

1 **1. INTRODUCTION**

2 **1.1 Peter Englander and Iron Bridge Tools, Inc.**

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

6 **1.2 Peter Englander**

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

10 **1.3 Iron Bridge Tools, Inc.**

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

14 **1.4 General Allegations**

15 Englander alleges that Iron Bridge has manufactured, imported, distributed and/or sold in
16 the State of California hand tool grips containing di(2-ethylhexyl)phthalate (“DEHP”) without
17 first providing the clear and reasonable warning required by Proposition 65. DEHP is listed
18 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects
19 and other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as hand tool clamps
22 with grips including, but not limited to, the *Husky Clamp*, #690 694 (#8 11187 01209 6) which
23 are manufactured, imported, distributed, sold and/or offered for sale by Iron Bridge in the State
24 of California, hereinafter the “Products.”

1 **1.6 Notices of Violation**

2 On or about June 15, 2012, Englander served Iron Bridge and certain requisite public
3 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Iron Bridge
4 was in violation of Proposition 65 for failing to warn its customers and consumers in California
5 that the Products expose users to DEHP.

6 On or about October 26, 2012, Englander served Iron Bridge, The Home Depot, Inc.
7 (“Home Depot”) and certain requisite public enforcement agencies with a “Supplemental 60-Day
8 Notice of Violation” (“Supplemental Notice”) alleging that Iron Bridge and Home Depot were in
9 violation of Proposition 65 for failing to warn its customers and consumers in California that the
10 Products expose users to DEHP. To the best of the Parties knowledge, no public enforcer has
11 commenced and is diligently prosecuting the allegations set forth in the Notice. The Notice and
12 Supplemental Notice shall be collectively referred to hereinafter as the “Notices.”

13 **1.7 Complaints**

14 On September 12, 2012, Englander filed a complaint in the Superior Court in and for the
15 County of Santa Clara against Iron Bridge and Does 1 through 150, *Englander v. Iron Bridge Tools,*
16 *Inc., et al.*, Case No. 112CV232186 (the “Action”), alleging violations of California Health &
17 Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain hand tool
18 grips sold by Iron Bridge in the State of California. On January 7, 2013, Englander filed a First
19 Amended Complaint in the instant action against Iron Bridge (“FAC”) for the alleged violations
20 of Health and Safety Code section 25249.6 that are the subject of the Notices.

21 **1.8 No Admission**

22 Iron Bridge denies the material, factual and legal allegations contained in Englander’s
23 Notices and Complaints and maintains that all products that it has sold, manufactured, imported
24 and/or distributed in California, including the Products, have been and are in compliance with all
25 laws. Nothing in this Consent Judgment shall be construed as an admission by Iron Bridge of any
26 fact, finding, issue of law or violation of law, nor shall compliance with this Consent Judgment
27 constitute or be construed as an admission by Iron Bridge of any fact, finding, conclusion, issue of
28

1 law or violation of law. However, this section shall not diminish or otherwise affect Iron Bridge's
2 obligations, responsibilities and duties under this Consent Judgment.

3 **1.9 Consent to Jurisdiction**

4 For purposes of this Consent Judgment only, the parties stipulate that this Court has
5 jurisdiction over Iron Bridge as to the allegations contained in the FAC, that venue is proper in the
6 County of Santa Clara and that this Court has jurisdiction to enter and enforce the provisions of this
7 Consent Judgment.

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term "Effective Date" shall mean January 30,
10 2014.

11 **2. INJUNCTIVE RELIEF: REFORMULATION**

12 **2.1 Reformulation Standards**

13 "Reformulated Products" are defined as those Products containing DEHP in
14 concentrations of no more than 0.1 percent (1,000 parts per million) by weight in each accessible
15 component of the Products when analyzed pursuant to U.S. Environmental Protection Agency
16 testing methodologies 3580A and 8270C or other methodology utilized by federal or state
17 government agencies for the purpose of determining DEHP content in a solid substance.
18 Accessible component means a component of the Products that could be used to grip or handle the
19 Products by a person during reasonably foreseeable use.

20 **2.2 Reformulation Commitment**

21 Within ninety (90) days of the Effective Date, all Products manufactured, imported, or
22 distributed in the State of California by Iron Bridge shall be Products that qualify as Reformulated
23 Products as defined in Section 2.1 above.

24 **2.3 Vendor Notification**

25 On or before the Effective Date, Iron Bridge shall provide the Reformulated Products
26 standard to its then-current vendors of Products that will be sold or offered for sale to California
27 consumers, and shall instruct each vendor to use reasonable efforts to provide Reformulated
28 Products expeditiously. In addressing the obligation set forth in the preceding sentence, Iron Bridge

1 shall not employ statements that will encourage a vendor to delay compliance with providing
2 Reformulated Products. Upon request, Iron Bridge shall provide Englander with copies of such
3 vendor notification and Englander shall regard such copies as confidential business information.

