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**ENDORSED
FILED
ALAMEDA COUNTY**

DEC 17 2012

CLERK OF THE SUPERIOR COURT
By Barbara LaMotte Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 FILO AMERICA; and DOES 1-150,
18 inclusive,

19 Defendants.

Case No. **RG12660027**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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 adhesive bandages sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
7 California citizens about the risk of exposure to DEHP present in and on the adhesive bandages
8 manufactured, distributed, and offered for sale or use to consumers throughout the State of
9 California.

10 3. Detectable levels of DEHP are commonly found in and on the adhesive bandages
11 that defendants manufacture, distribute, and offer for sale to consumers throughout the State of
12 California.

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

18 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
19 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
20 subject to the “clear and reasonable warning” requirements of the act one year later on October 24,
21 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
22 DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, import, sell, and/or offer for sale adhesive
24 bandages containing DEHP without a warning, including, but not limited to, the *Royal Bandage*
25 *Sensitive Skin, Lot #: 6637 (#7 93366 81121 1)*. All such adhesive bandages containing DEHP is
26 referred to collectively hereinafter as “PRODUCTS.”

27 7. Defendants’ failure to warn consumers and other individuals in the State of
28 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’ sales

1 of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder of such
2 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

3 8. 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 the LISTED CHEMICAL.
6 Health & Safety Code § 25249.7(a).

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

9 **PARTIES**

10 10. 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 pursuant to
13 Health and Safety Code § 25249.7(d).

14 11. Defendant FILO AMERICA ("FILO") is a person in the course of doing business
15 within the meaning of Health and Safety Code § 25249.11.

16 12. FILO manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale
17 or use in the State of California, or implies by its conduct that it manufactures, imports, distributes,
18 sells, and/or offers the PRODUCTS for sale or use in the State of California.

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

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

24 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person in
25 the course of doing business within the meaning of Health and Safety Code § 25249.11.

26 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
27 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in
28 the State of California.

1 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in the
2 course of doing business within the meaning of Health and Safety Code § 25249.11.

3 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
4 State of California.

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

10 20. FILO, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and
11 RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as
12 “DEFENDANTS.”

13 VENUE AND JURISDICTION

14 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
15 Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because
16 plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of wrongful
17 conduct occurred, and continue to occur, in Alameda County, and/or because DEFENDANTS
18 conducted, and continue to conduct, business in this county with respect to the PRODUCTS.

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

23 23. The California Superior Court has jurisdiction over DEFENDANTS based on
24 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
25 association that is a citizen of the State of California, has sufficient minimum contacts in the State
26 of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS’
27 purposeful availment renders the exercise of personal jurisdiction by California courts consistent
28 with traditional notions of fair play and substantial justice.

1 **FIRST CAUSE OF ACTION**

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

3 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 23, inclusive.

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

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

12 27. On or about June 15, 2012, plaintiff’s sixty-day notice of violation, together with the
13 requisite certificate of merit, was provided to FILO and certain public enforcement agencies stating
14 that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED
15 CHEMICAL, purchasers and users in the State of California were being exposed to the LISTED
16 CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS, without the
17 individual purchasers and users first having been provided with a “clear and reasonable warning”
18 regarding such toxic exposures, as required by Proposition 65.

19 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
20 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6,
21 and DEFENDANTS’ violations have continued to occur beyond their receipt of plaintiff’s sixty-
22 day notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in
23 nature, and will continue to occur in the future.

24 29. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
25 enforcement agencies have failed to commence and diligently prosecute a cause of action against
26 DEFENDANTS under Proposition 65.

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1 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or
2 use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require a
3 “clear and reasonable” warning under Proposition 65.

4 31. DEFENDANTS knew or should have known that the PRODUCTS they
5 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
6 CHEMICAL.

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

10 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
11 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are defined
12 by title 27 of the California Code of Regulations, section 25602(b).

13 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of
14 the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact and/or
15 ingestion.

16 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the
17 reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental
18 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS
19 for sale or use to individuals in the State of California.

20 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
21 consumers and other individuals in the State of California who were or who would become
22 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
23 reasonably foreseeable uses of the PRODUCTS.

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

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

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


6 **PRAYER FOR RELIEF**

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

- 8 1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil
9 penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;
- 10 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
11 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS
12 for sale or use in California without first providing a “clear and reasonable warning” as defined by
13 title 27 of the California Code of Regulations, section 25601 *et seq.*, as to the harms associated
14 with exposures the LISTED CHEMICAL;
- 15 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
- 16 4. That the Court grant such other and further relief as may be just and proper.

17 Dated: December 14, 2012

18 Respectfully Submitted,
19 THE CHANLER GROUP

20 By: 
21 Laralei S. Paras
22 Attorneys for Plaintiff
23 PETER ENGLANDER
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