

1 Brian C. Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 PETER ENGLANDER

ENDORSED
FILED
ALAMEDA COUNTY

SEP 21 2012
CLERK OF THE SUPERIOR COURT
By Lanette Buffin, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 **RG12648953**

15 PETER ENGLANDER,

16 Plaintiff,

17 v.

18 VALLEY INDUSTRIES CORP.; and DOES
19 1-150, inclusive,

20 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

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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 lead, a toxic chemical found in hand tool grips
5 sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risk of exposure to lead present in and on hand tool grips
8 manufactured, distributed, and/or offered for sale or use to consumers throughout the state of
9 California.

10 3. High levels of lead are commonly found in and on hand tool grips that defendants
11 manufacture, distribute, and/or offer for sale to consumers throughout the state of California.

12 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
13 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of
14 doing business shall knowingly and intentionally expose any individual to a chemical known to
15 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
16 warning to such individual” Health & Safety Code § 25249.6.

17 5. On February 27, 1987, California identified and listed lead pursuant to
18 Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Lead
19 became subject to the “clear and reasonable warning” requirements of the Act one year later on
20 February 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
21 25249.10(b). Lead is referred to hereinafter as the “LISTED CHEMICAL.”

22 6. Defendants manufacture, distribute, and/or sell hand tool grips that contain
23 excessive levels of lead, including, but not limited to, those offered in connection with the
24 *Valley 1-1/4 lb. Hatchet, Item No. 200013 (#6 39469 02500 4)*. All such hand tool grips
25 containing lead are referred to collectively hereinafter as “PRODUCTS.”

26 7. Defendants’ failure to warn consumers and/or other individuals in the state of
27 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’
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1 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder
2 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)
3 & (b)(1).

4 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
5 permanent injunctive relief to compel defendants to provide purchasers or users of the
6 PRODUCTS with the required warning regarding the health hazards of the LISTED
7 CHEMICAL. Health & Safety Code § 25249.7(a).

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

10 PARTIES

11 10. Plaintiff PETER ENGLANDER is a citizen of the state of California who is
12 dedicated to protecting the health of California citizens through the elimination or reduction of
13 toxic exposures from consumer products; and he brings this action in the public interest
14 pursuant to Health and Safety Code section 25249.7(d).

15 11. Defendant VALLEY INDUSTRIES CORP. ("VALLEY") is a person in the
16 course of doing business within the meaning of Health and Safety Code section 25249.11.

17 12. VALLEY manufactures, distributes, and/or offers the PRODUCTS for sale or use
18 in the state of California, or implies by its conduct that it manufactures, distributes, and/or offers
19 the PRODUCTS for sale or use in the state of California.

20 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
21 persons in the course of doing business within the meaning of Health and Safety Code section
22 25249.11.

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

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1 such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day
2 notice of violation. Plaintiff further alleges that DEFENDANTS' violations are ongoing and
3 continuous in nature and, as such, will continue to occur in the future.

4 29. After receiving the claims asserted in the sixty-day notice of violation, the
5 appropriate public enforcement agencies have failed to commence and diligently prosecute a
6 cause of action against DEFENDANTS under Proposition 65.

7 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
8 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
9 allowable state limits, such that they require a "clear and reasonable" warning under Proposition
10 65.

11 31. DEFENDANTS knew or should have known that the PRODUCTS they
12 manufactured, distributed, and/or offered for sale or use in California contain the LISTED
13 CHEMICAL.

14 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
15 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

16 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
17 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
18 defined by California Code of Regulations title 27, section 25602(b).

19 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
20 the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact
21 and/or ingestion.

22 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
23 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
24 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for
25 sale or use to individuals in the state of California.

26 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
27 consumers and other individuals in the state of California who were or who could become
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1 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
2 reasonably foreseeable use of the PRODUCTS.

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

8 38. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
9 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
10 for each violation.

11 39. As a consequence of the above-described acts, Health and Safety Code
12 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
13 DEFENDANTS.

14 **PRAYER FOR RELIEF**

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

16 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
17 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

18 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
19 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
20 offering the PRODUCTS for sale or use in California without first providing “clear and
21 reasonable warnings” as defined by California Code of Regulations title 27, section 25601 *et*
22 *seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

23 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

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4. That the Court grant such other and further relief as may be just and proper.

Dated: September 21, 2012

Respectfully Submitted,
THE CHANLER GROUP



By: Brian C. Johnson
Attorneys for Plaintiff
PETER ENGLANDER