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County of Santa Clara  
By \_\_\_\_\_ Jaurisai

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

112CV237082

PETER ENGLANDER,  
Plaintiff,  
v.  
COASTAL PET PRODUCTS, INC.; and  
DOES 1-150, inclusive,  
Defendants.

Case No. \_\_\_\_\_

**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 the grips of hand tools 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 the grips of hand  
8 tools manufactured, distributed, and offered for sale or use to consumers throughout the state of  
9 California.

10 3. High levels of DEHP are commonly found in and on the grips of hand tools that  
11 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 section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of  
15 doing business shall knowingly and intentionally expose any individual to a chemical known to  
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
17 warning to such 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  
21 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
22 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, and sell hand tools with grips that contain  
24 DEHP in levels that require a warning under Proposition 65, including, but not limited to, the  
25 *Safari by Coastal Stainless Steel Nail File, W6108 (#0 76484 51308 4)*. All such hand tools  
26 with grips containing DEHP are referred to collectively hereinafter as “PRODUCTS.”  
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1           7. Defendants' failure to warn consumers and other individuals in the state of  
2 California about their exposure to the LISTED CHEMICAL in conjunction with defendants'  
3 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoyment  
4 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)  
5 & (b)(1).

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

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

12   **PARTIES**

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

17           11. Defendant COASTAL PET PRODUCTS, INC. ("COASTAL") is a person in the  
18 course of doing business within the meaning of Health and Safety Code section 25249.11.

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

22           13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each  
23 persons in the course of doing business within the meaning of Health and Safety Code section  
24 25249.11.

25           14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
26 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
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1 and manufacture one or more of the PRODUCTS offered for sale or use in the state of  
2 California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
4 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

5 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
6 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
7 in the state of California.

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

10 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
11 state of California.

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

17 20. COASTAL, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
19 referred to as “DEFENDANTS.”

20 **VENUE AND JURISDICTION**

21 21. Venue is proper in the Santa Clara County Superior Court, pursuant to Code of  
22 Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent  
23 jurisdiction, because one or more instances of wrongful conduct occurred, and continue to  
24 occur, in Santa Clara County, and/or because DEFENDANTS conducted, and continue to  
25 conduct, business in this county with respect to the PRODUCTS.

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

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

9 **FIRST CAUSE OF ACTION**

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

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

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

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

21 27. On June 15, 2012, plaintiff’s sixty-day notice of violation, together with the  
22 requisite certificate of merit, was provided to COASTAL and certain public enforcement  
23 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the  
24 LISTED CHEMICAL, purchasers and users in the state of California were being exposed to the  
25 LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS,  
26 without the individual purchasers and users first having been provided with a “clear and  
27 reasonable warning” regarding such toxic exposures, as required by Proposition 65.  
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1           28. DEFENDANTS have engaged in the manufacture, distribution, and offering of  
2 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and  
3 DEFENDANTS' violations have continued to occur beyond their receipt of plaintiff's sixty-day  
4 notice of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature,  
5 and will continue to occur in the future.

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

9           30. The PRODUCTS manufactured, distributed, and offered for sale or use in  
10 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the  
11 allowable state limits, such that they require a "clear and reasonable" warning under Proposition  
12 65.

13           31. DEFENDANTS knew or should have known that the PRODUCTS they  
14 manufacture, distribute, and offer for sale or use in California contain the LISTED  
15 CHEMICAL.

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

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

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

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

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1 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
2 consumers and other individuals in the state of California who were or who would become  
3 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
4 reasonably foreseeable uses of the PRODUCTS.

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

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

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

16 **PRAYER FOR RELIEF**

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

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

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

25 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: December 3, 2012

Respectfully Submitted,  
THE CHANLER GROUP

  
By: \_\_\_\_\_  
Brian Johnson  
Attorneys for Plaintiff  
PETER ENGLANDER