4 **3. MONETARY PAYMENTS**

5 In settlement of all the claims referred to in this Consent Judgment, Iron Bridge shall pay a
6 total of \$40,000 in civil penalties in accordance with this Section. Each penalty payment will be
7 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75%
8 of the funds remitted to the California Office of Environmental Health Hazard Assessment
9 (“OEHHA”) and the remaining 25% of the penalty remitted to Englander, as follows:

10 **3.1 Initial Civil Penalty**

11 Iron Bridge shall pay an initial civil penalty in the amount of \$10,000 on or before January
12 30, 2014. Iron Bridge shall issue two separate checks to: (a) “OEHHA” in the amount of \$7,500;
13 and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$2,500. All penalty
14 payments shall be delivered to the addresses listed in Section 3.3 below.

15 **3.2 Final Civil Penalty**

16 Iron Bridge shall pay a final civil penalty of \$30,000 on or before July 31, 2014. The
17 final civil penalty shall be waived in its entirety, however, if, no later than July 15, 2014, an
18 officer of Iron Bridge provides Englander with written certification that, as of the date of such
19 certification and continuing into the future, Iron Bridge has met the reformulation standard
20 specified in Section 2 above, such that all Products manufactured, imported, distributed, sold and
21 offered for sale in California by Iron Bridge are Reformulated Products. Englander must receive
22 any such certification on or before July 15, 2014. The certification in lieu of a final civil penalty
23 payment provided by this Section is a material term, and time is of the essence. Iron Bridge shall
24 issue two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of
25 \$22,500; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$7,500.
26
27
28

1 **3.3 Payment Procedures**

2 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

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

5 The Chanler Group
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

8 (b) All payments owed to OEHHHA (EIN: 68-0284486), pursuant to Sections
9 3.1 through 3.2, shall be delivered directly to OEHHHA (Memo line "Prop
10 65 Penalties") at the following addresses:

11 For United States Postal Service Delivery:

12 Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 P.O. Box 4010
 Sacramento, CA 95812-4010

16 For Non-United States Postal Service Delivery:

17 Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
 1001 I Street
 Sacramento, CA 95814

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

23 **3.3.2 Issuance of 1099 Forms.** After each penalty payment, Iron Bridge shall
24 issue separate 1099 forms for each payment to Englander, whose address and tax identification
25 number shall be furnished upon request after this Consent Judgment has been fully executed by the
26 Parties, and OEHHHA at the addresses listed in Section 3.3.1 above.

1 **4. REIMBURSEMENT OF FEES AND COSTS**

2 The parties acknowledge that Englander and his counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
4 this fee issue to be resolved after the material terms of the agreement had been settled. Englander
5 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms
6 had been finalized. The parties then attempted to (and did) reach an accord on the compensation
7 due to Englander and his counsel under general contract principles and the private attorney
8 general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed
9 through the mutual execution of this agreement. Iron Bridge shall pay \$45,000 for fees and costs
10 incurred as a result of investigating, bringing this matter to Iron Bridge's attention, and
11 negotiating a settlement in the public interest. Iron Bridge shall issue a separate 1099 for fees and
12 costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver
13 payment on or before February 28, 2014.

14 **5. CLAIMS COVERED AND RELEASED**

15 **5.1 Final and Binding Resolution between Englander and Iron Bridge**

16 This Consent Judgment is a full, final and binding resolution between Englander and Iron
17 Bridge and its parents, subsidiaries, affiliated entities under common ownership, directors,
18 officers, employees, attorneys, and each entity to whom Iron Bridge directly or indirectly
19 distributes or sells the Products, including, without limitation, its downstream distributors,
20 wholesalers, customers, retailers, including but not limited to The Home Depot, Inc., franchisees,
21 cooperative members, and licensees ("Releasees") from all claims, demands, suits, liabilities,
22 causes of action or actions, now or in the future, for violations of Proposition 65 based on alleged
23 exposures to DEHP in the Products as set forth in the Notices.

