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11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SANTA CLARA  
14 UNLIMITED CIVIL JURISDICTION

15 PETER ENGLANDER,

16 Plaintiff,

17 v.

18 TARGET CORPORATION;  
19 DAP INCORPORATED; and DOES 1-150,  
20 inclusive,

21 Defendants.

Case No. 112CV232815

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

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

FILED

2013 MAY 28 12:18

David H. ... Clerk of the Superior Court  
County of Santa Clara, California

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T. Mai

1 NATURE OF THE ACTION

2 1. This Second 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 tape measures with vinyl components sold in California.

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

10 3. Detectable levels of DEHP are commonly found in tape measures with vinyl  
11 components that defendants manufacture, distribute, and offer for sale to consumers throughout  
12 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. 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, import, sell, and/or offer for sale tape  
24 measures with vinyl components containing the LISTED CHEMICAL without a warning,  
25 including, but not limited to, the *Durabuilt 16 ft. Measuring Tape, #085 05 0204, ID280495-*  
26 *0204 (#8 84540 00008 5 )* that are imported, manufactured, sold, or distributed for sale by DAP  
27 (“Products”).  
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1 State of California, and/or otherwise purposefully avails itself of the California market.  
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
3 California courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

6 20. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
7 Paragraphs 1 through 19, inclusive.

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

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

16 23. On February 22, 2013, plaintiff served TARGET, DAP and the requisite public  
17 enforcement agencies with a sixty-day notice of violation of Proposition 65 and accompanying  
18 certificate of merit, alleging that, as a result of DEFENDANTS' sales of the PRODUCTS  
19 containing the LISTED CHEMICAL, purchasers and users in the State of California were being  
20 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the  
21 PRODUCTS, without the individual purchasers and users first having been provided with a  
22 "clear and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

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

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

4           26. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
5 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require  
6 a "clear and reasonable" warning under Proposition 65.

7           27. DEFENDANTS knew or should have known that the PRODUCTS they  
8 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
9 CHEMICAL.

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

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

15          30. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
16 the PRODUCTS will expose individuals to the LISTED CHEMICAL through dermal contact  
17 and/or ingestion.

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

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

26          33. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
27 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
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1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold  
2 by 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 34. 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 35. 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 the California Code of Regulations title 27, section 25601 *et*  
18 *seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

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  
22 Dated: May 22, 2013

Respectfully Submitted,  
THE CHANLER GROUP

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24  
25 By: 

Brian Johnson  
Attorneys for Plaintiff  
PETER ENGLANDER