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5

6 Attorneys for Plaintiff  
PETER ENGLANDER  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
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12  
13 PETER ENGLANDER,

14 Plaintiff,

15 v.

16 BLACK POINT PRODUCTS, INC.;  
17 STEREN ELECTRONICS  
INTERNATIONAL, LLC; *et al.*,

18 Defendants.  
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Case No. RG12654342

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.*)

1           **1. INTRODUCTION**

2                   **1.1 Parties**

3                   This Consent Judgment is entered into by and between plaintiff, Peter Englander  
4 (“Englander”), and defendants, Black Point Products, Inc. (“Black Point”) and Steren Electronics  
5 International, LLC (“Steren”), with Englander and Black Point and Steren collectively referred to as  
6 the “Parties” and individually as a “Party.”

7                   **1.2 Plaintiff**

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

11                   **1.3 Defendants**

12                   Black Point and Steren each employ ten or more persons and each is a person in the course of  
13 doing business for purposes of The Safe Drinking Water and Toxic Enforcement Act of 1986, Health  
14 & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

15                   **1.4 General Allegations**

16                   Englander alleges that Black Point and Steren sold hand tools with grips containing di(2-  
17 ethylhexyl) phthalate (“DEHP”) without first providing the clear and reasonable warning required by  
18 Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of  
19 California to cause birth defects and other reproductive harm.

20                   **1.5 Product Description**

21                   The products that are covered by this Consent Judgment are hand tools with grips containing  
22 DEHP including, but not limited to, the *Steren Coax Crimp Tool, BV-67 (#0 14759 00567 4)*,  
23 manufactured and/or distributed or sold by Black Point and Steren directly or through others, to  
24 consumers in California (collectively, “Products”).

25                   **1.6 Notices of Violation**

26                   On or about August 16, 2012, Englander served both Black Point and Steren, and various  
27 public enforcement agencies, with a “60-Day Notice of Violation” (“Notice”), a document that  
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1 informed the recipients of Englander’s allegations that Black Point and Steren were in violation of  
2 Proposition 65 for failing to warn their customers and consumers in California that the Products  
3 expose users to DEHP.

4 **1.7 Complaint**

5 On October 31, 2012, Englander filed the instant action against Black Point and Steren  
6 (“Complaint”) for the violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

7 **1.8 No Admission**

8 Black Point and Steren deny the material, factual, and legal allegations contained in the  
9 Notice and Complaint, and maintain that all of the products that they have manufactured, distributed,  
10 and sold California, including the Products, have been, and are, in compliance with all laws. Nothing  
11 in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,  
12 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be  
13 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.  
14 This Section shall not, however, diminish or otherwise affect Black Point’s and Steren’s obligations,  
15 responsibilities, and duties under this Consent Judgment.

16 **1.9 Consent to Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
18 jurisdiction over Black Point and Steren as to the allegations in the Complaint, that venue is proper in  
19 Alameda County, and that the Court has jurisdiction to enter and enforce the provisions of this  
20 Consent Judgment.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” shall mean January 15,  
23 2013.

24 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

25 **2.1 Reformulated Products**

26 Commencing on the Effective Date and continuing thereafter, Black Point and Steren shall  
27 only ship, sell, or offer to ship for sale in California, Products that are Reformulated Products or that  
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1 are sold with a clear and reasonable warning pursuant to Section 2.2. For purposes of this Settlement  
2 Agreement, “Reformulated Products” are Products containing a maximum of 1,000 parts per million  
3 of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent  
4 methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a  
5 solid substance.

6 **2.2 Product Warnings**

7 Commencing on the Effective Date and continuing thereafter, Black Point and Steren shall,  
8 for all Products that are not Reformulated Products as defined by Section 2.1, provide a clear and  
9 reasonable warning in compliance with this section. Each warning shall be prominently placed with  
10 such conspicuousness as compared with other words, statements, designs, or devices as to render it  
11 likely to be read and understood by an ordinary individual under customary conditions before  
12 purchase or use. Each warning shall be provided in a manner such that the consumer or user  
13 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer  
14 confusion.

15 Black Point and Steren shall affix the warning to the Product packaging, labeling, or, if no  
16 packaging or labeling exists, directly on each Product sold in California that states:

17 **WARNING:** This product contains chemicals, including di(2-  
18 ethylhexyl) phthalate, known to the State of  
19 California to cause cancer and birth defects and  
20 other reproductive harm.

21 **3. MONETARY PAYMENTS**

22 **3.1 Civil Penalty Payment**

23 Black Point and Steren shall pay at total civil penalty of \$15,000 pursuant to the terms and  
24 conditions of this section, as follows:

25 **3.1.1 Initial Civil Penalty.** Black Point and Steren shall pay an initial civil penalty  
26 of \$6,000 pursuant to Health & Safety Code § 25249.7(b), on or before the Effective Date as set forth  
27 in Section 3.3.1. The penalty payments will be allocated according to Health & Safety Code §  
28 25249.12 (c)(1) and (d), with seventy-five percent (75%) of the penalty amount earmarked for the

1 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining  
2 twenty-five (25%) of the penalty amount earmarked for Englander.

