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9 Attorneys for Plaintiff,  
10 PETER ENGLANDER

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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)*, collectively “Covered Products.”

21 **1.4 Notice of Violation**

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

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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 the date upon  
12 which the Court endorses the Consent Judgment

13           **2. INJUNCTIVE RELIEF**

14           **2.1 Reformulated Products**

15           Commencing on the Effective Date and continuing thereafter, Orbit with respect to Covered  
16 Products shall only manufacture or cause to be manufactured for sale into California, Reformulated  
17 Products or Covered Products that will comply with the warning requirements in Section 2.2 For  
18 purposes of this Consent Judgment, “Reformulated Products” shall mean Covered Products that  
19 contain a maximum of 1,000 parts per million DEHP content when analyzed pursuant to U.S.  
20 Environmental Protection Agency (“USEPA”) testing methodologies 3580A and 8270C, and  
21 Covered Products that contain a maximum of 100 parts per million lead content when analyzed  
22 pursuant to USEPA testing methodologies SW6020 and SW3050B.

23           **2.2 Labeled Products**

24           As to any Covered Products manufactured or caused to be manufactured by Orbit and Orbit’s  
25 affiliates, for sale in California, after the Effective Date, that are not Reformulated Products, a  
26 warning that complies with Section 2.2.1 shall be provided.

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1                                   **2.2.1 Labels**

2           Any warning required by Section 2.2, above, shall be affixed to the packaging, labeling, or  
3 directly on each Covered Product. Each warning shall be prominently placed with such  
4 conspicuousness as compared with other words, statements, designs, or devices as to render it likely  
5 to be read and understood by an ordinary individual under customary conditions before purchase.  
6 Each warning shall be provided in a manner such that the consumer or user understands to which  
7 specific Covered Product the warning applies, so as to minimize the risk of consumer confusion. For  
8 Covered Products that are not Reformulated Products, Orbit shall use the following warning  
9 language:

10                                   WARNING: This product contains chemicals  
11   known to the state of California to  
12   cause cancer and birth defects and  
   other reproductive harm.

13 **3.    MONETARY PAYMENTS**

14           **3.1    Payments Pursuant to Health & Safety Code Section 25249.7(b)**

15           In settlement of all the claims referred to in this Consent Judgment, Orbit shall pay a total of  
16 \$23,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated  
17 according to California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds  
18 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the  
19 remaining 25% of the penalty remitted to Englander, as follows:

20                                   **3.1.1 Initial Civil Penalty**

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

25                                   **3.1.2 Final Civil Penalty**

26           Orbit shall pay a final civil penalty of \$18,000 on or before February 15, 2014. The  
27 final civil penalty shall be waived in its entirety, however, if, no later than February 1, 2014, an  
28 officer of Orbit provides Englander with written certification that, as of the date of such certification,

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1 all Covered Products shipped for sale in California by Orbit are Reformulated Products as defined by  
2 Section 2 and that Orbit will continue to only offer Reformulated Products in California in the  
3 future. The certification in lieu of a final civil penalty payment provided by this Section is a material  
4 term, and time is of the essence. Orbit shall issue two separate checks for its final civil penalty  
5 payments to: (a) "OEHHA" in the amount of \$13,500; and (b) "The Chanler Group in Trust for  
6 Peter Englander" in the amount of \$4,500, and deliver the payments to the addresses provided in  
7 Section 3.3.

### 8 **3.2 Attorney Fees and Costs**

9 The parties acknowledge that Englander and his counsel offered to resolve this dispute  
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
11 this fee issue to be resolved after the material terms of the agreement had been settled. Shortly after  
12 the other settlement terms had been finalized, Orbit expressed a desire to resolve the fee and cost  
13 issue. The parties then attempted to (and did) reach an accord on the compensation due to Englander  
14 and his counsel under general contract principles and the private attorney general doctrine codified at  
15 California Code of Civil Procedure section 1021.5 for all work performed through the mutual  
16 execution of this agreement. Orbit shall pay \$30,500 for fees and costs incurred as a result of  
17 investigating, bringing this matter to Orbit's attention, and negotiating a settlement in the public  
18 interest. Orbit shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the  
19 check payable to "The Chanler Group" and shall deliver payment on or before May 15, 2013, to the  
20 address listed in Section 3.3.1(a) below.

