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8 Attorneys for Plaintiff
9 PETER ENGLANDER

FILED

JUN 14 2013

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: R. Smith, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF MARIN
12 UNLIMITED CIVIL JURISDICTION

13 PETER ENGLANDER,

14 Plaintiff,

15 v.

16 FPC CORPORATION and DOES 1-150,

17 Defendants.

Case No. CIV 1300705

PMH
**[PROPOSED] JUDGMENT ON
PROPOSITION 65 SETTLEMENT**

Action Filed : February 15, 2013

1 In the above-entitled action, Plaintiff PETER ENGLANDER and Defendant FPC
2 CORPORATION, having agreed through their respective counsel that a judgment be entered
3 pursuant to the terms of the Consent To Judgment entered into by the parties in resolution of this
4 Proposition 65 action, and following the issuance of an order approving the Parties' Consent to
5 Judgment on this day, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to
6 Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered
7 in accordance with the terms of the Consent To Judgment attached hereto as Exhibit A. By stipulation
8 of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil
9 Procedure § 664.6.
10

11 **IT IS SO ORDERED.**

12
13 Dated: JUN 14 2013

PAUL M. HAAKENSON

Hon. Paul M. Haakenson
Judge Of The Superior Court

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
Gregory M. Sheffer, State Bar No. 173124
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
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5 Attorneys for Plaintiff
6 PETER ENGLANDER

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 IN AND FOR THE COUNTY OF MARIN

9 UNLIMITED CIVIL JURISDICTION

10
11 PETER ENGLANDER

12 Plaintiff,

13 v.

14 FPC CORPORATION and DOES 1-150,

15 Defendants.

Case No. CIV 1300705

**CONSENT TO JUDGMENT AS TO
DEFENDANT FPC CORPORATION**

Action Filed: February 15, 2013
Trial Date: Not Assigned

1 **1. INTRODUCTION**

2 1.1 **The Parties**

3 This Consent To Judgment is entered into by and between Plaintiff Peter Englander,
4 (“Englander” or “Plaintiff”) and Defendant FPC Corporation (“FPC”) with Englander and FPC
5 collectively referred to as the “Parties.”

6 1.2 **Plaintiff**

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

10 1.3 **Defendant**

11 FPC employs 10 or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

14 1.4 **General Allegations**

15 Englander alleges that FPC manufactured, distributed and/or sold, in the State of
16 California, certain types of hand tools with grips containing DEHP, including, but not limited to,
17 Craftsman Stapler/Nail Gun (#968517) that exposed users to DEHP, without first providing any
18 “clear and reasonable warning” under Proposition 65. DEHP is listed as a reproductive and
19 developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed
20 Chemical.”

21 1.5 **Notice of Violation**

22 On November 21, 2012, Englander served Defendant and various public enforcement
23 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided public
24 enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6
25 for failing to warn consumers of the presence of DEHP, a toxic chemical found in and on
26 Defendant’s hand tool products sold in California. To the best of the Parties’ knowledge, no
27 public enforcer has commenced and is diligently prosecuting the allegations set forth in the
28 Notice.

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1.6 Complaint

On February 15, 2013, Englander, acting, in the interest of the general public in California, filed a Complaint in the Superior Court of the State of California for the County of Marin, alleging violations by Defendant of Health & Safety Code § 25249.6 based, *inter alia*, on the alleged exposures to DEHP contained in the referenced hand tool products (the “Action”).

1.7 No Admission

This Consent To Judgment resolves claims that are denied and disputed by FPC. The Parties enter into this Consent To Judgment pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Defendant denies the material factual and legal allegations contained in the Notice and Action, maintains that it did not knowingly or intentionally expose California consumers to DEHP through the reasonably foreseeable use of the Covered Products and otherwise contends that all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Consent To Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent To Judgment constitute or be construed as an admission by the Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect FPC’s obligations, responsibilities, and duties under this Consent To Judgment.

