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(ENDORSED)
FILED

AUG 15 2012

David H. Yamazaki, Clerk of the Superior Court
County of Santa Clara, California
By: P. P. Engli
Deputy Clerk

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION

11
12 PETER ENGLANDER,
13 Plaintiff,
14 v.
15 ACCOUTREMENTS LLC; and DOES 1-150,
inclusive,
16 Defendants.
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Case No. 112CV230462
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(Cal. Health & Safety Code § 25249.6 et seq.)

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1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff PETER
3 ENGLANDER, in the public interest of the citizens of the State of California, to enforce the
4 People’s right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic
5 chemical found in placemats, toiletry cases/bags, and shower curtains sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant’s continuing failure to warn
7 California citizens about their exposure to DEHP, present in or on certain placemats, toiletry
8 cases/bags, and shower curtains that defendant manufactures, imports, distributes, and/or offers
9 for sale to consumers and businesses throughout the State of California.

10 3. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
11 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “No person in the course
12 of doing business shall knowingly and intentionally expose any individual to a chemical known
13 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
14 warning to such individual...” (*Cal. Health & Safety Code § 25249.6.*)

15 4. On October 24, 2003, California identified and listed DEHP as a chemical known
16 to cause birth defects and other reproductive harm. DEHP became subject to the warning
17 requirement one year later and was, therefore, subject to the “clear and reasonable warning”
18 requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code §§ 25249.8.*)

20 5. Defendant manufactures, imports, distributes, and/or sells placemats, toiletry
21 cases/bags, and shower curtains containing DEHP including, but not limited to, (1) *Bacon*
22 *Placemat, Item #11830 (#7 39048 11830 8); (2) Sushi Placemats Set of 2, Item #11329 (#7*
23 *39048 11329 7); (3) Parasite Pals Carrying Bag, Item #11298 (#7 39048 11298 6); and (4)*
24 *Lucky Dice Vinyl Shower Curtain, Item #11150 (#7 39048 11150 7), hereinafter referred to as the*
25 *“PRODUCTS.”*

26 6. Defendant’s failure to warn consumers and/or other individuals in the State of
27 California not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et*
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1 *seq.* about their exposure to DEHP in conjunction with defendant's distribution, importation,
2 manufacturing, and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects them
3 to enjoinder of such conduct as well as civil penalties for each such violation.

4 7. For defendant's violation of Proposition 65, plaintiff seeks preliminary injunctive
5 and permanent injunctive relief to compel defendant to provide purchasers or users of the
6 PRODUCTS with the required warning regarding the health hazards of DEHP. (*Cal. Health &*
7 *Safety Code § 25249.7(a).*)

8 8. Plaintiff also seeks civil penalties against defendants for their violations of
9 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

10 **PARTIES**

11 9. PETER ENGLANDER is a citizen of the State of California who is dedicated to
12 protecting the health of California citizens through the elimination or reduction of toxic
13 exposures from consumer and commercial products, and brings this action in the public interest
14 pursuant to California Health & Safety Code § 25249.7.

15 10. ACCOUTREMENTS LLC ("ACCOUTREMENTS") is a person doing business
16 within the meaning of California Health & Safety Code § 25249.11.

17 11. ACCOUTREMENTS manufactures, imports, distributes, sells and/or offers the
18 PRODUCTS for sale or use in the State of California or implies by its conduct that it
19 manufactures, imports, distributes, sells and/or offers the PRODUCTS for sale or use in the State
20 of California.

21 12. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons
22 doing business within the meaning of California Health & Safety Code § 25249.11.

23 13. MANUFACTURER DEFENDANTS engage in the process of research, testing,
24 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
25 engage in the process of research, testing, designing, assembling, fabricating, and/or
26 manufacturing one or more of the PRODUCTS for sale or use in the State of California.

1 14. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
2 doing business within the meaning of California Health & Safety Code § 25249.11.