3           **3.1.2 Final Civil Penalty.** Black Point and Steren shall pay a final civil penalty of  
4 \$9,000 within one-hundred and fifteen (115) days after the Effective Date, as provided by Section  
5 3.3.2. The final civil penalty shall be waived in its entirety, however, if an officer of Black Point and  
6 Steren provides Englander with written certification that Black Point and Steren have met the  
7 Reformulation Standard specified in Section 2.1 above such that all Products manufactured,  
8 produced, assembled, imported, distributed, shipped, sold or offered to ship for sale in California are,  
9 as of the date of the certification, and will continue to be, Reformulated Products. Englander must  
10 receive any such certification within one-hundred (100) days after the Effective Date, and time is of  
11 the essence. The final civil penalty shall also be apportioned in accordance with California Health &  
12 Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to OEHHA and the remaining  
13 25% of the penalty remitted to Englander.

14           **3.2 Reimbursement of Englander’s Fees and Costs**

15           The Parties acknowledge that Englander and his counsel offered to resolve this dispute  
16 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
17 the issue to be resolved after the material terms of the agreement had been settled. Shortly after all  
18 other settlement terms had been finalized, Black Point and Steren expressed a desire to resolve the  
19 fee and costs issue. The Parties then attempted to (and did) reach an accord on the compensation  
20 due Englander and his counsel under general contract principles and the private attorney general  
21 doctrine codified at Code of Civil Procedure § 1021.5 for all work performed in this matter  
22 exclusive of fees and costs incurred on appeal, if any. Under these legal principles, on or before the  
23 Effective Date, Black Point and Steren collectively shall pay \$35,000 for fees and costs incurred  
24 investigating, litigating, and enforcing this matter, including the fees and costs incurred (and yet to  
25 be incurred) drafting, negotiating, and obtaining the Court’s approval of this Consent Judgment in  
26 the public interest.  
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1                   **3.3     Payment Procedures**

2                           **3.3.1    Initial Payments**

3                           All payments made under this Consent Judgment shall be held in trust until the Court  
4 approves the settlement. The Parties acknowledge that Englander’s counsel gave Black Point and  
5 Steren the option of depositing the funds into an attorney’s trust account, but that Black Point and  
6 Steren elected to have The Chanler Group hold the settlement funds in trust until such time as the  
7 hearing of the motion for judicial approval. Settlement funds delivered to The Chanler Group shall  
8 be in the form of three checks for the following amounts, made payable to:

- 9                           (a)       “The Chanler Group in Trust for OEHHA” in the amount of \$4,500;  
10                          (b)       “The Chanler Group in Trust for Peter Englander” in the amount of \$1,500;  
11                          and  
12                          (c)       “The Chanler Group in Trust” in the amount of \$35,000.

13                          **3.3.2    Final Civil Penalty Payments.** If the final civil penalty of \$9,000 referenced  
14 in Section 3.1.2 above is not waived, payments shall be delivered within one-hundred and fifteen  
15 (115) days of the Effective Date to The Chanler Group in two checks, as follows:

- 16                           (a)       One check made payable to “The Chanler Group in Trust for OEHHA”  
17   in the amount of \$6,750; and  
18                           (b)       One check to “The Chanler Group in Trust for Peter Englander” in the  
19   amount of \$2,250.

20                          **3.3.3    Issuance of 1099 Forms**

21                           After the Consent Judgment has been approved, Black Point and/or Steren shall  
22 provide Englander’s counsel with a separate 1099 form for each of its payments to:

- 23                           (a)       “Office of Environmental Health Hazard Assessment,” P.O. Box 4010,  
24   Sacramento, CA 95814 (EIN: 68-0284486) for the civil penalty payment in the 2012  
25   calendar year;

1 (b) "Peter Englander," whose address and tax identification number shall be  
2 furnished upon request after this Consent Judgment has been fully executed by the  
3 Parties, for the civil penalty payment in the 2012 calendar year; and

4 (c) "The Chanler Group" (EIN: 94-3171522) for the reimbursement of  
5 Englander's fees and costs pursuant to Section 3.2.

6 (d) If the penalty of \$9,000 referenced in Section 3.1.2 above is paid, a fourth  
7 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O.  
8 Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$6,750; and

9 (e) If the penalty of \$9,000 referenced in Section 3.1.2 above is paid, a fifth 1099  
10 shall be issued to Englander in the amount of \$2,250, whose address and tax  
11 identification number shall be furnished upon request.

