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Attorneys for Plaintiff
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ENDORSED

2012 OCT 17 3:48

County of Santa Clara, California
By: _____
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,

Plaintiff,

v.

JONARD INDUSTRIES CORPORATION;
and DOES 1-150, inclusive,

Defendants.

Case No. _____

112CV234448

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(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 di(2-ethylhexyl)phthalate (“DEHP”) and lead,
5 toxic chemicals found in the grips of hand tools sold in California.

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

10 3. High levels of DEHP and lead are commonly found in and on the hand tool grips
11 that defendants manufacture, distribute, 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 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 February 27, 1987, California identified and listed lead pursuant to
19 Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Lead
20 became subject to the “clear and reasonable warning” requirements of the Act one year later on
21 February 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b).

23 6. On October 24, 2003, California identified and listed DEHP pursuant to
24 Proposition 65 as a chemical known to cause birth defects or other reproductive harm. DEHP
25 became subject to the “clear and reasonable warning” requirements of the Act one year later on
26 October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
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1 25249.10(b). DEHP and lead are referred to collectively hereinafter as the “LISTED
2 CHEMICALS.”

3 7. Defendants manufacture, distribute, and sell hand tool grips that contain excessive
4 levels of DEHP and/or lead, including, but not limited to, the *Jonard Industries Corp. Wire*
5 *Stripper, JIC-2030 (#8 11490 011670)*. All such hand tool grips containing DEHP and all such
6 hand tool grips containing lead are referred to collectively hereinafter as “PRODUCTS.”

7 8. Defendants’ failure to warn consumers and other individuals in the state of
8 California about their exposure to the LISTED CHEMICALS in conjunction with defendants’
9 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder
10 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)
11 & (b)(1).

12 9. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
13 permanent injunctive relief to compel defendants to provide purchasers or users of the
14 PRODUCTS with the required warning regarding the health hazards of the LISTED
15 CHEMICALS. Health & Safety Code § 25249.7(a).

16 10. Plaintiff also seeks civil penalties against defendants for their violations of
17 Proposition 65, as provided by Health and Safety Code section 25249.7(b).

18 PARTIES

19 11. Plaintiff PETER ENGLANDER is a citizen of the state of California who is
20 dedicated to protecting the health of California citizens through the elimination or reduction of
21 toxic exposures from consumer products; and he brings this action in the public interest
22 pursuant to Health and Safety Code section 25249.7(d).

23 12. Defendant JONARD INDUSTRIES CORPORATION (“JONARD”) is a person
24 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

25 13. JONARD manufactures, distributes, and/or offers the PRODUCTS for sale or use
26 in the state of California, or implies by its conduct that it manufactures, distributes, and/or offers
27 the PRODUCTS for sale or use in the state of California.

1 jurisdiction, because one or more instances of wrongful conduct occurred, and continue to
2 occur, in Santa Clara County, and/or because DEFENDANTS conducted and continue to
3 conduct business in this county with respect to the PRODUCTS.

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

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

14 **FIRST CAUSE OF ACTION**

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

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

18 26. The citizens of the State of California have expressly stated in the Safe Drinking
19 Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.*, that
20 they must be informed “about exposures to chemicals that cause cancer, birth defects and other
21 reproductive harm.” Health & Safety Code § 25249.6.

22 27. Proposition 65 states, “[n]o person in the course of doing business shall
23 knowingly and intentionally expose any individual to a chemical known to the state to cause
24 cancer or reproductive toxicity without first giving clear and reasonable warning to such
25 individual” *Id.*

26 28. On or about August 1, 2012, plaintiff’s sixty-day notice of violation, together with
27 the requisite certificate of merit, was provided to JONARD and certain requisite public
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1 enforcement agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS
2 containing the LISTED CHEMICALS, purchasers and users in the state of California were
3 being exposed to the LISTED CHEMICALS resulting from the reasonably foreseeable use of
4 the PRODUCTS, without the individual purchasers and users first having been provided with a
5 "clear and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

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

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

14 31. The PRODUCTS manufactured, distributed, and offered for sale or use in
15 California by DEFENDANTS contain the LISTED CHEMICALS in amounts above the
16 allowable state limits, such that they require a "clear and reasonable" warning under Proposition
17 65.

18 32. DEFENDANTS knew or should have known that the PRODUCTS they
19 manufacture, distribute, and offer for sale or use in California contain the LISTED
20 CHEMICALS.

21 33. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
22 to expose individuals through dermal contact and/or ingestion during reasonably foreseeable
23 use.

24 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
25 continues to cause, consumer exposures to the LISTED CHEMICALS, as such exposures are
26 defined by California Code of Regulations title 27, section 25602(b).

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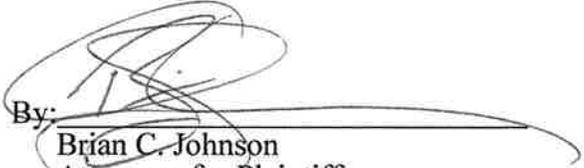
2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing “clear and reasonable warnings” in accordance with California Code of Regulations title 27, section 25601 *et seq.*, as to the harms associated with exposures the LISTED CHEMICALS;

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

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

Dated: October 11, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 
Brian C. Johnson
Attorneys for Plaintiff
PETER ENGLANDER