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5 Attorneys for Plaintiff
6 PETER ENGLANDER

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF MARIN

10 UNLIMITED CIVIL JURISDICTION

11
12 PETER ENGLANDER,

13 Plaintiff,

14 v.

15 HOPKINS MANUFACTURING
CORPORATION, CARRAND COMPANIES,
16 INC. and DOES 1-150,

17 Defendants.

Case No. CIV 1300878

**CONSENT TO JUDGMENT AS TO
DEFENDANT HOPKINS
MANUFACTURING CORP. AND
CARRAND COMPANIES, INC.**

Action Filed: February 28, 2013
Trail Date: Not Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This settlement Consent To Judgment (“Consent To Judgment” or “Settlement Consent
4 To Judgment”) is entered into by and between Peter Englander, (“Englander”), Hopkins
5 Manufacturing Corporation and Carrand Companies, Inc. (collectively “Hopkins”) with
6 Englander and Hopkins collectively referred to as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendants**

12 Hopkins Manufacturing Corporation and Carrand Companies, Inc. each employs 10 or
13 more persons and is a person in the course of doing business for purposes of the Safe Drinking
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.*
15 (“Proposition 65”).
16

17 **1.4 General Allegations**

18 Englander alleges that Hopkins manufactured, distributed and/or sold, in the State of
19 California, hand tools made with soft plastic-style grips that exposed users to DEHP without
20 first providing “clear and reasonable warning” under Proposition 65. DEHP is listed as a
21 reproductive and developmental toxicant pursuant to Proposition 65 and is referred to
22 hereinafter as the “Listed Chemical” or “DEHP”

23 **1.5 Notice of Violation**

24 On November 21, 2012, Englander served Hopkins and various public enforcement
25 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided public
26 enforcers and Hopkins with notice of alleged violations of Health & Safety Code § 25249.6 for
27 failing to warn consumers of the presence of DEHP, a toxic chemical Englander alleges is found

1 in their hand tools made with soft plastic style grips sold in California. Hopkins received the
2 60-Day Notice of Violation. Hopkins represents, as of the date it executes this Consent To
3 Judgment, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65
4 enforcement action related to DEHP in its products, as identified in the 60-Day Notice.

5 **1.6 Complaint**

6 On February 28, 2013, Englander, acting in the interest of the general public in California,
7 filed a Complaint in the Superior Court of the State of California for the County of Marin,
8 alleging violations by Defendant of Health & Safety Code § 25249.6 based, *inter alia*, on the
9 alleged exposures to DEHP contained in the referenced hand tool products (the “Action”).

10 **1.7 No Admission**

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

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26 ///

1 Section 2.3 by a NVLAP accredited US laboratory or are sold or shipped with one of the clear
2 and reasonable warnings set forth in Section 3.5.

3 **3.3 Warning Obligation For Previously Obtained Noticed Products**

4 Commencing on June 1, 2013, Hopkins shall not sell, distribute or otherwise deliver, or cause to
5 be sold, distributed or otherwise delivered, any Previously Obtained Noticed Product into the
6 United States or to any retailer that Hopkins reasonably understand maintains retail outlets in
7 the United States unless such Noticed Products are confirmed to be DEHP Free under Section 2.3
8 by a NVLAP accredited US laboratory or are sold or shipped with one of the clear and
9 reasonable warnings set forth in Section 3.5.

10 **3.4 Warning Obligation For Newly Obtained Covered Products**

11 Commencing on June 1, 2013, Hopkins shall not sell, distribute or otherwise deliver, or
12 cause to be sold, distributed or otherwise delivered into the United States or to any retailer that
13 Hopkins reasonably understand maintains retail outlets in the United States, any Newly
14 Obtained Covered Product unless such Covered Products are certified by the manufacturer to
15 meet the DEHP Free standard of Section 2.3 or are sold or shipped with one of the clear and
16 reasonable warnings set forth in Section 3.5.

17 **3.5 Mandatory Warning Procedures**

18 Each warning required by Section 3.2, Section 3.3 or Section 3.4 shall be prominently
19 placed with such conspicuousness as compared with other words, statements, designs, or
20 devices in the label, labeling or display as to render it likely to be read and understood by an
21 ordinary individual under customary conditions *before* purchase or use. Each warning shall be
22 provided in a manner such that the consumer or user understands to which *specific* Covered
23 Product the warning applies, so as to minimize the risk of consumer confusion.

24 **3.5.1 Retail Customers and Retail Store Sales.**

25 Hopkins shall affix a warning to the packaging, labeling, or directly on any Covered
26 Products sold or distributed to a United States retailer or to any entity that Hopkins reasonably
27 understands maintains retail outlets in the United States that states:

1 appears, Hopkins must provide a header or footer directing the consumer to the warning
2 language and definition of the designated symbol.