### 12 **3.3.3 Payment Address**

13 All payments and tax forms required by this Consent Judgment shall be delivered to  
14 the following address:

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

## 20 **4. CLAIMS COVERED AND RELEASED**

### 21 **4.1 Englander's Public Release of Proposition 65 Claims**

22 Englander, on behalf of himself, his past and current agents, representatives, attorneys,  
23 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to  
24 institute or participate in, directly or indirectly, any form of legal action and releases Black Point and  
25 Steren and each of their respective parents, subsidiaries, affiliated entities under common ownership,  
26 directors, officers, employees, and attorneys ("Defendant Releasees") and each entity to whom they  
27 directly or indirectly distribute or sell the Products, distributors, wholesalers, customers, retailers,  
28 franchisers, cooperative members, licensors and licensees ("Downstream Defendant Releasees") of  
any violation of Proposition 65 that was or could have been asserted in the Complaint against Black

1 Point, Steren, Defendant Releasees and Downstream Defendant Releasees arising under Proposition  
2 65 for unwarned exposures to DEHP contained in the Products manufactured, distributed, and sold by  
3 Black Point and Steren prior to the Effective Date, as set forth in the Notice. Compliance with the  
4 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures  
5 to DEHP from the Products manufactured, distributed, and sold by Black Point and Steren before the  
6 Effective Date, as set forth in the Notice and Complaint.

7 **4.2 Englander’s Individual Release of Claims**

8 Englander, in his individual capacity only and *not* in his representative capacity, also  
9 provides a release to Black Point, Steren, Defendant Releasees and Downstream Defendant  
10 Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions,  
11 causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities  
12 and demands of Englander of any nature, character, or kind, whether known or unknown, suspected  
13 or unsuspected, arising out of alleged or actual exposures to DEHP in the Products manufactured,  
14 sold or distributed for sale by Black Point and Steren before the Effective Date.

15 **4.3 Black Point’s and Steren’s Releases of Englander**

16 Black Point and Steren, on behalf of themselves and on behalf of their past and current  
17 agents, representatives, attorneys, successors, and/or assignees, each hereby waive any and all  
18 claims against Englander and his attorneys and other representatives, for any and all actions taken  
19 or statements made (or those that could have been taken or made) by Englander and his attorneys  
20 and other representatives, whether in the course of investigating claims, otherwise seeking to  
21 enforce Proposition 65 against it in this matter, or with respect to the Products.

22 **5. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
24 be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
25 has been fully executed by all Parties.  
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1           **6. SEVERABILITY**

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

5           **7. 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 is  
8 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Black Point  
9 and/or Steren may provide written notice to Englander of any asserted change in the law, and shall  
10 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,  
11 the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Black  
12 Point or Steren from any obligation to comply with any pertinent state or federal toxics control laws.

13           **8. NOTICES**

14           Unless specified herein, all correspondence and notices required by this Consent Judgment  
15 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,  
16 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

17 For Steren:

18           Darren E. Rawson, President  
19           Steren Electronics International, LLC  
20           6260 Sequence Drive, Suite 110  
21           San Diego, California 92121

22 For Black Point:

23           Tom Duenas, General Manager  
24           Black Point Products, Inc.  
25           2000 Wright Avenue  
26           Richmond, California 94804

27 For Englander:

28           Proposition 65 Coordinator  
              The Chanler Group  
              2560 Ninth Street  
              Parker Plaza, Suite 214  
              Berkeley, CA 94710

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

3 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

7 **10. POST EXECUTION ACTIVITIES**

8 Englander agrees to comply with the reporting form requirements referenced in Health &  
9 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code  
10 § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of the settlement. In  
11 furtherance of obtaining such approval, Englander, Black Point, and Steren agree to mutually employ  
12 their best efforts to support the entry of their settlement as a Consent Judgment and to obtain judicial  
13 approval of the same in a timely manner. For purposes of this Section, “best efforts” shall include, at  
14 a minimum, cooperating on the drafting and filing of the necessary moving papers and supporting the  
15 motion for judicial approval.

16 **11. MODIFICATION**

17 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
18 upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or  
19 application of any Party and the entry of a modified consent judgment by the Court.

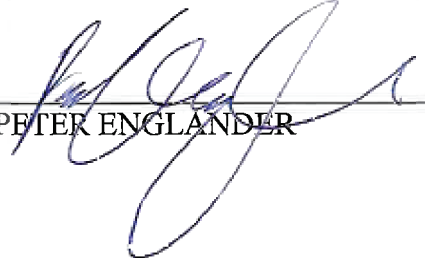
20 **12. AUTHORIZATION**

21 The undersigned are authorized to execute this Consent Judgment and have read, understood,  
22 and agree to all of the terms and conditions contained herein.  
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**AGREED TO:**

Date: January 15, 2013

By:   
PETER ENGLANDER

**AGREED TO:**

Date: 1/13/13

By:   
Darren Rawson, President  
STERENELECTRONICS  
INTERNATIONAL, LLC

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Tom Duenas, General Manager  
BLACK POINT PRODUCTS, INC.

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**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
PETER ENGLANDER

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Darren Rawson, President  
STERENELECTRONICS  
INTERNATIONAL, LLC

Date: 1-11-2013

By: Thomas Duenas  
Tom Duenas, General Manager  
BLACK POINT PRODUCTS, INC.