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THE CHANLER GROUP  
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Attorneys for Plaintiff,  
PETER ENGLANDER

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,  
  
Plaintiff,  
  
v.  
  
ORBIT IRRIGATION PRODUCTS, INC.;  
*et al.*  
  
Defendant.

Case No.: RG13678021

**[PROPOSED] CONSENT JUDGMENT**

Health & Safety Code, § 25249.5, et seq.

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Peter Englander (“Englander”) and  
4 Orbit Irrigation Products, Inc. (“Orbit”), with Englander and Orbit individually referred to as a  
5 “Party” and collectively as the “Parties.” Englander is an individual residing in California who seeks  
6 to promote awareness of exposures to toxic chemicals and to improve human health by reducing or  
7 eliminating hazardous substances contained in consumer products. Orbit employs ten or more  
8 persons and is a person in the course of doing business for purposes of the Safe Drinking Water and  
9 Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

10 **1.2 General Allegations**

11 Englander alleges and Orbit denies that Orbit manufactures, imports, sells or distributes for  
12 sale in the State of California hand tools with grips that contain di(2-ethylhexyl)phthalate (“DEHP”)  
13 and/or lead without first providing the clear and reasonable exposure warning required by  
14 Proposition 65. DEHP and lead are listed pursuant to Proposition 65 as chemicals that are known to  
15 the State of California to cause birth defects and other reproductive harm.

16 **1.3 Covered Product Description**

17 The products covered by this Consent Judgment are defined as hand tools with grips  
18 containing DEHP and/or lead that are manufactured, sold or distributed for sale in California by  
19 Orbit, including, but not limited to, the *Orbit Sprinkler Tool Kit, Model #26098, PN 26098-03 (#0*  
20 *46878 26098 6)*. The hand tools with grips containing DEHP and/or lead are referred to collectively  
21 as the “Covered Products.”

22 **1.4 Notice of Violation**

23 On or about November 21, 2012, Englander served Orbit and certain requisite public  
24 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Orbit violated  
25 Proposition 65 by failing to warn its customers and consumers in California that the Covered  
26 Products expose users to DEHP and/or lead. To the best of the Parties’ knowledge, no public  
27 enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

28

1           **1.5     No Admission**

2           Orbit denies the material, factual, and legal allegations contained in the Notice and maintains  
3 that all of the products it has manufactured, sold or distributed for sale in California, including the  
4 Covered Products, have been and are in compliance with all laws. Nothing in this Consent Judgment  
5 shall be construed as an admission by Orbit of any fact, finding, conclusion of law, issue of law or  
6 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an  
7 admission by Orbit of any fact, finding, conclusion of law, issue of law or violation of law, the same  
8 being specifically denied by Orbit. This Section shall not, however, diminish or otherwise affect  
9 Orbit’s obligations, responsibilities, and duties under this Consent Judgment.

10           **1.6     Effective Date**

11           For purposes of this Consent Judgment, the term “Effective Date” shall mean May 1, 2013.

12           **2.     INJUNCTIVE RELIEF**

13           **2.1     Reformulated Products**

14           Commencing on the Effective Date and continuing thereafter, Orbit shall only ship for sale  
15 into California, Reformulated Products or products that have been properly labeled per the warning  
16 in Section 2.2.1. For purposes of this Consent Judgment, “Reformulated Products” shall mean  
17 Covered Products that contain a maximum of 1,000 parts per million DEHP content when analyzed  
18 pursuant to U.S. Environmental Protection Agency (“USEPA”) testing methodologies 3580A and  
19 8270C, and Covered Products that contain a maximum of 100 parts per million lead content when  
20 analyzed pursuant to USEPA testing methodologies SW6020 and SW3050B.