### 21 **3.3 Payment Procedures**

#### 22 **3.3.1 Issuance of Payments.** Payments shall be delivered as follows:

- 23 (a) All payments owed to Englander, pursuant to Sections 3.1.1 through  
24 3.1.2, shall be delivered to the following payment address:

25 The Chanler Group  
26 Attn: Proposition 65 Controller  
27 2560 Ninth Street  
28 Berkeley, CA 94710

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

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

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

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

**4. CLAIMS COVERED AND RELEASED**

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

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

1 respect to the claims by virtue of the provisions of Section 1542 of the California Civil Code, which  
2 provides as follows:

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

9 Englander understands and acknowledges that the significance and consequences of this  
10 waiver of California Civil Code Section 1542 is that even if Englander, suffers future damages  
11 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered  
12 Products, or any exposure to, or failure to warn with respect to exposure to, the Covered Products,  
13 Englander will not be able to make any claim for those damages against any Defendant, its  
14 successors or assigns, or any of their respective parents, subsidiaries or affiliates, sister companies,  
15 or any of their customers, distributors, wholesalers, retailers or any other person in the course of  
16 doing business who may use, maintain, distribute or sell the Covered Products. Furthermore,  
17 Englander acknowledges that he intends these consequences and this Release for any such claims  
18 which may exist as of the date of this Release, but which Englander does not know exist, and which,  
19 if known, would materially affect his decision to enter into this Consent Judgment, regardless of  
20 whether his lack of knowledge is the result of ignorance, oversight, error, negligence, or any other  
21 cause.

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

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1           **4.2    Public Interest Release of Orbit**

2           Englander, acting on his own behalf and in the public interest pursuant to Health & Safety  
3 Code § 25249.7(d), hereby irrevocably releases and forever discharges Orbit and Releasees from all  
4 claims, demands, suits, liabilities, causes of action or actions, for violations of Proposition 65 based  
5 on exposures to DEHP and/or lead from the Covered Products sold by Orbit prior to the Effective  
6 Date, as alleged in the Notice. Compliance with the terms of this Consent Judgment constitutes  
7 compliance with Proposition 65 with respect to exposures to DEHP and/or lead from the Covered  
8 Products.

9           **4.3    Orbit’s Release of Englander**

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

16          **5.    COURT APPROVAL**

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

22          **5.    SEVERABILITY**

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

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1 **6. GOVERNING LAW**

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

8 **7. NOTICES**

9 Unless specified herein, all correspondence and notices required to be provided pursuant to  
10 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class,  
11 registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any  
12 party by the other party at the following addresses:  
13 For Orbit Irrigation Products, Inc.:

14 Kent Ericksen, President  
15 Orbit Irrigation Products, Inc.  
16 845 North Overland Road  
17 North Salt Lake, UT 84054

18 With a copy to:

19 Gregory S. Ericksen, Esq.  
20 1065 South 500 West  
21 P.O. Box 609  
22 Bountiful, UT 84011-0609

23 For Peter Englander:

24 The Chanler Group  
25 Attn: Proposition 65 Coordinator  
26 2560 Ninth Street  
27 Parker Plaza, Suite 214  
28 Berkeley, CA 94710-2565

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

1 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **9. POST-EXECUTION ACTIVITIES**

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

8 **10. MODIFICATION**

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

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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.

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**AGREED TO:**

**AGREED TO:**

Date: **September 6, 2013**

Date: 9-6-13

By:   
Peter Englander

By:   
Kent Fricksen, President  
Orbit Irrigation Products, Inc