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ENDORSED
FILED
ALAMEDA COUNTY
MAY 10 2013
CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
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16 PETER ENGLANDER,

17 Plaintiff,

18 v.

19 WINSTON PRODUCTS LLC; and DOES 1-
20 150, inclusive,

21 Defendants.

Case No. RG13667215

*Assigned for All Purposes to:
Judge: Hon. George C. Hernandez, Jr.
Department 514*

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

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

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BY FAX

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 towing straps,
5 ropes and tiedowns sold in California.

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

10 3. High levels of lead are commonly found in and on the towing straps, ropes and
11 tiedowns that defendants manufacture, distribute, and offer for sale to consumers throughout the
12 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 February 27, 1987, the state of California
19 identified and listed lead as a chemical known to cause birth defects and other reproductive
20 harm. Lead became subject to the “clear and reasonable warning” requirements of Proposition
21 65 one year later on February 27, 1988. (Cal. Code Regs., tit. 27, § 27001(c); Cal. Health &
22 Safety Code §§ 25249.8 & 25249.10(b).) Lead is referred to hereinafter as the “LISTED
23 CHEMICAL.”

24 6. Defendants manufacture, distribute, and sell towing straps, ropes and tiedowns
25 that contain lead in levels that require a warning under Proposition 65, including, but not limited
26 to, the *SmartStraps Tow Rope, #133 (#8 75195 001336)*. All such towing straps, ropes and
27 tiedowns containing lead are referred to collectively hereinafter as “PRODUCTS.”
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1 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda
2 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this
3 county with respect to the PRODUCTS.

4 24. 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 25. 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, and/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 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
17 Paragraphs 1 through 25, inclusive.

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

22 28. 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” Health & Safety Code § 25249.6.

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

6 30. On February 22, 2013, plaintiff's supplemental sixty-day notice of violation,
7 together with the requisite certificate of merit, was provided to WINSTON, WAL-MART and
8 certain public enforcement agencies stating that, as a result of DEFENDANTS' sales of the
9 PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the state of
10 California were being exposed to the LISTED CHEMICAL resulting from the reasonably
11 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
12 been provided with a "clear and reasonable warning" regarding such toxic exposures, as
13 required by Proposition 65.

14 31. DEFENDANTS have engaged in the manufacture, distribution, and offering of
15 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
16 such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day
17 notices of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature,
18 and will continue to occur in the future.

19 32. After receiving the claims asserted in the sixty-day notices of violation, the
20 appropriate public enforcement agencies have failed to commence and diligently prosecute a
21 cause of action against DEFENDANTS under Proposition 65.

22 33. The PRODUCTS manufactured, distributed, and offered for sale or use in
23 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
24 allowable state limits, such that they require a "clear and reasonable" warning under Proposition
25 65.

1 34. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufacture, distribute, and offer for sale or use in California contain the LISTED
3 CHEMICAL.

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

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

9 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
10 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
11 and/or ingestion.

12 38. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
13 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
14 accidental participation in the manufacture, distribution, and offering of the PRODUCTS for
15 sale or use to individuals in the state of California.

16 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those
17 consumers and other individuals in the state of California who were or who would become
18 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
19 reasonably foreseeable uses of the PRODUCTS.

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

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

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