1.8 Consent to Jurisdiction

For purposes of this Consent To Judgment only, the Parties stipulate that this Court has jurisdiction over FPC as to the allegations contained in the Complaint, that venue is proper in the County in which the Complaint is filed, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment. As an express part of this Agreement, pursuant to C.C.P. §664.6 the Court in which this action was filed shall retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

1
2 **2. DEFINITIONS**

3 2.1 The term "Complaint" shall mean the February 15, 2013, Complaint.

4 2.2 The term "Covered Products" means any hand tools with grips made with
5 materials containing DEHP that are manufactured, distributed, marketed or sold by FPC.

6 2.3 The term "Effective Date" shall mean March 1, 2013.

7 2.4 The term "DEHP Free" Covered Products shall mean Covered Products
8 containing materials or other components that may be handled, touched or mouthed by a
9 consumer, and which components contain less than or equal to 1,000 parts per million ("ppm")
10 of DEHP as determined by a minimum of duplicate quality controlled test results using
11 Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C.

12 **3. INJUNCTIVE RELIEF**

13 3.1 **Formulation Commitment**

14 No later than the February 15, 2013, Defendant shall provide the DEHP Free Standards,
15 to its then-current Vendors of Covered Products that will be sold or offered for sale to United
16 States consumers and shall instruct each Vendor to provide Covered Products that comply with
17 such DEHP Free Standards expeditiously. In addressing the obligation set forth in the preceding
18 sentence, Defendant shall not employ statements that will encourage a Vendor to delay
19 compliance with the DEHP Free Standard. Upon request, Defendant shall provide Plaintiff with
20 copies of such Vendor notification and Plaintiff shall regard such copies as confidential business
21 information.

22 As of the Effective Date, Defendant shall not order, cause to be ordered, manufacture or
23 cause to be manufactured any Covered Product for distribution to or sale in the United States
24 that the Vendor of the product has not certified is DEHP Free. For every Covered Product
25 ordered, caused to be ordered, manufactured or caused to be manufactured for distribution to or
26 sale in California after the Effective Date, Defendant shall maintain copies of any testing of such
27 products demonstrating compliance with this section.
28

1 **3.2 Previously Obtained Covered Products.**

2 **3.2.1 Product Warnings**

3 Commencing on the February 15, 2013, FPC shall not distribute or sell to any retailer any
4 CoveredProducts unless such Covered Products are DEHP Free under Section 2.4 or are
5 manufactured, distributed or shipped with one of the clear and reasonable warnings set forth
6 hereafter.

7 Each such warning shall be prominently placed with such conspicuousness as compared
8 with other words, statements, designs, or devices as to render it likely to be read and understood
9 by an ordinary individual under customary conditions of purchase or use. Each warning shall
10 be affixed to or printed on the Covered Product itself.

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

12 For distribution of Covered Products obtained by FPC prior to February 1, 2013,
13 that are not certified to be DEHP Free, FPC shall affix a warning to the packaging, labeling, or
14 directly on any Covered Products that states:

15 **WARNING:** This product contains a chemical known to
16 the State of California to cause cancer, birth
 defects and other reproductive harm.

17 (b) **Mail Order Catalog and Internet Sales.** FPC may satisfy its Proposition
18 65 warning obligations for Covered Product obtained by FPC prior to February 1, 2013, that are
19 not certified to be DEHP Free and are sold by mail order catalogue or from the internet by
20 providing a warning: (1) in the mail order catalogue as specified in Section 3.2.1(b)(i); on the
21 website as specified in Section 3.2.1(b)(ii); and/or by affixing the warning specified in Section
22 3.2.1(a)(i) to the packaging, labeling, or directly on any Covered Product.

23 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
24 order catalog must be in the same type size or larger than the Covered Product description text
25 within the catalog. The following warning shall be provided on the same page and in the same
26 location as the display and/or description of the Covered Product:

27
28

1 **WARNING:** This product contains a chemical known to
2 the State of California to cause cancer, birth
 defects and other reproductive harm.

