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Josh Voorhees, State Bar No. 241436  
Harris A. Weinstein, State Bar No. 282166  
THE CHANLER GROUP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710  
Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

Attorneys for Plaintiff  
PETER ENGLANDER

**FILED**

JUL 26 2013

David H. Yarmasinski, Clerk of the Superior Court  
County of Santa Clara, California

By:

Deputy Clerk

**L. QUACH-MARCELLANO**

UCS

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

PETER ENGLANDER,  
Plaintiff,  
v.  
BIG ROC TOOLS, INC.; *et al.*,  
Defendants.

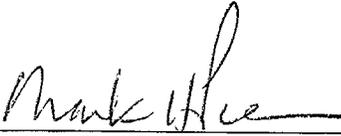
) Case No.: 1-12-CV-238157  
)  
) **[PROPOSED] JUDGMENT**  
) **PURSUANT TO TERMS OF**  
) **PROPOSITION 65 SETTLEMENT**  
) **AND CONSENT JUDGMENT**  
)  
) Date: July 23, 2013  
) Time: 9:00 a.m.  
) Dept.: 9  
) Judge: Hon. Mark Pierce

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3 In the above-entitled action, plaintiff Peter Englander and defendant Big Roc Tools,  
4 inc. having agreed through their respective counsel that Judgment be entered pursuant to  
5 the terms of their settlement agreement in the form of a Consent Judgment, and following  
6 this Court's issuance of an Order approving this Proposition 65 settlement and Consent  
7 Judgment on July 23, 2013:

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to  
9 California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure  
10 § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment  
11 attached hereto as **Exhibit A**. By stipulation of the parties, the Court will retain  
12 jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

13 **IT IS SO ORDERED.**

14 Dated: JUL 23 2013

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16 \_\_\_\_\_  
17 JUDGE OF THE SUPERIOR COURT

18 Mark H. Pierce  
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# **EXHIBIT A**

1 Josh Voorhees, State Bar No. 241436  
2 Harris A. Weinstein, State Bar No. 282166  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff  
10 PETER ENGLANDER

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF SANTA CLARA  
13 UNLIMITED CIVIL JURISDICTION

14 PETER ENGLANDER,  
15 Plaintiff,

16 v.

17 BIG ROC TOOLS, INC.; and DOES 1-150,  
18 inclusive,  
19 Defendants.

) Case No. 112CV238157

) **[PROPOSED] CONSENT JUDGMENT AS**  
) **TO DEFENDANT BIG ROC TOOLS, INC.**

) Dept: 9  
) Judge: Hon. Mark H. Pierce  
) Date: None set

) Action Filed: December 19, 2012

1           **1. INTRODUCTION**

2           **1.1 Peter Englander and Big Roc Tools, Inc.**

3           This Consent Judgment is entered into by and between plaintiff Peter Englander  
4           (“Englander” or “Plaintiff”) and defendant Big Roc Tools, Inc. (“Big Roc” or “Defendant”),  
5           with Plaintiff and Defendant collectively referred to as the “Parties.”

6           **1.2 Peter Englander**

7           Englander is an individual residing in the State of California who seeks to promote  
8           awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating  
9           hazardous substances contained in consumer and commercial products.

10          **1.3 Big Roc Tools, Inc.**

11          Englander alleges that Big Roc employs ten or more persons 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 & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14          **1.4 General Allegations**

15          Englander alleges that Big Roc has manufactured, imported, distributed and/or sold ratchet  
16          tie-down hand grips containing lead without the requisite Proposition 65 warnings. Lead is on the  
17          Proposition 65 list as known to cause birth defects and other reproductive harm.

18          **1.5 Product Description**

19          The following products are covered by this Consent Judgment: (1) *BR Tools 2 pc. Ratchet*  
20          *Tie Down Set, RTD11415 (#7 29183 16107 9)*; (2) *BR Tools 4 pc. Ratchet Tie Down Set, RTD04*;  
21          (3) *RTD115-C*; and (4) *RTD2271-C* manufactured, imported, distributed and/or sold by Big Roc in  
22          the State of California, referred to hereinafter as the “Covered Products.”

