

1 Josh Voorhees, State Bar No. 241436
2 Harris A. Weinstein, State Bar No. 282166
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 PETER ENGLANDER

ENDORSED
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David H. ... M. Rawson Court
County of Santa Clara, California
By: _____
Clerk

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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 BIG ROC TOOLS, INC.; and DOES 1-150,
19 inclusive,
20 Defendants.

Case No. 112CV238157

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. 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 lead, a toxic chemical found in ratchet tie-down
5 hand grips in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant’s continuing failure to warn
7 California citizens about their exposure to lead, present in or on certain ratchet tie-down hand
8 grips that defendant manufactures, imports, distributes and/or offers for sale to consumers
9 throughout the 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 February 7, 1987, California identified and listed lead as a chemical known to
16 cause birth defects and other reproductive harm. Lead 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 February 7, 1988. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code § 25249.8.*)

20 5. Defendant Big Roc Tools, Inc. (“Big Roc” or “Defendant”) manufactures, imports,
21 distributes and/or sells ratchet tie-down hand grips containing lead including, but not limited to,
22 *BR Tools 2 pc. Ratchet Tie Down Set, RTD11415 (#7 29183 16107 9).*

23 6. All such ratchet tie-down hand grips containing lead shall hereinafter be
24 collectively referred to as the “Products.”

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

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

7 9. Plaintiff also seeks civil penalties against Defendant for its violations of
8 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

9 **PARTIES**

10 10. PETER ENGLANDER is a citizen of the State of California who is dedicated to
11 protecting the health of California citizens through the elimination or reduction of toxic
12 exposures from consumer and commercial products, and brings this action in the public interest
13 pursuant to California Health & Safety Code § 25249.7.

14 11. Big Roc is a person doing business within the meaning of California Health &
15 Safety Code § 25249.11.

16 12. Big Roc manufactures, imports, distributes, and/or offers the Products for sale or
17 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 California Health & Safety Code §
21 25249.11.

22 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,
23 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
24 engage in the process of research, testing, designing, assembling, fabricating and/or
25 manufacturing, one or more of the Products for sale or use in the State of California.

1 all causes except those given by statute to other trial courts.” The statute under which this action
2 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 either are citizens of the State of California, have sufficient minimum contacts in
6 the State of California or otherwise purposefully avail themselves of the California market.
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
8 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. The citizens of the State of California have expressly stated in Proposition 65 that
14 they must be informed “about exposures to chemicals that cause cancer, birth defects and other
15 reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

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

20 27. On July 11, 2012, a 60-Day Notice of Violation, together with the requisite
21 Certificate of Merit (the “Notice”), was provided to Big Roc and various public enforcement
22 agencies stating that as a result of DEFENDANTS’ manufacture, distribution and/or sale of the
23 Products, purchasers and users in the State of California were being exposed to lead resulting
24 from the reasonably foreseeable uses of the Products, without the individual purchasers and users
25 first having been provided with a “clear and reasonable warning” regarding such toxic exposures.

26 28. DEFENDANTS have engaged in the manufacture, importation, distribution and/or
27 offering of the Products for sale or use in violation of California Health & Safety Code § 25249.6

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1 and DEFENDANTS' manufacture, importation, distribution and/or offering of the Products for
2 sale or use in violation of California Health & Safety Code § 25249.6 has continued to occur
3 beyond Big Roc's receipt of plaintiff's Notice. Plaintiff further alleges and believes that such
4 violations will continue to occur into the future.

5 29. After receipt of the claims asserted in the Notice, the appropriate public
6 enforcement agencies have failed to commence and diligently prosecute a cause of action against
7 DEFENDANTS under Proposition 65.

8 30. The Products manufactured, imported, distributed and/or offered for sale or use in
9 California by DEFENDANTS contained lead above the allowable state limits.

10 31. DEFENDANTS knew or should have known that the Products manufactured,
11 imported, distributed and/or offered for sale or use by DEFENDANTS in California contained
12 lead.

13 32. Lead was present in or on the Products in such a way as to expose individuals to
14 lead through dermal contact and ingestion during the reasonably foreseeable use of the Products.

15 33. The normal and reasonably foreseeable use of the Products has caused and
16 continues to cause consumer and workplace exposures to lead, as such exposure is defined by 27
17 California Code of Regulations ("CCR") § 25602(b).

18 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
19 the Products would expose individuals to lead through dermal contact and ingestion.

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

24 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
25 consumers and/or other individuals in the State of California who were or who could become
26 exposed to lead through dermal contact and ingestion during the reasonably foreseeable use of
27 the PRODUCTS.

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Dated: December 18, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 
Harris Weinstein
Attorneys for Plaintiff
PETER ENGLANDER