3 Where it is impracticable to provide the warning on the same page and in the same
4 location as the display and/or description of the Covered Product, FPC may utilize a designated
5 symbol to cross-reference the applicable warning and shall define the term “designated symbol”
6 with the following language on the inside of the front or back cover of the catalog or on the same
7 page as any order form for the Covered Product:

8 **WARNING:** Certain products identified with
9 this symbol ▼ and offered for sale in this
10 catalog contain a chemical known to the
 State of California to cause cancer, birth
 defects and other reproductive harm.

11 The designated symbol must appear on the same page and in close proximity to the
12 display and/or description of the Covered Product. On each page where the designated symbol
13 appears, FPC must provide a header or footer directing the consumer to the warning language
14 and definition of the designated symbol.

15 If FPC elects to provide warnings in any mail order catalog, then the warnings must be
16 included in all catalogs offering to sell one or more Covered Product printed after the Effective
17 Date.

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

26 **WARNING:** This product contains a chemical known to
27 the State of California to cause cancer, birth
28 defects and other reproductive harm.

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

5 **WARNING:** Products identified on this page with the
6 following symbol ▼ contain a chemical
7 known to the State of California to cause
8 cancer, birth defects and other
9 reproductive harm.

10 FPC shall maintain records of compliance correspondence, inventory reports or other
11 communication confirming compliance with § 3.2.1 for two (2) years from the Effective Date and
12 shall produce copies of such records upon written request by Englander.

13 **4. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(B)**

14 In settlement of all the claims referred to in this Consent To Judgment, FPC shall pay a
15 total civil penalty of \$10,000.00 under this Section, as follows:

16 **4.1 Initial Civil Penalty**

17 FPC shall pay an initial civil penalty in the amount of \$6,000.00 on or before April 19,
18 2013. The civil penalty shall be apportioned in accordance with California Health & Safety Code
19 § 25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of
20 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
21 remitted to Englander. FPC shall issue two separate checks for the penalty payment: (a) one
22 check made payable to "OEHHA" in the amount of \$4,500.00 representing 75% of the total
23 penalty; and (b) one check made payable to "The Chanler Group in Trust for Peter Englander" in
24 the amount of \$1,500.00, representing 25% of the total penalty. Two separate 1099s shall be
25 issued for the above payments. The checks and 1099s shall be delivered to the addresses listed in
26 Section 4.3 below.

27 **4.2 Final Civil Penalty**

28 FPC shall pay a final civil penalty of \$4,000.00 on or before May 3, 2013. The final civil
penalty shall be waived in its entirety, however, if an Officer of FPC provides Englander, care of

1 his counsel, with written certification that, as of the Effective Date and continuing into the future,
2 FPC has met the reformulation standard specified in Section 3.1 above, such that all newly
3 obtained Covered Products sold by Defendant after March 1, 2013, are certified by the Vendor to
4 be DEHP Free. Englander must receive any such certification on or before April 19, 2013, and
5 time is of the essence. The final civil penalty shall be apportioned in accordance with California
6 Health & Safety Code § 25249.12 (c)(1) & (d), with 75% of these funds remitted to OEHHA and
7 the remaining 25% of the penalty remitted to Englander, as provided by California Health &
8 Safety Code § 25249.12(d). FPC shall issue two separate checks for the penalty payment: (a) one
9 check made payable to "OEHHA" in the amount of \$3,000.00, representing 75% of the total
10 penalty; and (b) one check made payable to "The Chanler Group in Trust for Englander" in the
11 amount of \$1,000.00, representing 25% of the total penalty. Two separate 1099s shall be issued
12 for the above payments. The checks and 1099s shall be delivered to the addresses listed in
13 Section 4.3 below.

