Judgment by the Court thereon.

5 **13. OTHER TERMS**

6 **13.1** The terms of this Consent Judgment shall be governed by the laws of the State of  
7 California and apply within the State of California. In the event that Proposition 65 is repealed,  
8 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Covered  
9 Products, then Hangzhou may provide written notice to Brimer of any asserted change in the law,  
10 and shall have no further injunctive obligations pursuant to this Consent Judgment with respect to,  
11 and to the extent that, the Products are so affected.

12 **13.2** This Consent Judgment contains the sole and entire agreement and understanding of  
13 the Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and  
14 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 Parties,  
16 except as expressly set forth in this Consent Judgment. No representations, oral or otherwise,  
17 express or implied, other than those specifically referred to in this Consent Judgment have been  
18 made by any Party. No other agreements not specifically contained or referenced in this Consent  
19 Judgment, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

20 **13.3** Nothing in this Consent Judgment shall release or in any way affect any rights that  
21 Hangzhou might have against any other party.

22 **13.4** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
23 by the Party he or she represents to agree to the terms and conditions of this Consent Judgment, and  
24 to enter into and execute the Consent Judgment on behalf of the Party represented and to legally  
25 bind that Party.

26 **13.5** The Parties, including their counsel, have participated in the preparation of this  
27 Consent Judgment, and this Consent Judgment is the result of the joint efforts of the Parties. This  
28 Consent Judgment was subject to revision and modification by the Parties and has been accepted

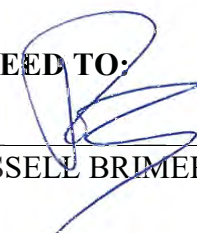
1 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
2 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of  
3 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
4 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
5 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this  
6 regard, the Parties hereby waive California Civil Code § 1654.

7 **13.6** Nothing in this Consent Judgment is intended to, or shall be construed to, infringe  
8 upon or preclude the right of any public enforcer, including the Office of the Attorney General of  
9 the State of California, to bring a public enforcement action under Proposition 65.

10 **13.7** Except as otherwise provided in this Consent Judgment, including a successful  
11 enforcement of this Consent Judgment under Section 6, which may entitle Brimer to attorneys' fees  
12 under Code of Civil Procedure § 1021.5, or any other applicable law, each Party shall bear her/its  
13 own attorneys' fees and costs.

14 **14. AUTHORIZATION**

15 The undersigned are authorized to execute this Consent Judgment on behalf of their  
16 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
17 Consent Judgment.

18  
19 **AGREED TO:**  
20   
21 \_\_\_\_\_  
22 RUSSELL BRIMER  
23  
24 Dated: 10/18/2016

**AGREED TO:**  
\_\_\_\_\_  
HANGZHOU GREAT STAR TOOLS CO.,  
LTD.  
By: \_\_\_\_\_  
(Print Name)  
Its: \_\_\_\_\_  
(Title)  
Dated: \_\_\_\_\_

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2 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of  
3 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
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11 enforcement of this Consent Judgment under Section 6, which may entitle Brimer to attorneys' fees  
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16 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
17 Consent Judgment.

19 **AGREED TO:**

20 \_\_\_\_\_  
21 RUSSELL BRIMER

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

**AGREED TO:**

20 \_\_\_\_\_  
21 HANGZHOU GREAT STAR TOOLS CO.,  
LTD.

22 By: *Liyang*  
(Print Name)

23 Its: Vice president  
(Title)

24 Dated: 2016 Nov. 30

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