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(ENDORSED)  
**FILED**  
JAN 7 2013

DAVID H. YAMASAKI  
Chief Executive Officer/Berk Smith  
Superior Court of CA County of Santa Clara  
DEPT

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

15 PETER ENGLANDER, ) Case No. 1-12-CV-232186  
16 )  
17 Plaintiff, )  
18 )  
19 v. ) **FIRST AMENDED COMPLAINT FOR**  
20 ) **CIVIL PENALTIES AND INJUNCTIVE**  
21 ) **RELIEF**  
22 IRON BRIDGE TOOLS, INC.; THE HOME )  
23 DEPOT, INC.; and DOES 1-150, inclusive, )  
24 )  
25 Defendants. ) (Cal. Health & Safety Code § 25249.6 et seq.)  
26 )  
27 )  
28 )

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 hand tool grips 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 hand tool grips that  
8 defendant manufactures, imports, distributes, and/or offers for sale to consumers throughout the  
9 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. Defendants Iron Bridge Tools, Inc. ("IRON BRIDGE") and The Home Depot, Inc.  
21 ("HOME DEPOT") manufacture, import, distribute and/or sell hand tool grips containing DEHP  
22 including, but not limited to, *Husky Clamp, #690 694 (#8 11187 01209 6)*, hereinafter referred to  
23 as the "Products."

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

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

7 8. Plaintiff also seeks civil penalties against IRON BRIDGE AND HOME DEPOT  
8 for their violations of Proposition 65, as provided for by California Health & Safety Code §  
9 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. IRON BRIDGE is a person doing business within the meaning of California Health  
16 & Safety Code § 25249.11.

17 11. IRON BRIDGE manufactures, imports, distributes and/or offers the Products for  
18 sale or use in the State of California or implies by its conduct that it manufactures, imports,  
19 distributes, and/or offers the Products for sale or use in the State of California.

20 12. HOME DEPOT is a person doing business within the meaning of California Health  
21 & Safety Code § 25249.11.

22 13. HOME DEPOT manufactures, imports, distributes and/or offers the Products for  
23 sale or use in the State of California or implies by its conduct that it manufactures, imports,  
24 distributes, and/or offers the Products for sale or use in the State of California.

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

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1 15. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
2 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they  
3 engage in the process of research, testing, designing, assembling, fabricating, and/or  
4 manufacturing, one or more of the Products for sale or use in the State of California.

5 16. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons  
6 doing business within the meaning of California Health & Safety Code § 25249.11.

7 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
8 transport one or more of the Products to individuals, businesses, or retailers for sale or use in the  
9 State of California.

10 18. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each persons  
11 doing business within the meaning of California Health & Safety Code § 25249.11.

12 19. RETAILER DEFENDANTS offer the Products for sale to individuals in the State  
13 of California and, in some circumstances, may also be manufacturers and/or distributors.

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

19 21. IRON BRIDGE, HOME DEPOT, MANUFACTURER DEFENDANTS,  
20 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,  
21 collectively be referred to hereinafter as "DEFENDANTS."

22 **VENUE AND JURISDICTION**

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

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

5           24. The California Superior Court has jurisdiction over DEFENDANTS based on  
6 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
7 association that either are citizens of the State of California, have sufficient minimum contacts in  
8 the State of California, or otherwise purposefully avail themselves of the California market.  
9 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California  
10 courts consistent with traditional notions of fair play and substantial justice.

11   **FIRST CAUSE OF ACTION**

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

13           25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
14 Paragraphs 1 through 24, inclusive.