3 15. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
4 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in
5 the State of California.

6 16. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons
7 doing business within the meaning of California Health & Safety Code § 25249.11.

8 17. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
9 State of California and, in some circumstances, may also be manufacturers and/or distributors.

10 18. At this time, the true names of defendants DOES 1 through 150, inclusive, are
11 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
12 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
13 each of the fictitiously named defendants is responsible for the acts and occurrences herein
14 alleged. When ascertained, their true names shall be reflected in an amended complaint.

15 19. ACCOUTREMENTS, MANUFACTURER DEFENDANTS, DISTRIBUTOR
16 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
17 referred to hereinafter as “DEFENDANTS.”

18 **VENUE AND JURISDICTION**

19 20. Venue is proper in the Santa Clara County Superior Court, pursuant to Code of
20 Civil Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction,
21 because one or more instances of wrongful conduct occurred, and continues to occur, in the
22 County of Santa Clara, and/or because DEFENDANTS conducted, and continue to conduct,
23 business in this County with respect to the PRODUCTS.

24 21. The California Superior Court has jurisdiction over this action pursuant to
25 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in
26 all causes except those given by statute to other trial courts.” The statute under which this action
27 is brought does not specify any other basis of subject matter jurisdiction.

1 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §
2 25249.6 has continued to occur beyond Defendants' receipt of the Notice. Plaintiff further
3 alleges and believes that such violations will continue to occur into the future.

4 28. After receipt of the claims asserted in the Notice, the appropriate public
5 enforcement agencies have failed to commence and diligently prosecute a cause of action against
6 DEFENDANTS under Proposition 65.

7 29. The PRODUCTS manufactured, imported, distributed, sold and/or offered for sale
8 or use in California by DEFENDANTS contained DEHP above the allowable state limits.

9 30. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
10 imported, distributed, sold and/or offered for sale or use by DEFENDANTS in California
11 contained DEHP.

12 31. DEHP was present in or on the PRODUCTS in such a way as to expose
13 individuals to DEHP through dermal contact and ingestion during the reasonably foreseeable use
14 of the PRODUCTS.

15 32. The normal and reasonably foreseeable use of the PRODUCTS has caused and
16 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by
17 27 California Code of Regulations ("CCR") § 25602(b).

18 33. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
19 the PRODUCTS would expose individuals to DEHP through dermal contact and ingestion.

20 34. DEFENDANTS intended that such exposures to DEHP from the reasonably
21 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
22 in the manufacture, importation, distribution, sale and/or offering for sale or use of PRODUCTS
23 to individuals in the State of California.

24 35. DEFENDANTS failed to provide a "clear and reasonable warning" to those
25 consumers and/or other individuals in the State of California who were or who could become
26 exposed to DEHP through dermal contact and ingestion during the reasonably foreseeable use of
27 the PRODUCTS.

1 36. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
2 directly by California voters, individuals exposed to DEHP through dermal contact and
3 ingestion, resulting from the reasonably foreseeable use of the PRODUCTS sold by
4 DEFENDANTS without a “clear and reasonable warning”, have suffered, and continue to suffer,
5 irreparable harm, for which harm they have no plain, speedy, or adequate remedy at law.

6 37. As a consequence of the above-described acts, DEFENDANTS are liable for a
7 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
8 Safety Code § 25249.7(b).

9 38. As a consequence of the above-described acts, California Health & Safety Code
10 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
11 DEFENDANTS.

12 **PRAYER FOR RELIEF**

13 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

14 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
15 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged
16 herein;

17 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
18 preliminarily and permanently enjoin DEFENDANTS from manufacturing, importing,
19 distributing, or offering the PRODUCTS for sale or use in California, without providing “clear
20 and reasonable warnings” as defined by 27 CCR § 25601, as to the harms associated with
21 exposures to DEHP;

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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: August 14, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 
Clifford A. Chanler
Attorneys for Plaintiff
PETER ENGLANDER