23          **1.6 Notice of Violation**

24          On July 11, 2012, Englander served Big Roc and various public enforcement agencies with  
25          a document entitled “60-Day Notice of Violation” (the “Notice”) that provided the recipients with  
26          notice of alleged violations of California Health & Safety Code § 25249.6 based on Big Roc’s  
27          alleged failure to warn consumers that the Covered Products exposed users in California to lead. To  
28

1 the best of the Parties' knowledge, no public enforcer has prosecuted the allegations set forth in the  
2 Notice.

3 **1.7 Complaint**

4 On December 19, 2012 Englander filed a complaint in the Superior Court in and for the  
5 County of Santa Clara against Big Roc Tools, Inc. and Does 1 through 150, *Englander v. Big Roc*  
6 *Tools, Inc., et al.*, Case No. 112CV238157 (the "Action"), alleging violations of California  
7 Health & Safety Code § 25249.6, based on the alleged exposures to lead contained in certain ratchet  
8 tie-down hand grips sold by Big Roc.

9 **1.8 No Admission**

10 The Parties enter into this Consent Judgment as a full and final settlement of all claims that  
11 were raised in the Notice and Complaint or that could have been raised in the Notice and/or  
12 Complaint, with respect to the Covered Products. By execution of this Consent Judgment and  
13 agreeing to comply with its terms, Big Roc does not admit any facts or conclusions of law, and  
14 specifically denies the material, factual and legal allegations contained in Englander's Notice and  
15 Complaint and maintains that all products that it has sold, manufactured, imported and/or  
16 distributed in California, including the Covered Products, have been and are in compliance with all  
17 laws. Nothing in this Consent Judgment shall be construed as an admission by Big Roc of any fact,  
18 finding, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute  
19 or be construed as an admission by Big Roc of any fact, finding, conclusion, issue of law or  
20 violation of law. This Consent Judgment is the product of negotiation and compromise and is  
21 entered into by the Parties for purposes of settling, compromising, and resolving issues disputed in  
22 this action. However, this section shall not diminish or otherwise affect Big Roc's obligations,  
23 responsibilities and duties under this Consent Judgment.

24 **1.9 Consent to Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
26 jurisdiction over Big Roc as to the allegations contained in the Complaint, that venue is proper in  
27 the County of Santa Clara and that this Court has jurisdiction to enter and enforce the provisions of  
28 this Consent Judgment.

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**1.10 Effective Date**

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this Consent Judgment is approved by the Court.

**2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulation Standards**

“Reformulated Products” are defined as those Covered Products containing lead in concentrations less than 100 parts per million (“ppm”) when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance and which yield no more than 1.0 micrograms of lead when analyzed pursuant to NIOSH Test Method 9100 performed on any accessible component (i.e. any component part that may be handled, touched or mouthed during the reasonably foreseeable use or misuse by a consumer).

**2.2 Reformulation Commitment**

The Parties acknowledge and agree that Big Roc, as of the Effective Date, has already implemented a warning program for non-Reformulated Products manufactured, distributed and/or sold by Big Roc that are intended or otherwise known to be sold in California. Big Roc may continue to sell the Covered Products containing the warning label that are already in the stream of commerce. As of the Effective Date, Big Roc shall only manufacture, import, distribute or acquire for potential distribution to or sale in California Reformulated Products pursuant to Section 2.1 above.

**3. MONETARY PAYMENTS**

In settlement of all the claims referred to in this Consent Judgment, Big Roc shall pay a total of \$7,500 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Englander, as follows:

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**3.1 Initial Civil Penalty**

Big Roc shall pay an initial civil penalty in the amount of \$2,500 on or before June 30, 2013. Big Roc shall issue two separate checks to: (a) "OEHHA" in the amount of \$1,875; and (b) "The Chanler Group in Trust for Peter Englander" in the amount of \$625. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

**3.2 Final Civil Penalty**

Big Roc shall pay a final civil penalty of \$5,000 on or before December 30, 2013. The final civil penalty shall be waived in its entirety, however, if, no later than December 15, 2013, an officer of Big Roc provides Englander with written certification that, as of the date of such certification and continuing into the future, Big Roc has met the reformulation standard specified in Section 2 above, such that all Covered Products manufactured, imported, distributed, sold and offered for sale in California by Big Roc are Reformulated Products. Englander must receive any such certification on or before December 15, 2013. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Unless waived, Big Roc shall issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of \$3,750; and (b) "The Chanler Group in Trust for Peter Englander" in the amount of \$1,250.

