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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION

11 DR. WHITNEY R. LEEMAN; and ANTHONY
12 E. HELD, PH.D., P.E.,

Case No. RG14727199

13 Plaintiffs,

[PROPOSED] CONSENT JUDGMENT

14 v.

15 SNAP-ON INCORPORATED; and DOES 1-
16 150, inclusive,

17 Defendants.

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Dr. Whitney R. Leeman
4 (“Leeman”), Anthony E. Held, Ph.D., P.E. (“Held”) (with Leeman and Held collectively referred
5 to as the “Plaintiffs”) and defendant Snap-on Incorporated (“Snap-on” or “Defendant”), with
6 Plaintiffs and Defendant collectively referred to as the “Parties.”

7 **1.2 Plaintiffs**

8 Plaintiffs are individuals residing in California who seek to promote awareness of
9 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
10 substances in consumer products.

11 **1.3 Defendant**

12 Snap-on employs ten or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
14 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Plaintiffs allege that Snap-on manufactured, imported, distributed, sold and/or offered for
17 sale hand tools with vinyl/PVC grips containing lead and vinyl/PVC pouches containing the
18 phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”) in the State of California without the
19 health hazard warnings required by Proposition 65. Lead and DEHP are listed pursuant to
20 Proposition 65 as known to the State of California to cause birth defects and other reproductive
21 harm.

22 **1.5 Product Description**

23 The products that are covered by this Consent Judgment are the following: (1) hand tools
24 with vinyl/PVC grips containing lead specifically limited to the *Bahco Grass Shears, GS-76-E*
25 *#6 22422 26031 4; #7 311518 274979* (hereinafter referred to as the “Lead Products”); and (2)
26 vinyl/PVC pouches containing DEHP specifically limited to the *Williams Vinyl Pouches, SKU#s:*
27 *50001; 50003; 50005; 50007; 097411; and 099965* (hereinafter referred to as the “DEHP
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1 Products”), which Snap-on imported, distributed, sold and/or offered for sale in the State of
2 California. The Lead Products and the DEHP Products are referred to collectively as the
3 “Products.”

4 **1.6 Notices of Violation**

5 On May 1, 2013, Leeman served Snap-on and various public enforcement agencies with a
6 document entitled “60-Day Notice of Violation” (“Lead Notice”) that provided the recipients
7 with notice of alleged violations of Proposition 65 for failing to warn consumers that the Lead
8 Products exposed users in California to lead. On October 18, 2013, Held served Snap-on and
9 various public enforcement agencies with a document entitled “60-Day Notice of Violation”
10 (“DEHP Notice”) that provided the recipients with notice of alleged violations of Proposition 65
11 for failing to warn consumers that the DEHP Products exposed users in California to DEHP.
12 The Lead Notice and the DEHP Notice are hereinafter referred to collectively as the “Notices.”
13 To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently
14 prosecuting the allegations set forth in the Notices.

15 **1.7 Complaint**

16 On or about May 29, 2014, the Plaintiffs, who were and are acting in the interest of the
17 general public in California, filed a complaint (“Complaint” or “Action”) in the Superior Court in
18 and for the County of Alameda against Snap-on and Does 1 through 150, alleging, *inter alia*,
19 violations of Proposition 65 based on the alleged exposures to lead contained in the Lead
20 Products and DEHP in the DEHP Products sold by Snap-on in the State of California.

21 **1.8 No Admission**

22 Snap-on denies the material, factual and legal allegations contained in the Notices and the
23 Complaint and maintains that all Products sold and distributed in California have been and are in
24 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission
25 by Snap-on of any fact, finding, issue of law, or violation of law; nor shall compliance with this
26 Consent Judgment constitute or be construed as an admission by Snap-on of any fact, finding,
27 conclusion, issue of law, or violation of law, such being specifically denied by Snap-on.

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1 However, this section shall not diminish or otherwise affect Snap-on's obligations,
2 responsibilities, and duties under this Consent Judgment.

3 **1.9 Consent to Jurisdiction**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
5 jurisdiction over Snap-on as to the allegations contained in the Complaint, that venue is proper in
6 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of
7 this Consent Judgment.

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date
10 this Consent Judgment is approved by the Court.

