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11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF SANTA CLARA  
14 UNLIMITED CIVIL JURISDICTION  
15

16 PETER ENGLANDER,

17 Plaintiff,

18 v.

19 THE FLETCHER-TERRY COMPANY, LLC;  
20 and DOES 1-150, inclusive,

21 Defendants.  
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Case No. **112CV235127**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

ENDORSED  
FILED  
2012 OCT 30 PM 3:30  
David H. Yamashita  
County of Santa Clara, California  
M. Rabson  
Deputy Clerk

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 the grips of hand tools sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to  
7 warn California citizens about the risks of exposures to DEHP present in and on the grips of  
8 hand tools manufactured, distributed, and offered for sale or use to consumers throughout the  
9 State of California.

10 3. High levels of DEHP are commonly found in and on the grips of hand tools that  
11 defendants manufacture, distribute, sell, and offer for sale to consumers throughout the State of  
12 California.

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
14 Health and Safety Code § 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 . . . .” (Cal. Health & Safety Code § 25249.6.)

18 5. On October 24, 2003, pursuant to Proposition 65, 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., Title 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
22 25249.10(b).) DEHP is hereinafter referred to as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, and sell hand tools with grips that contain  
24 DEHP, including, but not limited to, the *Fletcher ScoreMate Plastic Cutter, #05-111 (#0 81777*  
25 *05111 2)*. All such hand tools with grips containing DEHP are hereinafter collectively referred  
26 to as the “PRODUCTS.”  
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1 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
2 California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
4 in the course of doing business within the meaning of Health and Safety Code § 25249.11.

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

8 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in  
9 the course of doing business within the meaning of Health and Safety Code § 25249.11.

10 18. RETAILER DEFENDANTS offer the PRODUCTS for sale and sell the  
11 PRODUCTS to individuals in the State of California.

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

17 20. FLETCHER-TERRY, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, hereinafter  
19 collectively be referred to as “DEFENDANTS.”

### 20 **VENUE AND JURISDICTION**

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

26 22. The California Superior Court has jurisdiction over this action pursuant to  
27 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction  
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1 in all causes except those given by statute to other trial courts.” The statute under which this  
2 action 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 is a citizen of the State of California, has sufficient minimum contacts in the  
6 State of California, and/or otherwise purposefully avails itself of the California market.  
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
8 California 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 fully as though set forth at  
12 length herein, Paragraphs 1 through 23, inclusive.

13 25. The citizens of the State of California have expressly stated in the Safe Drinking  
14 Water and Toxic Enforcement Act of 1986, Health and Safety Code § 25249.5 *et seq.*, that they  
15 must be informed “about exposures to chemicals that cause cancer, birth defects, or other  
16 reproductive harm.”

17 26. Proposition 65 mandates that “[n]o person in the course of doing business shall  
18 knowingly and intentionally expose any individual to a chemical known to the state to cause  
19 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
20 individual . . . .” (Health & Safety Code § 25249.6.)

21 27. On or about July 11, 2012, plaintiff’s sixty-day notice of violation, together with  
22 the requisite certificate of merit, was provided to FLETCHER-TERRY and certain public  
23 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS  
24 containing the LISTED CHEMICAL, purchasers and users in the State of California were being  
25 exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the  
26 PRODUCTS, without the individual purchasers and users first having been provided with a  
27 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.  
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1           28.    DEFENDANTS have engaged in the manufacture, distribution, and offering of  
2 the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6, and such  
3 violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day  
4 notice of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature,  
5 and will continue to occur in the future.

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

9           30.    The PRODUCTS manufactured, distributed, and offered for sale or use in  
10 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the  
11 allowable state limits, such that they require a "clear and reasonable" warning under Proposition  
12 65.

13           31.    DEFENDANTS knew or should have known that the PRODUCTS they  
14 manufactured, distributed, and offered for sale or use in California contain the LISTED  
15 CHEMICAL.

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

18           33.    The normal and reasonably foreseeable uses of the PRODUCTS has caused, and  
19 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
20 defined by California Code of Regulations, Title 27, § 25602(b).

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

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