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ENDORSED

2013 MAR 18 2:55

D. W. Englander
Superior Court
County of Santa Clara
Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SANTA CLARA

13 UNLIMITED CIVIL JURISDICTION

113 CV 243152

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 GF HEALTH PRODUCTS, INC.; and DOES
18 1-150, inclusive,

19 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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BY FAX

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 blood pressure kits 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 DEHP present in and on blood pressure
8 kits manufactured, distributed, and offered for sale or use to consumers throughout the state of
9 California.

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

15 4. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
16 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
17 subject to the “clear and reasonable warning” requirements of the act one year later on October
18 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
19 25249.10(b).

20 5. Defendants manufacture, distribute, and sell blood pressure kits that contain
21 DEHP in levels that require a warning under Proposition 65 including, but not limited to, the
22 *Lumiscope Self Taking Blood Pressure Kit, Model 100-201, TYL309MS (#0 38673 00021 8)*.
23 All such blood pressure kits containing DEHP are referred to collectively hereinafter as
24 “PRODUCTS.”

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

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

7 8. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
8 penalties against defendants for their violations of Proposition 65.

9 **PARTIES**

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

14 10. Defendant GF HEALTH PRODUCTS, INC. ("GF HEALTH") is a person in the
15 course of doing business within the meaning of Health and Safety Code section 25249.11.

16 11. GF HEALTH manufactures, distributes, and/or offers the PRODUCTS for sale or
17 use in the state of California, or implies by its conduct that it manufactures, distributes, and/or
18 offers the PRODUCTS for sale or use in the state of California.

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

22 13. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
23 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
24 and manufacture one or more of the PRODUCTS offered for sale or use in the state of
25 California.

26 14. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
27 in the course of doing business within the meaning of Health and Safety Code section 25249.11.
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1 association that is a citizen of the state of California, has sufficient minimum contacts in the
2 state of California, and/or otherwise purposefully avails itself of the California market.
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
4 California courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of Proposition 65 - Against All Defendants)**

7 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
8 Paragraphs 1 through 22, inclusive.

9 24. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
10 Enforcement Act of 1986, the People of California expressly declare their right “[t]o be
11 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
12 harm.”

13 25. Proposition 65 states, “[n]o person in the course of doing business shall
14 knowingly and intentionally expose any individual to a chemical known to the state to cause
15 cancer or reproductive toxicity without first giving clear and reasonable warning to such
16 individual” Health & Safety Code § 25249.6.

17 26. On May 24, 2012, plaintiff’s sixty-day notice of violation, together with the
18 requisite certificate of merit, was provided to GF HEALTH and certain public enforcement
19 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing DEHP,
20 purchasers and users in the state of California were being exposed to DEHP resulting from the
21 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
22 first having been provided with a “clear and reasonable warning” regarding such toxic
23 exposures, as required by Proposition 65.

24 27. DEFENDANTS have engaged in the manufacture, distribution, and offering of
25 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
26 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day
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1 notice of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature,
2 and will continue to occur in the future.

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

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

9 30. DEFENDANTS knew or should have known that the PRODUCTS they
10 manufacture, distribute, and offer for sale or use in California contain DEHP.

11 31. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
12 through dermal contact and/or ingestion during reasonably foreseeable use.

13 32. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
14 continue to cause, consumer exposures to DEHP, as such exposures are defined by California
15 Code of Regulations title 27, section 25602(b).

16 33. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
17 of the PRODUCTS expose individuals to DEHP through dermal contact and/or ingestion.

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

22 35. DEFENDANTS failed to provide a "clear and reasonable warning" to those
23 consumers and other individuals in the state of California who were or who would become
24 exposed to DEHP through dermal contact and/or ingestion during the reasonably foreseeable
25 uses of the PRODUCTS.

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

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

7 38. As a consequence of the above-described acts, Health and Safety Code
8 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
9 DEFENDANTS.

10 **PRAYER FOR RELIEF**

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

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


14 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
16 offering the PRODUCTS for sale or use in California without first providing a "clear and
17 reasonable warning" as defined by California Code of Regulations title 27, section 25601 *et*
18 *seq.*, as to the harms associated with exposures DEHP;

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

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

21 Dated: March 14, 2013

22 Respectfully Submitted,
23 THE CHANLER GROUP

24 By: 
25 Harris A. Weinstein
26 Attorneys for Plaintiff
27 PETER ENGLANDER
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