11 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

12 **2.1 Reformulation Standards**

13 As of the Effective Date, Snap-on shall only manufacture, import, distribute, sell and/or
14 offer for sale in California Products that are "Reformulated Products" or Products that comply
15 with the warning requirements found in Section 2.2 below. For purposes of this Settlement
16 Agreement, "Reformulated Products" shall mean: (1) Lead Products containing Accessible
17 Components which yield less than 1.0 microgram of lead when using a wipe test pursuant to
18 NIOSH Test Method 9100 and less than 100 parts per million lead when analyzed pursuant to
19 EPA testing methodologies 3050B and 6010B or any other equivalent extraction/testing
20 methodologies; and (2) DEHP Products that contain no more than 1,000 parts per million DEHP
21 in each Accessible Component when analyzed pursuant to EPA testing methodologies 3580A and
22 8270C or any other equivalent extraction/testing methodologies. For purposes of this Settlement
23 Agreement, "Accessible Components" shall mean components of a Product that can be touched
24 by a person during normal, intended and foreseeable use of the Product.

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1 **2.2 Product Warnings**

2 The Parties acknowledge and agree that Snap-on has already implemented a warning
3 program for all non-Reformulated Products manufactured, imported, distributed, sold, and/or
4 offered for sale by Snap-on in California, which provides as follows:

5 **WARNING:** This product contains a chemical known to the
6 State of California to cause cancer, or birth defects or other
7 reproductive harm.

8 Snap-on shall continue to use said warning on all non-Reformulated Products with a
9 manufactured date of May 1, 2014 or earlier. However, for any non-Reformulated Products with
10 a manufacture date of May 1, 2014 or later that are distributed, sold and/or offered for sale by
11 Snap-on in California, Snap-on shall provide the clear and reasonable warnings set forth in
12 subsections 2.2(a) and (b), as applicable. Each warning shall be prominently placed with such
13 conspicuousness as compared with other words, statements, designs, or devices as to render it
14 likely to be read and understood by an ordinary individual under customary conditions before
15 purchase or use. Each warning shall be provided in a manner such that the consumer or user
16 understands to which *specific* Product the warning applies, so as to minimize the risk of
17 consumer confusion. Each warning for Lead Products shall specify that the product contains
18 lead, whereas each warning for DEHP Products shall specify that the product contains DEHP by
19 including the specific chemical that applies from each bracketed term in sections 2.2(a) and (b)
20 below.

21 **(a) Retail Store Sales.**

22 **(i) Product Labeling.** Snap-on shall affix a warning to the packaging,
23 labeling, or directly on each Product sold in retail outlets in California by Snap-on or any person
24 selling the Products, that states:

25 **WARNING:** This product contains chemicals, including
26 [DEHP or Lead], known to the State of
27 California to cause birth defects and other
28 reproductive harm.

(ii) Point-of-Sale Warnings. Alternatively, Snap-on may provide
warning signs in the form below to its customers in California with instructions to post the

1 warnings in close proximity to the point of display of the Products. Such instruction sent to
2 Snap-on's customers shall be sent by certified mail, return receipt requested.

3 **WARNING:** This product contains chemicals, including
4 [DEHP or Lead], known to the State of
5 California to cause birth defects and other
6 reproductive harm.

7 Where more than one Product is sold in proximity to other like items or to those that do
8 not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following
9 statement shall be used:¹

10 **WARNING:** The following products contains chemicals,
11 including [DEHP or Lead], known to the State of
12 California to cause birth defects and other
13 reproductive harm.

14 [*list products for which warning is required*]

15 **(b) Mail Order Catalog and Internet Sales.**

16 In the event that Snap-on sells Products via mail order catalog and/or the internet, to
17 customers located in California, after the Effective Date, that are not Reformulated Products,
18 Snap-on shall provide warnings for such Products. Warnings given in the mail order catalog or
19 on the internet shall identify the *specific* Product to which the warning applies as further specified
20 in Sections 2.2(b)(i) and (ii). The warning requirements found below shall only apply for newly
21 designed mail order catalogs and for newly designed online catalogs. Products, that are not
22 Reformulated Products, sold after the Effective Date via old versions of the mail order catalog or
23 the online catalog, that do not contain the proper warnings pursuant to this section, shall be
24 shipped with a warning included with the Product that includes language informing the purchaser
25 that he or she may return the Product for a full refund (including shipping costs for both the
26 receipt and return of the Product), within 30 days of purchase.