14 **4.3 Payment Procedures**

15 **4.3.1. Issuance of Payments.** Payments shall be delivered as follows:

- 16 (a) All payments owed to Englander, pursuant to Sections 4.1 through
17 4.2, shall be delivered to the following payment address:

18 The Chanler Group
19 Attn: Proposition 65 Controller
20 2560 Ninth Street
21 Parker Plaza, Suite 214
22 Berkeley, CA 94710

- 23 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
24 Sections 4.1 through 4.2, shall be delivered directly to OEHHA (Memo
25 line "Prop 65 Penalties") at the following addresses:

26 For United States Postal Service Delivery:

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

1 For Non-United States Postal Service Delivery:

2 Mike Gyrics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street
6 Sacramento, CA 95814

7 With a copy of the checks payable to OEHHA mailed to The Chanler
8 Group at the address set forth above in 4.3.1(a), as proof of payment to
9 OEHHA.

10 Any failure by defendant to deliver the above-referenced payments to either OEHHA or
11 The Chanler Group within two days of the required date shall result in imposition of a 10%
12 simple interest assessment on the undelivered payment(s) until delivery.

13 **4.3.2 Issuance of 1099 Forms.** After each payment, FPC shall issue separate
14 1099 forms for each payment, as follows:

- 15 (a) For each penalty payment owed in Sections 4.1 through 4.2, a 1099
16 shall be issued to the Office of Environmental Health Hazard
17 Assessment, 1001 I Street, Sacramento, CA 95814 (EIN: 68-
18 0284486) in the amount of 75% of the total penalty payment;
- 19 (b) For each penalty payment owed in Sections 4.1 through 4.2, a 1099
20 shall be issued to Englander, whose address and tax identification
21 number shall be furnished upon request, in the amount of 25% of
22 the total penalty payment.

23 **5. REIMBURSEMENT OF FEES AND COSTS**

24 The parties acknowledge that Englander and his counsel offered to resolve this dispute
25 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
26 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
27 Englander then expressed a desire to resolve the fee and cost issue shortly after the other
28 settlement terms had been finalized. The parties then attempted to (and did) reach an accord on

1 the compensation due to Englander and his counsel under general contract principles and the
2 private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5,
3 for all work performed through the mutual execution of this agreement. FPC shall pay
4 \$35,000.00 for fees and costs incurred as a result of investigating, bringing this matter to FPC's
5 attention, and negotiating a settlement in the public interest. FPC shall issue a separate 1099 for
6 fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall
7 deliver payment on or before April 19, 2013, to the following address:

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

13 Any failure by defendant to deliver the above-referenced payments to The Chanler
14 Group within two days of the required date shall result in imposition of a 10% simple interest
15 assessment on the undelivered payment(s) until delivery.

16 **6. CLAIMS COVERED AND RELEASE**

17 **6.1 Englander's Releases of FPC**

18 **6.1.1** This Consent To Judgment is a full, final, and binding resolution between
19 Englander, on behalf of himself, his past and current agents, representatives, attorneys,
20 successors, and/or assignees, and in the interest of the general public, and FPC and its attorneys,
21 successors, licensors and assigns ("Defendant Releasees"), and all entities to whom FPC directly
22 or indirectly distributes or sells Covered Products, including but not limited to distributors,
23 wholesalers, customers, retailers, franchisees, cooperative members, and licensees
24 ("Downstream Defendant Releasees") of any violation of Proposition 65 that has been or could
25 have been asserted against Defendant Releasees and Downstream Defendant Releasees
26 regarding the failure to warn about exposure to the Listed Chemical arising in connection with
27 Covered Products manufactured, sourced, distributed, or sold by Defendant Releasees prior to
28 the Effective Date. FPC's compliance with this Consent To Judgment shall constitute

1 compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products
2 after the Effective Date.