3 If Hopkins elects to provide warnings in any mail order catalog, then the warnings must
4 be included in all catalogs offering to sell one or more Covered Products printed after the April
5 1, 2013.

6 (b) **Internet Website Warning.** A warning must be given in
7 conjunction with the sale of any Covered Products by Hopkins via the Internet, provided it
8 appears either: (a) on the same web page on which a Covered Product is displayed; (b) on the
9 same web page as the order form for a Covered Product; (c) on the same page as the price for
10 any Covered Product; or (d) on one or more web pages displayed to a purchaser during the
11 checkout process. The following warning statement shall be used and shall appear in any of the
12 above instances adjacent to or immediately following the display, description, or price of the
13 Covered Product for which it is given in the same type size or larger than the Covered Product
14 description text:

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

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

22 **WARNING:** Products identified on this page with the
23 following symbol ▼ contain DEHP, a
24 chemical known to the State of California
25 to cause cancer and birth defects or other
26 reproductive harm.

1 **4. MONETARY PAYMENTS**

2 4.1 **Civil Penalty Payment Pursuant To Health & Safety Code § 25249.7(b)**

3 In settlement of all the claims referred to in this Settlement Consent To Judgment, and
4 absent waiver of any Final Civil Penalty under the terms of this Section, Hopkins shall pay a
5 total of \$32,000.00 in civil penalties in accordance with this Section. Each penalty payment will
6 be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75%
7 of the funds remitted to the California Office of Environmental Health Hazard Assessment
8 (“OEHHA”) and the remaining 25% of the penalty remitted to Englander, as follows:

9 **Initial Civil Penalty:** Hopkins shall pay an initial civil penalty in the amount of
10 \$24,000.00 on or before April 1, 2013. Hopkins shall issue two separate checks to: (a) one to
11 “OEHHA” in the amount of \$18,000.00 representing 75% of the initial penalty; and (b) one to
12 “The Chanler Group in Trust for Peter Englander” in the amount of \$6,000.00 representing 25%
13 of the initial penalty. All penalty payments shall be delivered to the addresses listed in Section
14 4.2 below.

15 **Final Civil Penalty:** Hopkins shall pay a final civil penalty of \$8,000.00 on or before May
16 1, 2013. The final civil penalty shall be waived in its entirety, however, if an Officer of each of
17 Hopkins Manufacturing Corporation and Carrand Companies, Inc. provides Englander, care of
18 his counsel, with written certification that, as of the April 1, 2013 and continuing into the future,
19 Hopkins and Carrand have met the reformulation standard specified in Section 3.1 above, such
20 that all newly obtained Noticed Products are DEHP Free. Englander must receive any such
21 certification on or before April 15, 2013, and time is of the essence. Absent waiver of this
22 penalty, Hopkins shall issue two separate checks for the final penalty payment: (a) one check
23 made payable to “OEHHA” in the amount of \$6,000.00, representing 75% of the final civil
24 penalty; and (b) one check made payable to “The Chanler Group in Trust for Peter Englander” in
25 the amount of \$2,000.00, representing 25% of the final civil penalty. Two separate 1099s shall be
26 issued for the above payments. The checks and 1099s shall be delivered to the addresses listed in
27 Section 4.2 below.

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4.2 Payment Procedures

4.2.1 Issuance of Payments. Payments shall be delivered as follows:

(a) All payments owed to Englander, pursuant to Section 4.1 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 Section 4.1 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

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 4.2.1(a), as proof of payment to OEHHA.

4.2.2 Issuance of 1099 Forms. After each penalty payment, Hopkins shall issue separate 1099 forms for each payment to Englander, whose address and tax identification number shall be furnished upon request after this Settlement Consent To Judgment has been

1 fully executed by the Parties, and OEHHA at the addresses listed in Section 4.2.1 above.