27 **(i) Mail Order Catalog Warning.** Any warning provided in a mail
28 order catalog shall be in the same type size or larger than the Product description text within the

¹ For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 catalog. The following warning shall be provided on the same page and in the same location as
2 the display and/or description of the Product:

3 **WARNING:** This product contains chemicals, including
4 [DEHP or Lead], known to the State of
5 California to cause birth defects and other
6 reproductive harm.

7 Where it is impracticable to provide the warning on the same page and in the same
8 location as the display and/or description of the Product, Snap-on may utilize a designated symbol
9 to cross reference the applicable warning and shall define the term “designated symbol” with the
10 following language on the inside of the front cover of the catalog or on the same page as any
11 order form for the Product(s):

12 **WARNING:** Certain products identified with this symbol ▼
13 and offered for sale in this catalog contain
14 chemicals, including [DEHP or Lead], known to
15 the State of California to cause birth defects and
16 other reproductive harm.

17 The designated symbol must appear on the same page and in close proximity to the
18 display and/or description of the Product. On each page where the designated symbol appears,
19 Snap-on must provide a header or footer directing the consumer to the warning language and
20 definition of the designated symbol.

21 (ii) **Internet Website Warning.** A warning shall be given in
22 conjunction with the sale of the Products via the internet, which warning shall appear either: (a)
23 on the same web page on which a Product is displayed; (b) on the same web page as the order
24 form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web
25 pages displayed to a purchaser during the checkout process. The following warning statement
26 shall be used and shall appear in any of the above instances adjacent to or immediately following
27 the display, description, or price of the Product for which it is given in the same type size or larger
28 than the Product description text:

WARNING: This product contains chemicals, including
 [DEHP or Lead], known to the State of
 California to cause birth defects and other
 reproductive harm.

1 Alternatively, the designated symbol may appear adjacent to or immediately following the
2 display, description, or price of the Product for which a warning is being given, provided that the
3 following warning statement also appears elsewhere on the same web page, as follows:

4 **WARNING:** Products identified on this page with the
5 following symbol ▼ contain chemicals,
6 including [DEHP or Lead], known to the State of
 California to cause birth defects and other
 reproductive harm.

7 **3. MONETARY PAYMENTS**

8 In settlement of all claims referred to in this Consent Judgment, Snap-on shall pay a total
9 of \$30,000 in civil penalties in accordance with this Section. Each penalty payment will be
10 allocated in accordance with California Health & Safety Code §§ 25249.12(c) & (d), with 75% of
11 the funds remitted to the California Office of Environmental Health Hazard Assessment
12 (“OEHHA”) and the remaining 25% of the penalty split between the Plaintiffs, as follows:

13 **3.1 Initial Civil Penalties**

14 Snap-on shall pay an initial civil penalty of \$2,000, on or before the Effective Date for
15 violations of Proposition 65 stemming from the Lead Products. Snap-on shall issue separate
16 checks to: (a) “OEHHA” in the amount of \$1,500; and (b) “Dr. Whitney R. Leeman, Client Trust
17 Account” in the amount of \$500. Likewise, Snap-on shall pay an initial civil penalty of \$4,000
18 on or before the Effective Date for violations of Proposition 65 stemming from the DEHP
19 Products. Snap-on shall issue separate checks to: (a) “OEHHA” in the amount of \$3,000; and (b)
20 “Anthony E. Held, Client Trust Account” in the amount of \$1,000. All penalty payments shall
21 be delivered to the addresses listed in Section 3.4 below.

22 **3.2 Second Civil Penalty**

23 Snap-on shall pay a second civil penalty of \$12,000 on or before August 15, 2014. The
24 second civil penalty shall be waived in its entirety, however, if, no later than August 1, 2014, an
25 officer of Snap-on provides Leeman with written certification that, as of the date of such
26 certification and continuing into the future, Snap-on has met the reformulation standard specified
27 in Section 2.1 above, such that all Lead Products manufactured, imported, distributed, sold and/or
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1 offered for sale in California by Snap-on are Reformulated Products. The certification in lieu of a
2 second civil penalty payment provided by this Section is a material term, and time is of the
3 essence. In the event the second civil penalty is not waived, Snap-on shall issue two separate
4 checks for its second civil penalty payments to: (a) "OEHHA" in the amount of \$9,000; and (b)
5 "Dr. Whitney R. Leeman, Client Trust Account" in the amount of \$3,000.