21           **2.2     Labeled Products**

22           “Labeled Products” are those that may have DEHP or lead at similar levels as the  
23 “Reformulated Products,” but out of an abundance of caution and in the public interest, are also  
24 labeled pursuant to Section 2.2.1. As to any Covered Products, a warning as described in  
25 Section 2.2.1 shall be provided on any units of such Covered Products that Orbit ships into the State  
26 of California. The warning requirements set forth in Section 2.2.1 shall not apply to:  
27  
28

- 1 (a) Covered Products that are not reformulated, manufactured, distributed,  
2 marketed or sold by Orbit, and/or any other defendant or entity within the  
3 Chain of Distribution, 90 days after the Effective Date (for purposes of this  
4 Consent Judgment, Chain of Distribution shall mean Orbit and its downstream  
5 customers, distributors, and retailers);
- 6 (b) Covered Products in Orbit's inventory, or the inventory of any other defendant  
7 or entity within the chain or distribution, on or before the Effective Date;  
8 and/or
- 9 (c) Covered Products manufactured, distributed, marketed, sold or shipped for  
10 sale or use outside the State of California.

11 **2.2.1 Labels**

12 Subject to Section 2.2.1 hereof, Orbit, and Orbit's affiliates, shall provide the  
13 following warning statement for all units of Covered Products that, on or after 120 days from the  
14 Effective Date, are distributed directly by Orbit, and Orbit's affiliates, for sale in California or are  
15 transferred to distributors or retailers by Defendant, Orbit, and Orbit's affiliates, for sale in  
16 California:

17 **WARNING:** This product contains detectable levels of chemicals  
18 known to the State of California to cause cancer and/or birth  
defects or other reproductive harm.

19 The requirement for product labeling set forth in this Section 2.2.1 imposed pursuant to the terms of  
20 this Consent Judgment. The parties recognize that product labeling is not the exclusive method of  
21 providing a warning under Proposition 65 and its implementing regulations. Each warning shall be  
22 prominently placed with such conspicuousness as compared with other words, statements, designs,  
23 or devices as to render it likely to be read and understood by an ordinary individual under customary  
24 conditions before purchase or use. Each warning shall also be provided in a manner such that the  
25 consumer or user understands to which specific Product the warning applies, so as to minimize the  
26 risk of consumer confusion.

1 **3. MONETARY PAYMENTS**

2 **3.1 Payments Pursuant to Health & Safety Code Section 25249.7(b)**

3 In settlement of all the claims referred to in this Consent Judgment, Orbit shall pay a total of  
4 \$23,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated  
5 according to California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds  
6 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the  
7 remaining 25% of the penalty remitted to Englander, as follows:

8 **3.1.1 Initial Civil Penalty**

9 Orbit shall pay an initial civil penalty of \$5,000 on or before May 15, 2013. Orbit  
10 shall issue two separate checks to: (a) “OEHHA” in the amount of \$3,750; and (b) “The Chanler  
11 Group in Trust for Peter Englander” in the amount of \$1,250. All penalty payments shall be  
12 delivered to the addresses listed in Section 3.3 below.

13 **3.1.2 Final Civil Penalty**

14 Orbit shall pay a final civil penalty of \$18,000 on or before February 15, 2014. The  
15 final civil penalty shall be waived in its entirety, however, if, no later than February 1, 2014, an  
16 officer of Orbit provides Englander with written certification that, as of the date of such certification,  
17 all Covered Products shipped for sale in California by Orbit are Reformulated Products as defined by  
18 Section 2 and that Orbit will continue to only offer Reformulated Products in California in the  
19 future. The certification in lieu of a final civil penalty payment provided by this Section is a material  
20 term, and time is of the essence. Orbit shall issue two separate checks for its final civil penalty  
21 payments to: (a) “OEHHA” in the amount of \$13,500; and (b) “The Chanler Group in Trust for  
22 Peter Englander” in the amount of \$4,500 , and deliver the payments to the addresses provided in  
23 Section 3.3.

24 **3.2 Attorney Fees and Costs**

25 The parties acknowledge that Englander and his counsel offered to resolve this dispute  
26 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
27 this fee issue to be resolved after the material terms of the agreement had been settled. Shortly after  
28

1 the other settlement terms had been finalized, Orbit expressed a desire to resolve the fee and cost  
2 issue. The parties then attempted to (and did) reach an accord on the compensation due to Englander  
3 and his counsel under general contract principles and the private attorney general doctrine codified at  
4 California Code of Civil Procedure section 1021.5 for all work performed through the mutual  
5 execution of this agreement. Orbit shall pay \$30,500 for fees and costs incurred as a result of  
6 investigating, bringing this matter to Orbit's attention, and negotiating a settlement in the public  
7 interest. Orbit shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the  
8 check payable to "The Chanler Group" and shall deliver payment on or before May 15, 2013, to the  
9 address listed in Section 3.3.1(a) below.

