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ENDORSED

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SANTA CLARA

13 UNLIMITED CIVIL JURISDICTION

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 TARGET CORPORATION; and DOES 1-150,
18 inclusive,

19 Defendants.

Case No. 112CV232815

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

1 NATURE OF THE ACTION

2 1. This First Amended Complaint is a representative action brought by plaintiff
3 PETER ENGLANDER in the public interest of the citizens of the State of California to enforce
4 the People’s right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic
5 chemical found in and on the hand strap of certain tape measures sold in California.

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

10 3. Detectable levels of DEHP are commonly found in and on the hand strap of
11 certain tape measures that defendants manufacture, distribute, and/or offer for sale to consumers
12 throughout the State of 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. On October 24, 2003, California identified and listed DEHP pursuant to
19 Proposition 65 as a chemical known to cause birth defects and other reproductive harm. DEHP
20 became subject to the “clear and reasonable warning” requirements of the act one year later on
21 October 24, 2004. DEHP is referred to hereinafter as the “LISTED CHEMICAL.” Cal. Code
22 Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

23 6. Defendants manufacture, distribute, and/or sell without a warning the *Durabuilt*
24 *16 ft. Measuring Tape, #085 05 0204, ID280495-0204 (#8 84540 00008 5)*, a tape measure with
25 a hand strap containing DEHP (hereinafter, “PRODUCT”).

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 sale of the PRODUCT is a violation of Proposition 65, and subjects defendants to enjoinder of
2 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 PRODUCT with the required warning regarding the health hazards of the LISTED
7 CHEMICAL. Health & Safety Code § 25249.7(a).

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

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 TARGET CORPORATION ("TARGET") is a person in the course of
16 doing business within the meaning of Health and Safety Code section 25249.11.

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

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

23 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
24 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
25 and manufacture the PRODUCT sold or offered for sale in the State of California.

26 15. 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, 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 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
8 Paragraphs 1 through 23, inclusive.

9 25. 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 26. 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 27. On June 15, 2012, plaintiff's sixty-day notice of violation, together with the
18 requisite certificate of merit, was provided to TARGET and certain public enforcement agencies
19 stating that, as a result of DEFENDANTS' sales of the PRODUCT containing the LISTED
20 CHEMICAL, purchasers and users in the State of California were being exposed to the LISTED
21 CHEMICAL resulting from the reasonably foreseeable use of the PRODUCT, without the
22 individual purchasers and users first having been provided with a "clear and reasonable
23 warning" regarding such toxic exposures, as required by Proposition 65.

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

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

5 30. The PRODUCT DEFENDANTS manufacture, distribute, and/or offer for sale or
6 use in California contains the LISTED CHEMICAL in an amount that requires a “clear and
7 reasonable” warning under Proposition 65.

8 31. DEFENDANTS knew or should have known that the PRODUCT they
9 manufacture, distribute, and/or offer for sale or use in California contains the LISTED
10 CHEMICAL.

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

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

16 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
17 the PRODUCT exposes individuals to the LISTED CHEMICAL through dermal contact and/or
18 ingestion.

19 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
20 the reasonably foreseeable use of the PRODUCT would occur by their deliberate, non-
21 accidental participation in the manufacture, distribution, and/or offering of the PRODUCT for
22 sale or use to individuals in the State of California.

23 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
24 consumers and other individuals in the State of California who were or who could become
25 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
26 reasonably foreseeable use of the PRODUCT.

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

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

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

11 **PRAYER FOR RELIEF**

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

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

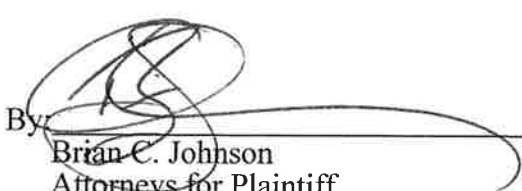
15 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
16 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
17 offering the PRODUCT for sale or use in California without first providing a “clear and
18 reasonable warning” as defined by California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

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

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

22 Dated: November 26, 2012

Respectfully Submitted,
THE CHANLER GROUP

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25 By: 
26 Brian C. Johnson
27 Attorneys for Plaintiff
28 PETER ENGLANDER