6 **3.3 Final Civil Penalty**

7 Snap-on shall pay a final civil penalty of \$12,000 on or before September 15, 2014. The
8 final civil penalty shall be waived in its entirety, however, if, no later than September 1, 2014, an
9 officer of Snap-on provides Held with written certification that, as of the date of such certification
10 and continuing into the future, Snap-on has met the reformulation standard specified in Section
11 2.1 above, such that all DEHP Products manufactured, imported, distributed, sold and/or offered
12 for sale in California by Snap-on are Reformulated Products. The certification in lieu of a final
13 civil penalty payment provided by this Section is a material terms, and time is of the essence. In
14 the event the final civil penalty is not waived, Snap-on shall issue two separate checks for its final
15 civil penalty payment to: (a) "OEHHA" in the amount of \$9,000; and (b) "Anthony E. Held,
16 Client Trust Account" in the amount of \$3,000.

17 **3.4 Payment Procedures**

18 **3.4.1 Issuance of Payments.** Payments shall be delivered as follows:

19 (a) All payments owed to the Plaintiffs, pursuant to Sections 3.1, 3.2 and
20 3.3, shall be delivered to the following payment address:

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

26 (b) All payments owed to OEHHA, pursuant to Sections 3.1, 3.2 and 3.3,
27 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following
28 addresses:

1 For United States Postal Service Delivery:

2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 P.O. Box 4010
6 Sacramento, CA 95812-4010

7 For Non-United States Postal Service Delivery:

8 Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 1001 I Street
12 Sacramento, CA 95814

13 With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address
14 set forth above in 3.4.1(a), as proof of payment to OEHHA.

15 **4. REIMBURSEMENT OF FEES AND COSTS**

16 The Parties attempted to (and did) reach an accord on the compensation due to the
17 Plaintiffs and their counsel under general contract principles and the private attorney general
18 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through
19 the mutual execution of this agreement. Snap-on shall pay \$35,500 for fees and costs incurred as
20 a result of investigating, bringing this matter to Snap-on's attention, and negotiating a settlement
21 in the public interest. Snap-on shall issue a check payable to "The Chanler Group" and shall
22 deliver payment on or before the Effective Date, to the address listed in Section 3.4.1(a) above.

23 **5. CLAIMS COVERED AND RELEASED**

24 **5.1 Leeman's Public Release of Proposition 65 Claims**

25 Leeman, acting on her own behalf and in the public interest, releases Snap-on, its parents,
26 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
27 attorneys, and each entity to whom Snap-on directly or indirectly distributes or sells Products,
28 including but not limited to downstream distributors, wholesalers, customers, retailers,
franchisees, cooperative members, licensors, and licensees ("Releasees") from all claims for
violations of Proposition 65 up through the Effective Date based on exposure to lead from the

1 Lead Products. Compliance with the terms of this Consent Judgment constitutes compliance with
2 Proposition 65 with respect to exposures to lead from the Lead Products.

3 **5.2 Held's Public Release of Proposition 65 Claims**

4 Held, acting on his own behalf and in the public interest, releases Snap-on and the
5 Releasees from all claims for violations of Proposition 65 up through the Effective Date based on
6 exposure to DEHP from the DEHP Products. Compliance with the terms of this Consent
7 Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from the
8 DEHP Products.

9 **5.3 Plaintiffs' Individual Releases of Claims**

10 Plaintiffs also, in their individual capacities only and *not* in their representative capacities,
11 provide a release herein which shall be effective as a full and final accord and satisfaction, as a
12 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
13 claims, liabilities and demands of Plaintiffs of any nature, character or kind, whether known or
14 unknown, suspected or unsuspected, limited to and arising out of any violation of Proposition 65
15 regarding the failure to warn about exposure to DEHP in the DEHP Products and lead in the Lead
16 Products manufactured, imported, distributed, sold and/or offered for sale by Releasees.