2 **4.3 Augmentation Of Penalty Payments**

3 For purposes of the penalty assessment under this Consent To Judgment, Englander is
4 relying entirely upon Hopkins and its counsel for accurate, good faith reporting to Englander of
5 the nature and amounts of relevant sales activity. If within nine (9) months of the April 15,
6 2013, Englander discovers and presents to Hopkins valid and accurate evidence that the
7 Covered Products have been distributed by Hopkins in sales volumes materially different than
8 those identified by Hopkins prior to execution of this Consent To Judgment, then Hopkins shall
9 be liable for an additional penalty amount of \$10,000.00. Hopkins shall also be liable for any
10 reasonable, additional attorney fees expended by Englander in discovering such additional
11 retailers or sales. Englander agrees to provide Hopkins with a written demand for all such
12 additional penalties and attorney fees under this Section. After service of such demand,
13 Hopkins shall have thirty (30) days to agree to the amount of fees and penalties owing by
14 Hopkins and submit such payment to Englander in accordance with the method of payment of
15 penalties and fees identified in Sections 4.2. Should this thirty (30) day period pass without any
16 such resolution between the parties and payment of such additional penalties and fees,
17 Englander shall be entitled to file a formal legal claim for damages for breach of this contract
18 and the prevailing party shall be entitled to all reasonable attorney fees and costs relating to
19 such claim.

20 **4.4 Reimbursement Of Fees And Costs**

21 The parties acknowledge that Englander and his counsel offered to resolve this dispute
22 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
23 leaving this fee issue to be resolved after the material terms of the Consent To Judgment had
24 been settled. Hopkins then expressed a desire to resolve the fee and cost issue shortly after the
25 other settlement terms had been finalized. The parties then attempted to (and did) reach an
26 accord on the compensation due to Englander and his counsel under general contract principles
27 and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5,

1 for all work performed through the mutual execution of this Consent To Judgment. Hopkins
2 shall pay \$37,000.00 for fees and costs incurred as a result of investigating, bringing this matter to
3 Hopkins's attention, and negotiating a settlement in the public interest. Hopkins shall issue a
4 separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler
5 Group" and shall deliver payment on or before April 1, 2013, to the address listed in Section 4.2.1
6 above.

7 Any failure by Hopkins to deliver any of the above-referenced payments to The Chanler
8 Group within five business days of the date of April 1, 2013, shall result in imposition of a 10%
9 simple interest assessment on the undelivered payment(s) until delivery.

10 **5. CLAIMS COVERED AND RELEASE**

11 **5.1 Englander's Release of Proposition 65 Claims Against Hopkins**

12 **5.1.1** This Consent To Judgment is a full, final, and binding resolution between
13 Englander, on behalf of himself, his past and current agents, representatives, attorneys,
14 successors, and/or assignees, and in the interest of the general public, and Hopkins and its
15 directors, officers, owners, attorneys, successors, licensors and assigns ("Defendant Releasees"),
16 and all entities to whom Hopkins directly or indirectly distribute or sell Covered Products,
17 including but not limited to distributors, wholesalers, customers, retailers, franchisees,
18 cooperative members, and licensees ("Downstream Defendant Releasees") of any violation of
19 Proposition 65 that has been or could have been asserted against Defendant Releasees and
20 Downstream Defendant Releasees regarding the failure to warn about exposure to the Listed
21 Chemical arising in connection with Covered Products and Noticed Products manufactured,
22 sourced, distributed, or sold by Defendant Releasees prior to April 1, 2013. Hopkins' compliance
23 with this Consent To Judgment shall constitute compliance with Proposition 65 with respect to
24 the Listed Chemical in the Covered Products and Noticed Products after April 1, 2013.

25 **5.1.2** Englander on behalf of himself, his past and current agents,
26 representatives, attorneys, successors, and/or assignees, and in the interest of the general public,
27 hereby waives with respect to Covered Products all rights to institute or participate in, directly

1 or indirectly, any form of legal action and releases all claims, including, without limitation, all
2 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
3 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
4 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
5 contingent (collectively "claims"), against Defendant Releasees and Downstream Defendant
6 Releasees that arise under Proposition 65 or any other statutory or common law claims that were
7 or could have been asserted in the public interest, as such claims relate to Defendant Releasees'
8 and Downstream Defendant Releasees' alleged failure to warn about exposures to the Listed
9 Chemical contained in the Covered Products and/or Noticed Products.

10 **5.1.3** Englander also, in his individual capacity only and *not* in his
11 representative capacity, provides a general release herein which shall be effective as a full and
12 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
13 attorneys' fees, damages, losses, claims, liabilities and demands of Englander of any nature,
14 character or kind, known or unknown, suspected or unsuspected, arising out of the subject
15 matter of the Complaint as to Covered Products manufactured, distributed or sold by Defendant
16 Releasees. Englander acknowledges that he is familiar with Section 1542 of the California Civil
17 Code, which provides as follows:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
19 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
20 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.

