

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Brian C. Johnson, State Bar No. 235965  
Josh Voorhees, State Bar No. 241436  
THE CHANLER GROUP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

Attorneys for Plaintiff  
PETER ENGLANDER

ENDORSED  
FILED  
San Francisco County Superior Court  
MAR - 5 2013  
CLERK OF THE COURT  
BY: DENNIS TOYAMA  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,  
  
Plaintiff,  
  
v.  
  
INGERSOLL-RAND COMPANY; and DOES  
1-150, inclusive,  
  
Defendants.

Case No. CGC-13-529207  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
  
(Health & Safety Code. § 25249.6 *et seq.*)

**NATURE OF THE ACTION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1. This Complaint is a representative action brought by plaintiff PETER ENGLANDER in the public interest of the citizens of the State of California to enforce the People’s right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in vinyl coated steel cables sold in California.

2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn California citizens about the risk of exposure to DEHP present in and on the vinyl coated steel cables manufactured, distributed, and offered for sale or use to consumers throughout the State of California.

3. Detectable levels of DEHP are commonly found in and on the vinyl coated steel cables that defendants manufacture, distribute, and offer for sale to consumers throughout the State of California.

4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . . .” Health & Safety Code § 25249.6.

5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became subject to the “clear and reasonable warning” requirements of the act one year later on October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

6. Defendants manufacture, distribute, import, sell, and offer for sale without warning in California, vinyl coated steel cables containing, including, but not limited to, the *Schlage Steel Cable Models 999249, 997719, 994800, 994862, 999201, 999218, 999225, 999256, 999263, and 999270*. All such vinyl coated steel cables containing DEHP are referred to collectively hereinafter as “PRODUCTS.”



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

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

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

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

12          18.     RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
13 State of California.

14          19.     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 names pursuant to  
16 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
17 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
18 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

19          20.     INGERSOLL-RAND, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
20 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
21 referred to as “DEFENDANTS.”

#### **VENUE AND JURISDICTION**

22  
23          21.     Venue is proper in the San Francisco County Superior Court, pursuant to Code of  
24 Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent  
25 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more  
26 instances of wrongful conduct occurred, and continue to occur, in the county of San Francisco,  
27  
28

1 and/or because DEFENDANTS conducted, and continue to conduct, business in this county  
2 with respect to the PRODUCTS.

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

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

13 **FIRST CAUSE OF ACTION**

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

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

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

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

25 27. On July 11, 2012, plaintiff’s sixty-day notice of violation, together with the  
26 requisite certificate of merit, was provided to INGERSOLL-RAND and certain public  
27 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS  
28

1 containing the LISTED CHEMICAL, purchasers and users in the State of California were being  
2 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the  
3 PRODUCTS, without the individual purchasers and users first having been provided with a  
4 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

5 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
6 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
7 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
8 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and  
9 continuous in nature, and will continue to occur in the future.

10 29. After receiving plaintiff’s sixty-day notice of violation, the appropriate public  
11 enforcement agencies have failed to commence and diligently prosecute a cause of action  
12 against DEFENDANTS under Proposition 65.

13 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
14 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require  
15 a “clear and reasonable” warning under Proposition 65.

16 31. DEFENDANTS knew or should have known that the PRODUCTS they  
17 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
18 CHEMICAL.

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

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

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

28

1 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
2 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-  
3 accidental participation in the manufacture, importation, distribution, sale, and offering of the  
4 PRODUCTS for sale or use to individuals in the State of California.

5 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
6 consumers and other individuals in the State of California who were or who would become  
7 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
8 reasonably foreseeable uses of the PRODUCTS.

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

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

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

20 **PRAYER FOR RELIEF**

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

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

24 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
25 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
26 offering the PRODUCTS for sale or use in California without first providing a “clear and  
27  
28

1 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601  
2 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

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

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

5  
6 Dated: February 8, 2013

Respectfully Submitted,  
THE CHANLER GROUP

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

By:   
Brian C. Johnson  
Attorneys for Plaintiff  
PETER ENGLANDER