3 **6.1.2** Englander on behalf of himself, his past and current agents,
4 representatives, attorneys, successors, and/or assignees, and in the interest of the general public,
5 hereby waives with respect to Covered Products all rights to institute or participate in, directly
6 or indirectly, any form of legal action and releases all claims, including, without limitation, all
7 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
8 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
9 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
10 contingent (collectively "claims"), against Defendant Releasees and Downstream Defendant
11 Releasees that arise under Proposition 65 or any other statutory or common law claims that were
12 or could have been asserted in the public interest, as such claims relate to Defendant Releasees'
13 and Downstream Defendant Releasees' alleged failure to warn about exposures to the Listed
14 Chemical contained in the Covered Products.

15 **6.1.3** Englander also, in his individual capacity only and *not* in his
16 representative capacity, provides a general release herein which shall be effective as a full and
17 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
18 attorneys' fees, damages, losses, claims, liabilities and demands of Englander of any nature,
19 character or kind, known or unknown, suspected or unsuspected, arising out of the subject
20 matter of the Complaint as to Covered Products manufactured, distributed or sold by Defendant
21 Releasees. Englander acknowledges that he is familiar with Section 1542 of the California Civil
22 Code, which provides as follows:

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

26 Englander, in his individual capacity only and *not* in his representative capacity,
27 expressly waives and relinquishes any and all rights and benefits which he may have under, or
28 which may be conferred on him by the provisions of Section 1542 of the California Civil Code as

1 well as under any other state or federal statute or common law principle of similar effect, to the
2 fullest extent that he may lawfully waive such rights or benefits pertaining to the released
3 matters. In furtherance of such intention, the release hereby given shall be and remain in effect
4 as a full and complete release notwithstanding the discovery or existence of any such additional
5 or different claims or facts arising out of the released matters.

6 This Section 6.1 release is expressly limited to those claims that arise under Proposition
7 65, as such claims relate to Defendant's alleged failure to warn about exposures to or
8 identification of the Listed Chemical contained in the Covered Products and as such claims are
9 identified in the Proposition 65 60-Day Notice to Defendant.

10 The Parties further understand and agree that this Section 6.1 release shall not extend
11 upstream to any entities, other than Defendant, that manufactured the Covered Products or any
12 component parts thereof, or any distributors or suppliers who sold the Covered Products or any
13 component parts thereof to Defendant.

14 **6.1.4** Upon court approval of the Consent To Judgment, the Parties waive their
15 respective rights to a hearing or trial on the allegations of the Complaint.

16 **6.2 FPC's Release of Englander**

17 **6.2.1** FPC waives any and all claims against Englander, his attorneys, and other
18 representatives for any and all actions taken or statements made (or those that could have been
19 taken or made) by Englander and his attorneys and other representatives, whether in the course
20 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this
21 matter, and/or with respect to the Covered Products.

22 **6.2.2** FPC also provides a general release herein which shall be effective as a
23 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
24 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of FPC of any nature,
25 character or kind, known or unknown, suspected or unsuspected, arising out of the subject
26 matter of the Action. FPC acknowledges that it is familiar with Section 1542 of the California
27 Civil Code, which provides as follows:
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A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

FPC expressly waives and relinquishes any and all rights and benefits that it may have under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

7. SEVERABILITY

If, subsequent to court approval of this Consent To Judgment, any of the provisions of this Consent To Judgment are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected, unless the Court finds that any unenforceable provision is not severable from the remainder of the Consent To Judgment.

8. COURT APPROVAL

This Consent To Judgment is effective upon execution but must also be approved by the Court. The Consent to Judgment shall become null and void if, for any reason, it is not approved and entered by the Court within nine months after it has been fully executed by all Parties. If the Consent to Judgment becomes null and void after any payment of monies under this agreement to The Chanler Group in trust, such monies shall be returned to defendant by payment of such monies to its counsel, in trust for FPC.

9. GOVERNING LAW

The terms of this Consent To Judgment shall be governed by the laws of the State of California.