21 Englander, in his individual capacity only and *not* in his representative capacity,
22 expressly waives and relinquishes any and all rights and benefits which he may have under, or
23 which may be conferred on him by the provisions of Section 1542 of the California Civil Code as
24 well as under any other state or federal statute or common law principle of similar effect, to the
25 fullest extent that he may lawfully waive such rights or benefits pertaining to the released
26 matters. In furtherance of such intention, the release hereby given shall be and remain in effect
27

1 as a full and complete release notwithstanding the discovery or existence of any such additional
2 or different claims or facts arising out of the released matters.

3 This Section 5.1 release is expressly limited to those claims that arise under Proposition
4 65, as such claims relate to Defendant's alleged failure to warn about exposures to or
5 identification of the Listed Chemical contained in the Covered Products or Noticed Products and
6 as such claims are identified in the Proposition 65 60-Day Notice to Defendant.

7 This Section 5.1 release is expressly limited to any alleged violations that occur prior to
8 June 1, 2013, and does not release any person, party or entity from any liability for any violation
9 of Proposition 65 regarding the Covered Products or Noticed Products that occur more than
10 thirty (30) days after June 1, 2013.

11 The Parties further understand and agree that this Section 5.1 release shall not extend
12 upstream to any entities, other than Defendant, that manufactured the Covered Products or
13 Noticed Products or any component parts thereof, or any distributors or suppliers who sold the
14 Covered Products or Noticed Products or any component parts thereof to Defendant.

15 **5.1.4** Upon court approval of the Consent To Judgment, the Parties waive their
16 respective rights to a hearing or trial on the allegations of the Complaint.

17 **5.2 Hopkins's Release of Englander**

18 **5.2.1** Hopkins waives any and all claims against Englander, his attorneys, and
19 other representatives for any and all actions taken or statements made (or those that could have
20 been taken or made) by Englander and his attorneys and other representatives, whether in the
21 course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in
22 this matter, and/or with respect to the Covered Products and Noticed Products.

23 **5.2.2** Hopkins also provides a general release herein which shall be effective as
24 a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
25 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Hopkins of any
26 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the
27

1 subject matter of the Action. Hopkins acknowledges that it is familiar with Section 1542 of the
2 California Civil Code, which provides as follows:

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

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

16 **6. SEVERABILITY**

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

21 **7. COURT APPROVAL**

22 This Consent To Judgment is effective upon execution but must also be approved by the
23 Court to be enforceable. If this Consent Judgment is not approved by the Court in its entirety,
24 the Parties shall meet and confer to determine whether to modify the terms of the Consent
25 Judgment and to resubmit it for approval. In meeting and conferring, the Parties agree to
26 undertake any actions reasonably necessary to amend and/or modify this Consent Judgment in
27 order to further the mutual intention of the Parties in entering into this Consent Judgment.

28 The Consent to Judgment shall become null and void if, for any reason, it is not approved
and entered by the Court within one year after it has been fully executed by all Parties. If the

1 Consent to Judgment becomes null and void after any payment of monies under this agreement
2 to The Chanler Group in trust, such monies shall be returned to defendant by payment of such
3 monies to its counsel, in trust for Hopkins.

4 If this Consent Judgment is not entered by the Court, and the Parties have exhausted
5 their meet and confer efforts pursuant to this Section, upon 15 days written notice, the law firm
6 holding Defendant's funds in trust shall refund any and all payments made into its trust
7 account by Defendants as requested.

8 **8. GOVERNING LAW**

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

11 **9. NOTICES**

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

14 For Hopkins, to:

15 Brad Kraft, President
16 Hopkins Manufacturing Corporation
17 PO Box 1157
18 Emporia KS 66801

18 With copy to their counsel at:

19 George Gigounas
20 DLA Piper LLP (US)
21 555 Mission Street, Suite 2400
22 San Francisco, California 94105-2933

22 For Englander to:

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

27 Any Party may modify the person and address to whom the notice is to be sent by

1 sending each other Party notice by certified mail and/or other verifiable form of written
2 communication.

3 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

4 Englander agrees to comply with the reporting form requirements referenced, in
5 California Health & Safety Code §25249.7(f).

6 **11. MODIFICATION**

7 This Consent To Judgment may be modified only by written Consent To Judgment of the
8 Parties or court order.

9 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

10 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
11 motion is required to obtain judicial approval of this Consent To Judgment, and that Englander
12 and his counsel shall prepare the motion and all supporting papers, file and pursue the motion's
13 approval through best efforts, at no additional cost to Hopkins. In furtherance of obtaining such
14 approval, Englander and Hopkins and their respective counsel agree to mutually employ their
15 best efforts to support the entry of this agreement as a Consent To Judgment and obtain
16 approval of the Consent To Judgment - sufficient to render a formal judgment approving this
17 agreement - by the Court in a timely manner. Any effort by Plaintiff or Defendants to impede
18 judicial approval of this Consent To Judgment shall subject such impeding party to liability for
19 attorney fees and costs incurred by such party in their efforts to meet or oppose the impeding
20 party's impeding conduct.