**3.3 Payment Procedures**

**3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

(a) All payments owed to Englander, pursuant to Sections 3.1 through 3.2, shall be delivered to the following payment address:

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

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

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For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyrics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

**3.3.2 Issuance of 1099 Forms.** After each penalty payment, Big Roc shall issue separate 1099 forms for each payment to Englander, whose address and tax identification number shall be furnished upon request after this Consent Judgment has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that Englander and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Englander then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Englander and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Big Roc shall pay \$24,000 for fees and costs incurred as a result of investigating, bringing this matter to Big Roc’s attention, and negotiating a settlement in the public interest. Big Roc shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall

1 make the check payable to “The Chanler Group” and shall deliver payment to the address listed in  
2 Section 3.3.1(a) above.

3 **5. CLAIMS COVERED AND RELEASED**

4 **5.1 Englander’s Public Release of Proposition 65 Claims**

5 This Consent Judgment is a full, final and binding resolution between Englander and Big  
6 Roc and its parents, shareholders, divisions, subdivisions, subsidiaries, partners, officers, affiliates,  
7 and sister companies and their successors and assigns (“Defendant Releasees”), and their  
8 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,  
9 licensors, and licensees, and any other person or entity downstream to whom they directly or  
10 indirectly distribute or sell the Covered Products (“Downstream Defendant Releasees”), of any  
11 violation of Proposition 65 that has been asserted by Englander in the public interest, through a  
12 Proposition 65 60-Day Notice of Violation against Big Roc, Defendant Releasees, and Defendant  
13 Downstream Releasees regarding the failure to warn about exposure to lead in Covered Products.  
14 Defendant Releasees’ compliance with this Consent Judgment shall constitute compliance with  
15 Proposition 65 with respect to lead in Covered Products after the Effective Date.

16 **5.2 Englander’s Individual Release of Claims**

17 Englander, on behalf of himself, his past and current agents, representatives, attorneys,  
18 successors, and/or assignees hereby waives all rights to institute or participate in, directly or  
19 indirectly, any form of legal action and releases all claims, including, without limitation, all actions,  
20 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs,  
21 fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and  
22 attorneys’ fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
23 (collectively “Claims”), against Big Roc, Defendant Releasees, and Downstream Defendant  
24 Releasees arising from the allegations raised in the Notice and Complaint with respect to exposures  
25 to lead in the Covered Products.

26 Englander also, in his individual capacity only and *not* in his representative capacity,  
27 provides a general release herein which shall be effective as a full and final accord and satisfaction,  
28 as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages,

1 losses, claims, liabilities and demands of Englander of any nature, character or kind, whether known  
2 or unknown, suspect or unsuspected, limited to and arising out of alleged or actual exposures to lead  
3 in the Covered Products manufactured, distributed or sold by Big Roc. Englander further  
4 acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as  
5 follows:

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

10 Englander, in his individual capacity only and *not* in his representative capacity, expressly waives  
11 and relinquishes any and all rights and benefits which he may have under, or which may be  
12 conferred on him by the provisions of Section 1542 of the California Civil Code as well as under  
13 any other state or federal statute or common law principle of similar effect, to the fullest extent that  
14 he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of  
15 such intention, the release hereby given shall be and remain in effect as a full and complete release  
16 notwithstanding the discovery or existence of any such additional or different claims or facts arising  
17 out of the Notice and/or the alleged failure to warn about exposures to lead in the Covered Products.

18 This release is expressly limited to those claims that arise under Proposition 65, as such  
19 claims relate to Big Roc's alleged failure to warn about exposures to lead contained in the Covered  
20 Products, as such claims are identified in the Proposition 65 60-Day Notice to Big Roc.