10 **3.3 Payment Procedures**

11 **3.3.1 Issuance of Payments.** Payments shall be delivered as follows:

- 12 (a) All payments owed to Englander, pursuant to Sections 3.1.1 through  
13 3.1.2, shall be delivered to the following payment address:

14 The Chanler Group  
15 Attn: Proposition 65 Controller  
16 2560 Ninth Street  
17 Parker Plaza, Suite 214  
18 Berkeley, CA 94710

- 19 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to  
20 Sections 3.1.1 through 3.1.2, shall be delivered directly to OEHHA  
21 (Memo line "Prop 65 Penalties") at the following address:

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

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

1                   **3.3.2 Issuance of 1099 Forms.** After each penalty payment, Orbit shall issue  
2 separate 1099 forms for each payment to Englander, whose address and tax identification number  
3 will be provided upon request after this Consent Judgment is fully executed by the Parties, and  
4 OEHHA at the addresses listed in Section 3.3.1(b) above.

5 **4.       CLAIMS COVERED AND RELEASED**

6                   **4.1       Englander’s Individual Release of Orbit**

7                   This Consent Judgment is a full, final, and binding resolution between Englander and Orbit  
8 of any violation of Proposition 65 that was or could have been asserted by Englander, on behalf of  
9 himself, or on behalf of his past and current agents, representatives, attorneys, successors, and  
10 assignees, against Orbit, its parents, subsidiaries, affiliated entities under common ownership,  
11 directors, officers, employees, attorneys, and each entity to whom Orbit directly or indirectly  
12 distributes or sells the Covered Products, including, without limitation, its downstream distributors,  
13 wholesalers, customers, retailers, franchisees, cooperative members, and licensees, and its vendors,  
14 suppliers, and manufacturers (“Releasees”), based on unwarned exposures to DEHP and/or lead  
15 contained in Covered Products sold or distributed for sale by Orbit in California prior to the  
16 Effective Date. In furtherance of the foregoing, Englander, on his own behalf and on behalf of those  
17 whom he represents by statute, hereby waives any and all rights and benefits which he now has, or in  
18 the future may have, conferred upon him with respect to the claims by virtue of the provisions of  
19 Section 1542 of the California Civil Code, which provides as follows:

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

26                   Englander understands and acknowledges that the significance and consequences of this  
27 waiver of California Civil Code Section 1542 is that even if Englander, or those whom he represents  
28 by statute, suffer future damages arising out of or resulting from, or related directly or indirectly to,  
in whole or in part, the Covered Products, or any exposure to, or failure to warn with respect to

1 exposure to, the Covered Products, Englander will not be able to make any claim for those damages  
2 against any Defendant, its successors or assigns, or any of their respective parents, subsidiaries or  
3 affiliates, sister companies, or any of their customers, distributors, wholesalers, retailers or any other  
4 person in the course of doing business who may use, maintain, distribute or sell the Covered  
5 Products. Furthermore, Englander acknowledges that he intends these consequences and this  
6 Release for any such claims which may exist as of the date of this Release, but which Englander  
7 does not know exist, and which, if known, would materially affect his decision to enter into this  
8 Consent Judgment, regardless of whether his lack of knowledge is the result of ignorance, oversight,  
9 error, negligence, or any other cause.

10 In further consideration of the promises and agreements herein contained, Englander, on his  
11 own behalf and on behalf of his past and current agents, representatives, attorneys, successors,  
12 and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any  
13 form of legal action, and releases all claims that he may have against Orbit and Releasees, including,  
14 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,  
15 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert  
16 fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP and/or lead  
17 in Covered Products manufactured, sold, or distributed for sale in California by Orbit prior to the  
18 Effective Date.