21 **13. ENTIRE CONSENT TO JUDGMENT**

22 This Consent To Judgment contains the sole and entire agreement and understanding of
23 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
24 negotiations, commitments, and understandings related hereto. No representations, oral or
25 otherwise, express or implied, other than those contained herein have been made by any Party
26 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
27 deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or

1 termination of this Consent To Judgment shall be binding unless executed in writing by the
2 Party to be bound. No waiver of any of the provisions of this Consent To Judgment shall be
3 deemed or shall constitute a waiver of any of the other provisions whether or not similar, nor
4 shall such waiver constitute a continuing waiver.

5 **14. ATTORNEY'S FEES**

6 Should Englander prevail on any motion, application for order to show cause or other
7 proceeding to enforce a violation of this Consent To Judgment, Englander shall be entitled to his
8 reasonable attorney fees and costs incurred as a result of such motion, order or application,
9 consistent with C.C.P. § 1021.5. Should Hopkins prevail on any motion, application for order to
10 show cause or other proceeding to enforce a violation of this Consent To Judgment, Hopkins
11 shall be entitled to its reasonable attorney fees and costs incurred as a result of such motion,
12 order or application upon a finding that Englander's prosecution of the motion or application
13 lacked substantial justification. For purposes of this Consent To Judgment , the term substantial
14 justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of
15 Civil Procedure §§ 2016, *et seq.*

16 Except as specifically provided for hereinabove, each Party shall bear its own costs and
17 attorney's fees in connection with the Notice.

18 Nothing in this Section shall preclude a Party from seeking an award of sanctions
19 pursuant to law.

20 **15. NEUTRAL CONSTRUCTION**

21 Both Parties and their counsel have participated in the preparation of this Consent To
22 Judgment and this Consent To Judgment is the result of the joint efforts of the Parties. This
23 Consent To Judgment was subject to revision and modification by the Parties and has been
24 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
25 uncertainty or ambiguity existing in this Consent To Judgment shall not be interpreted against
26 any Party as a result of the manner of the preparation of this Consent To Judgment. Each Party
27 to this Consent To Judgment agrees that any statute or rule of construction providing that

1 ambiguities are to be resolved against the drafting Party should not be employed in the
2 interpretation of this Consent To Judgment and, in this regard, the Parties hereby waive
3 California Civil Code Section 1654.

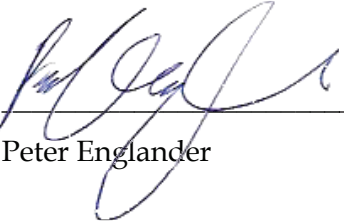
4 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

8 **17. AUTHORIZATION**

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

12 **IT IS SO AGREED**

14 Dated: March __, 2013 15 _____ 16 17 Brad Kraft, President 18 Hopkins Manufacturing Corporation	14 Dated: March <u>12</u> , 2013 15  16 _____ 17 Peter Englander
19 Dated: March __, 2013 20 _____ 21 22 Brad Kraft, President 23 Carrand Companies, Inc.	

1 ambiguities are to be resolved against the drafting Party should not be employed in the
2 interpretation of this Consent To Judgment and, in this regard, the Parties hereby waive
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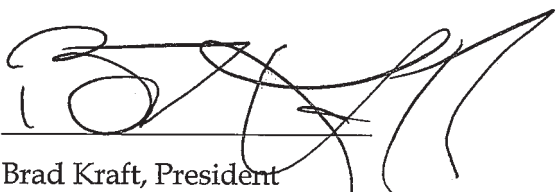
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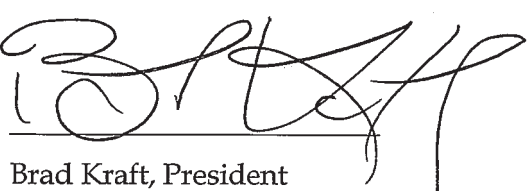
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10 on behalf of their respective Parties and have read, understood, and agree to all of the terms and
11 conditions of this Consent To Judgment.

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14 Dated: March <u>11</u> , 2013 15  16 _____ 17 Brad Kraft, President 18 Hopkins Manufacturing Corporation	14 Dated: March __, 2013 15 _____ 16 _____ 17 Peter Englander
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19 Dated: March <u>11</u> , 2013 20  21 _____ 22 Brad Kraft, President 23 Carrand Companies, Inc.
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