17 **5.4 Snap-on's Release of the Plaintiffs**

18 Snap-on, on behalf of itself, its past and current agents, representatives, attorneys,
19 successors, and/or assignees, hereby waives any and all claims against Plaintiffs, their attorneys
20 and other representatives, for any and all actions taken or statements made (or those that could
21 have been taken or made) by Plaintiffs and their attorneys and other representatives, whether in
22 the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
23 matter with respect to the Products.

24 **6. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the court and
26 shall be null and void if, for any reason, it is not approved and entered by the court within one
27 year after it has been fully executed by all Parties, in which event any monies that have been
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1 provided to the Plaintiffs or their counsel pursuant to Section 3 and 4 above, shall be refunded
2 within fifteen (15) days after receiving written notice from Snap-on that the one-year period has
3 expired.

4 **7. SEVERABILITY**

5 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
6 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
7 provisions remaining shall not be adversely affected.

8 **8. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California and apply within the State of California. In the event that Proposition 65 is repealed
11 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then
12 Snap-on shall provide written notice to the Plaintiffs of any asserted change in the law, and shall
13 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
14 that, the Products are so affected.

15 **9. NOTICES**

16 Unless specified herein, all correspondence and notices required to be provided pursuant
17 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
18 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
19 other party at the following addresses:

20 To Snap-on:

21 Irwin M. Shur
22 General Counsel
23 Snap-on Incorporated
2801 80th Street
Kenosha, WI 53143

To Plaintiffs:

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

24 Any party, from time to time, may specify in writing to the other party a change of
25 address to which all notices and other communications shall be sent.
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1 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

6 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

7 The Plaintiffs agree to comply with the reporting form requirements referenced in
8 California Health & Safety Code § 25249.7(f).

9 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

10 The Parties agree to mutually employ their, and their counsel’s, commercially reasonable
11 efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the
12 Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to
13 California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial
14 approval of this Consent Judgment, which the Plaintiffs shall jointly file, and which Snap-on
15 shall not oppose. If any third party objection to the noticed motion is filed, the Plaintiffs and
16 Snap-on shall work together to file a joint reply and appear at any hearing before the Court. If
17 the Court does not approve the motion to approve this Consent Judgment, and the Parties choose
18 not to pursue a modified Consent Judgment within 30 days of said denial, or in the event that the
19 Court approves this Consent Judgment and any person successfully appeals that approval, all
20 payments made pursuant to this Consent Judgment will be returned to Snap-on within fifteen
21 (15) days of an order reversing or vacating the approval.

22 **13. MODIFICATION**

23 This Consent Judgment may be modified only: (1) by written agreement of the Parties
24 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
25 motion of any party and entry of a modified Consent Judgment by the court.
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1 **14. ENTIRE AGREEMENT**

2 This Consent Judgment contains the sole and entire agreement and understanding of the
3 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, and understandings related hereto. No representations, oral or
5 otherwise, express or implied, other than those contained herein have been made by any party
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
7 deemed to exist or to bind any of the Parties.

8 **15. AUTHORIZATION**

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

12 **AGREED TO:**

AGREED TO:

13 Date: 6/6/14

Date: _____

14 By: Whitney Leeman
15 Dr. Whitney R. Leeman

16 By: _____
Snap-on Incorporated

17 **AGREED TO:**

18 Date: June 6, 2014

19 By: Anthony E. Held
20 Anthony E. Held, P.h.D., P.E.

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1 **14. ENTIRE AGREEMENT**

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3 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, and understandings related hereto. No representations, oral or
5 otherwise, express or implied, other than those contained herein have been made by any party
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
7 deemed to exist or to bind any of the Parties.

8 **15. AUTHORIZATION**

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

12 AGREED TO:

AGREED TO:

13
14 **Snap-on Incorporated**

15 Date: _____

Date: 06/18/2014

16 By: _____
17 Dr. Whitney R. Leeman

16 By:  _____
17 Irwin M. Shur
18 Vice President, General Counsel & Secretary

18 AGREED TO:

19 Date: _____
20

21 By: _____
22 Anthony E. Held, P.h.D., P.E.