#### 19 **4.2 Public Interest Release of Orbit**

20 Englander, acting on his own behalf and in the public interest, and on behalf of each of his  
21 predecessors, successors, partners, partnerships, agents, representatives, insurers, attorneys, heirs,  
22 assignors and assignees, accountants and all persons and entities acting or claiming by, through,  
23 under or in concert with any of them, hereby irrevocably releases and forever discharges Orbit from  
24 all claims, demands, suits, liabilities, causes of action or actions, now or in the future, for violations  
25 of Proposition 65 based on exposures to DEHP and/or lead from the Products. Compliance with the  
26 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to  
27 exposures to DEHP and/or lead from the Products.  
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1           **4.3     Orbit’s Release of Englander**

2           Orbit, on its own behalf and on behalf of its past and current agents, representatives,  
3 attorneys, successors, and assignees, hereby waives any and all claims that it may have against  
4 Englander and his attorneys and other representatives, for any and all actions taken or statements  
5 made by Englander and his attorneys and other representatives, whether in the course of  
6 investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the  
7 Covered Products.

8           **5.     COURT APPROVAL**

9           This Consent Judgment is not effective until it is approved and entered by the Court and shall  
10 be null and void if, for any reason, it is not approved and entered by the Court within one year after  
11 it has been fully executed by the Parties, in which event any monies that have been provided to  
12 Englander or his counsel pursuant to Sections 3.1.1 and 3.1.2 above shall be refunded within  
13 fifteen (15) days after receiving written notice from Orbit that the one-year period has expired.

14           **5.     SEVERABILITY**

15           If, subsequent to the execution of this Consent Judgment, any provision of this Consent  
16 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not be  
17 adversely affected.

18           **6.     GOVERNING LAW**

19           The terms of this Consent Judgment shall be governed by the laws of the state of California  
20 and apply within the state of California. In the event that Proposition 65 is repealed or is otherwise  
21 rendered inapplicable by reason of law generally, or as to the Covered Products, then Orbit may  
22 provide written notice to Englander of any asserted change in the law, and have no further  
23 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Covered  
24 Products are so affected.

25           **7.     NOTICES**

26           Unless specified herein, all correspondence and notices required to be provided pursuant to  
27 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class,  
28

1 registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any  
2 party by the other party at the following addresses:  
3 For Orbit Irrigation Products, Inc.:

4 Kent Ericksen, President  
5 Orbit Irrigation Products, Inc.  
6 845 North Overland Road  
7 North Salt Lake, UT 84054

8 With a copy to:

9 Gregory S. Ericksen, Esq.  
10 1065 South 500 West  
11 P.O. Box 609  
12 Bountiful, UT 84011-0609

13 For Peter Englander:

14 The Chanler Group  
15 Attn: Proposition 65 Coordinator  
16 2560 Ninth Street  
17 Parker Plaza, Suite 214  
18 Berkeley, CA 94710-2565

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

21 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

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

25 **9. POST-EXECUTION ACTIVITIES**

26 Englander agrees to comply with the reporting form requirements referenced in Health and  
27 Safety Code section 25249.7(f).

28 **10. MODIFICATION**

This Consent Judgment may be modified only by a written agreement of the Parties.

1 **11. AUTHORIZATION**

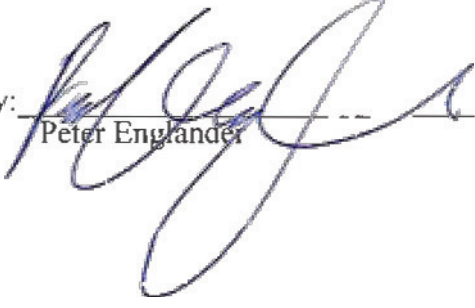
2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood and agree to all of the terms and conditions of this  
4 Consent Judgment.


5 **AGREED TO:**

**AGREED TO:**

7 Date: May 9, 2013

7 Date: 5-9-2013

9 By:   
10 Peter Englander

9 By:   
10 Kent Ericksen, President  
Orbit Irrigation Products, Inc