1 **10. NOTICES**

2 When any Party is entitled to receive any notice under this Consent To Judgment, the
3 notice shall be sent by certified mail and electronic mail to the following:

4 For FPC to:

5 Pat Kamins
6 FPC Corporation
7 355 Hollow Hill Road
8 Wauconda, IL 60084

9 For Englander to:

10 Proposition 65 Coordinator
11 The Chanler Group
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710-2565

15 Any Party may modify the person and address to whom the notice is to be sent by sending each
16 other Party notice by certified mail and/or other verifiable form of written communication.

17 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

18 Englander agrees to comply with the reporting form requirements referenced, in
19 California Health & Safety Code §25249.7(f) and to file a motion for approval of this Consent
20 Judgment.

21 **12. MODIFICATION**

22 This Consent To Judgment may be modified only: (1) by written agreement of the
23 Parties; or (2) upon a successful motion of any party and entry of a modified Consent To
24 Judgment by the Court.

25 **13. ADDITIONAL POST-EXECUTION ACTIVITIES**

26 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
27 motion is required to obtain judicial approval of this Consent To Judgment. In furtherance of
28 obtaining such approval, Englander and FPC and their respective counsel agree to mutually
employ their best efforts to support the entry of this agreement as a Consent To Judgment and
obtain approval of the Consent To Judgment - sufficient to render a formal judgment approving
this agreement - by the Court in a timely manner. Any effort by plaintiff or FPC to impede

1 judicial approval of this Consent To Judgment shall subject such impeding party to liability for
2 attorney fees and costs incurred by plaintiff or his counsel in their efforts to meet or oppose
3 FPC's impeding conduct.

4 **14. ENTIRE AGREEMENT**

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

11 **15. ATTORNEY'S FEES**

12 15.1 Should Englander prevail on any motion, application for order to show cause or
13 other proceeding to enforce a violation of this Agreement, Englander shall be entitled to his
14 reasonable attorney fees and costs incurred as a result of such motion, order or application,
15 consistent with C.C.P. §1021.5. Should Defendant prevail on any motion, application for order to
16 show cause or other proceeding to enforce a violation of this Consent Judgment, Defendant may
17 be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or
18 application upon a finding that Brimer's prosecution of the motion or application lacked
19 substantial justification. For purposes of this Agreement, the term substantial justification shall
20 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§
21 2016, et seq.

22 15.2 Except as specifically provided in the above paragraph and in Section 5.1, each
23 Party shall bear its own costs and attorney's fees in connection with this action.

24 15.3 Nothing in this Section 14 shall preclude a Party from seeking an award of
25 sanctions pursuant to law.
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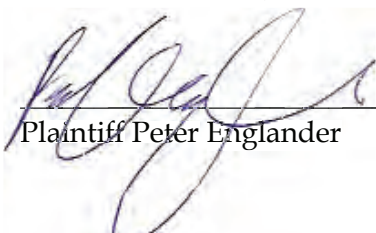
1 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

2 This Consent To 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 taken
4 together, shall constitute one and the same document.

5 **17. AUTHORIZATION**

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

9 **IT IS SO AGREED**

<p>10 Dated: March <u>22</u>, 2013</p> <p>11 </p> <p>12 _____ 13 Plaintiff Peter Englander</p>	<p>10 Dated: March __, 2013</p> <p>11 _____</p> <p>12 Pat Kamins, COO 13 FPC Corporation</p>
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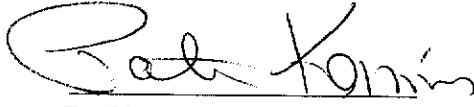
1 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

2 This Consent To 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 taken
4 together, shall constitute one and the same document.

5 **17. AUTHORIZATION**

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

9 **IT IS SO AGREED**

<p>10 Dated: March __, 2013</p> <p>11</p> <p>12 _____</p> <p>13 Plaintiff Peter Englander</p> <p>14</p>	<p>10 Dated: March ²⁵, 2013</p> <p>11 </p> <p>12 Pat Kamins, COO</p> <p>13 FPC Corporation</p> <p>14</p>
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