### 21 **5.3 Big Roc's Release of Englander**

22 Big Roc on behalf of itself, its past and current agents, representatives, attorneys, successors  
23 and/or assignees, hereby waives any and all claims against Englander, his attorneys and other  
24 representatives, for any and all actions taken or statements made (or those that could have been  
25 taken or made) by Englander and his attorneys and other representatives, whether in the course of  
26 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with  
27 respect to the Covered Products.  
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1 Big Roc also provides a general release herein which shall be effective as a full and final  
2 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
3 attorneys' fees, damages, losses, claims, liabilities and demands of Big Roc of any nature, character  
4 or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the  
5 Action. Big Roc acknowledges that it is familiar with Section 1542 of the California Civil Code,  
6 which provides as follows:

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

11 Big Roc expressly waives and relinquishes any and all rights and benefits which it may have under,  
12 or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as  
13 well as under any other state or federal statute or common law principle of similar effect, to the  
14 fullest extent that it may lawfully waive such rights or benefits pertaining to the Notice and/or the  
15 alleged failure to warn about exposures to lead in the Covered Products. In furtherance of such  
16 intention, the release hereby given shall be and remain in effect as a full and complete release  
17 notwithstanding the discovery or existence of any such additional or different claims or facts arising  
18 out of the released matters.

18 **6. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and  
20 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
21 after it has been fully executed by all Parties. If this Consent Judgment is not approved by the  
22 Court, (a) this Consent Judgment and any and all prior agreements between the Parties merged  
23 herein shall terminate and become null and void, and the action shall revert to the status that existed  
24 prior to the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any  
25 draft thereof, or of the negotiation, or other part or aspect of the Parties' settlement discussions,  
26 shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this  
27 action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether  
28 to modify the terms of the Consent Judgment and to resubmit it for approval.

1       **7. SEVERABILITY**

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

5       **8. GOVERNING LAW**

6           The terms of this Consent Judgment shall be governed by the laws of the State of California  
7       and apply within the State of California. In the event that Proposition 65 is repealed, preempted or  
8       is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this  
9       Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or  
10      preemption or rendered inapplicable by reason of law generally as to the Covered Products, then  
11      Big Roc shall provide written notice to Englander of any asserted change in the law, and shall have  
12      no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
13      Covered Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve  
14      Big Roc from any obligation to comply with any pertinent state or federal toxics control law.

15      **9. NOTICES**

16           Unless specified herein, all correspondence and notices required to be provided pursuant to  
17      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 Big Roc:

21                   Elizabeth V. McNulty  
22                   Hewitt Wolensky, LLP  
23                   4041 MacArthur Blvd, Ste. 300  
24                   Costa Mesa, CA 92627

20                   To Peter Englander:

21                   Proposition 65 Coordinator  
22                   The Chanler Group  
23                   2560 Ninth Street  
24                   Parker Plaza, Suite 214  
25                   Berkeley, CA 94710-2565

26           Any Party, from time to time, may specify in writing to the other party a change of address  
27      to which all notices and other communications shall be sent.  
28

1       **10. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

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

6               Englander and his attorneys agree to comply with the reporting form requirements  
7 referenced in California Health & Safety Code § 25249.7(f).

8       **12. ADDITIONAL POST EXECUTION ACTIVITIES**

9               Englander and Big Roc agree to mutually employ their best efforts to support the entry of  
10 this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in  
11 a timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code §  
12 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which  
13 Englander shall draft and file, and Big Roc shall join. If any third party objection to the noticed  
14 motion is filed, Englander and Big Roc shall work together to file a joint reply and appear at any  
15 hearing before the Court. This provision is a material component of the Consent Judgment and  
16 shall be treated as such in the event of a breach.

17       **13. MODIFICATION**

18               This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
19 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
20 of any party and entry of a modified Consent Judgment by the Court.

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**14. AUTHORIZATION**

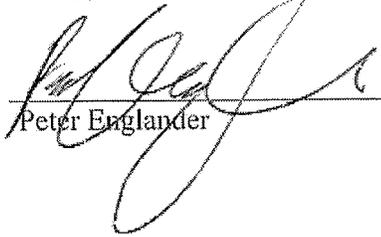
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

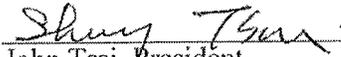
AGREED TO:

AGREED TO:

Date: May 29, 2013

Date: 5-23-2013

By:   
Peter Englander

By:   
John Tsai, President  
Shirley Tsai, Vice President  
Big Roc Tools, Inc.