15           26. The citizens of the State of California have expressly stated in Proposition 65 that  
16 they must be informed “about exposures to chemicals that cause cancer, birth defects and other  
17 reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

18           27. Proposition 65 states, “[n]o person in the course of doing business shall knowingly  
19 and intentionally expose any individual to a chemical known to the state to cause cancer or  
20 reproductive toxicity without first giving clear and reasonable warning to such individual...”  
21 (*Id.*)

22           28. On June 15, 2012, a 60-Day Notice of Violation, together with the requisite  
23 Certificate of Merit (the “Notice”), was provided to IRON BRIDGE and various public  
24 enforcement agencies stating that as a result of DEFENDANTS’ manufacture, distribution and/or  
25 sale of the Products, purchasers and users in the State of California were being exposed to DEHP  
26 resulting from the reasonably foreseeable uses of the Products, without the individual purchasers  
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1 and users first having been provided with a "clear and reasonable warning" regarding such toxic  
2 exposures.

3 29. On October 26, 2012, a 60-Day Notice of Violation, together with the requisite  
4 Certificate of Merit (the "Supplemental Notice"), was provided to IRON BRIDGE, HOME  
5 DEPOT and various public enforcement agencies stating that as a result of DEFENDANTS'  
6 manufacture, distribution and/or sale of the Products, purchasers and users in the State of  
7 California were being exposed to DEHP resulting from the reasonably foreseeable uses of the  
8 Products, without the individual purchasers and users first having been provided with a "clear  
9 and reasonable warning" regarding such toxic exposures.

10 30. The Notice and Supplemental Notice shall be collectively referred to hereinafter  
11 as, the "Notices."

12 31. DEFENDANTS have engaged in the manufacture, importation, distribution and/or  
13 offering of the Products for sale or use in violation of California Health & Safety Code § 25249.6  
14 and DEFENDANTS' manufacture, importation, distribution and/or offering of the Products for  
15 sale or use in violation of California Health & Safety Code § 25249.6 has continued to occur  
16 beyond IRON BRIDGE'S and HOME DEPOT'S receipt of plaintiff's Notices. Plaintiff further  
17 alleges and believes that such violations will continue to occur into the future.

18 32. After receipt of the claims asserted in the Notices, the appropriate public  
19 enforcement agencies have failed to commence and diligently prosecute a cause of action against  
20 DEFENDANTS under Proposition 65.

21 33. The Products manufactured, imported, distributed and/or offered for sale or use in  
22 California by DEFENDANTS contained DEHP above the allowable state limits.

23 34. DEFENDANTS knew or should have known that the Products manufactured,  
24 imported, distributed and/or offered for sale or use by DEFENDANTS in California contained  
25 DEHP.

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1           35. DEHP was present in or on the Products in such a way as to expose individuals to  
2 DEHP through dermal contact and ingestion during the reasonably foreseeable use of the  
3 PRODUCTS.

4           36. The normal and reasonably foreseeable use of the Products has caused and  
5 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by  
6 27 California Code of Regulations ("CCR") § 25602(b).

7           37. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
8 the Products would expose individuals to DEHP through dermal contact and ingestion.

9           38. DEFENDANTS intended that such exposures to DEHP from the reasonably  
10 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation  
11 in the manufacture, importation, distribution, and/or offer for sale or use of Products to  
12 individuals in the State of California.

13           39. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
14 consumers and/or other individuals in the State of California who were or who could become  
15 exposed to DEHP through dermal contact and ingestion during the reasonably foreseeable use of  
16 the Products.

17           40. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
18 directly by California voters, individuals exposed to DEHP through dermal contact and  
19 ingestion, resulting from the reasonably foreseeable use of the Products, sold by DEFENDANTS  
20 without a "clear and reasonable warning," have suffered, and continue to suffer, irreparable  
21 harm, for which harm they have no plain, speedy or adequate remedy at law.

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

25           42. As a consequence of the above-described acts, California Health & Safety Code  
26 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
27 DEFENDANTS.

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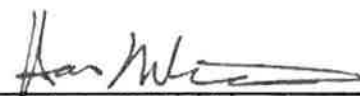
**PRAYER FOR RELIEF**

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged herein;
2. That the Court, pursuant to California Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as defined by 27 CCR § 25601, as to the harms associated with exposures to DEHP;
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: January 7, 2013

Respectfully Submitted,  
THE CHANLER GROUP

By:   
Harris A. Weinstein  
Attorneys for Plaintiff  
PETER ENGLANDER