24 **5.2 Englander's Public Release of Proposition 65 Claims**

25 Englander, acting on his own behalf and in the public interest, and on behalf of each of his
26 predecessors, successors, partners, partnerships, agents, representatives, insurers, attorneys,
27 heirs, assignors and assignees, accountants and all persons and entities acting or claiming by,
28 through, under or in concert with any of them, hereby waives all rights to institute or participate

1 in, directly or indirectly, any form of legal action and irrevocably releases and forever discharges
2 all claims including without limitation, all causes of action or actions, in law or in equity,
3 demands, suits, liabilities, damages, costs, fines, penalties, or expenses (including but not limited
4 to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, now or in the
5 future, (collectively "Claims") against Iron Bridge and its Releasees arising from any alleged
6 violations of Proposition 65 based on alleged exposures to DEHP in the Products as set forth in
7 the Notices. Compliance with the terms of this Consent Judgment constitutes compliance with
8 Proposition 65 with respect to exposures to DEHP in the Products.

9 **5.3 Englander's Individual Release of Claims**

10 Plaintiff also, in his individual capacity only and *not* in his representative capacity, provides
11 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
12 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
13 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,
14 suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the
15 Products manufactured, distributed or sold by Iron Bridge or its Releasees. Englander
16 acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides
17 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
20 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
21 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.

22 Englander, in his individual capacity only and not in his representative capacity, expressly
23 waives and relinquishes any and all rights and benefits which he may have under, or which may
24 be conferred on him by the provisions of Section 1542 of the California Civil Code as well as
25 under any other state or federal statute or common law principle of similar effect, to the fullest
26 extent that he may lawfully waive such rights or benefits pertaining to the released matters. In
27 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
28

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

3 **5.4 Iron Bridge's Release of Englander**

4 Iron Bridge on behalf of itself, its past and current agents, representatives, attorneys,
5 successors and/or assignees, hereby waives any and all claims against Englander, his attorneys and
6 other representatives, for any and all actions taken or statements made (or those that could have
7 been taken or made) by Englander and his attorneys and other representatives, whether in the course
8 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
9 respect to the Products.

10 Iron Bridge acknowledges that it is familiar with Section 1542 of the California Civil
11 Code, which provides as follows:

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

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

23 **6. COURT APPROVAL**

24 This Consent Judgment is not effective until it is approved and entered by the Court and
25 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
26 after it has been fully executed by all parties.
27
28

1 **7. SEVERABILITY**

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

5 **8. GOVERNING LAW**

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

15 **9. NOTICES**

16 Unless specified herein, all correspondence and notices required to be provided pursuant to
17 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
18 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
19 other party at the following addresses:

20 To Peter Englander:

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

26 To Iron Bridge:

27 Oto Gonzalez
28 Vice President of Operations
29 Iron Bridge Tools, Inc.
30 624 South Military Trail
31 Deerfield Beach, FL 33442

1 With a copy to:

2 Hany S. Fangary
3 Velasco Law Group, APC
4 100 W. Broadway, Suite 255
Long Beach, CA 90802
hany@velascolawgroup.com

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

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

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

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

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

14 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

15 Englander and Iron Bridge agree to mutually employ their best efforts to support the entry of
16 this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in
17 a timely manner. The parties acknowledge that, pursuant to California Health & Safety Code
18 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which
19 Englander shall draft and file, and Iron Bridge shall join. If any third party objection to the
20 noticed motion is filed, Englander and Iron Bridge shall work together to file a joint reply and
21 appear at any hearing before the Court. This provision is a material component of the Consent
22 Judgment and shall be treated as such in the event of a breach. If the Court does not approve the
23 motion to approve this Consent Judgment, and the Parties choose not to pursue a modified
24 Consent Judgment within 30 days of said denial, or in the event that the Court approves this
25 Consent Judgment and any person successfully appeals that approval, all payments made
26 pursuant to this Consent Judgment will be returned to Iron Bridge with interest at the prevailing
27 Federal Funds rate within sixty (60) days of the Court's denial of the motion to approve the
28 Consent Judgment or the successful appeal of approval of the Consent Judgment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13. MODIFICATION

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

14. AUTHORIZATION

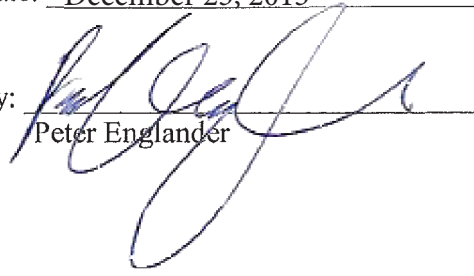
The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

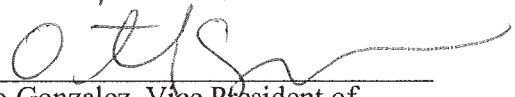
AGREED TO:

AGREED TO:

Date: December 23, 2013

Date: 12/20/2013

By: 
Peter Englander

By: 
Oto Gonzalez, Vice President of
Operations
Iron Bridge Tools, Inc.