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ENDORSED
FILED
ALAMEDA COUNTY
OCT 3 2012
CLERK OF THE SUPERIOR COURT
By Esther Coleman, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

RG12654342

PETER ENGLANDER,

Plaintiff,

v.

BLACK POINT PRODUCTS, INC.; STEREN
ELECTRONICS INTERNATIONAL, LLC;
and DOES 1-150, inclusive,

Defendants.

Case No. _____

**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 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 by defendants
9 throughout the 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 Regulations, 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 *Steren Coax Crimp Tool, BV-67 (#0 14759 00567 4)*.
25 All such hand tools with grips containing DEHP are hereinafter collectively referred to as the
26 “PRODUCTS.”
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1 7. Defendants' failures to warn consumers and other individuals in the State of
2 California about their exposures to the LISTED CHEMICAL in conjunction with defendants'
3 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder
4 of such conduct as well as civil penalties for each violation. (Health & Safety Code
5 § 25249.7(a) & (b)(1).)

6 8. As a result of defendants' violations of Proposition 65, plaintiff seeks preliminary
7 and permanent injunctive relief to compel defendants to provide purchasers or users of the
8 PRODUCTS with the required warning regarding the health hazards of the LISTED
9 CHEMICAL. (Health & Safety Code § 25249.7(a).)

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

12 **PARTIES**

13 10. Plaintiff PETER ENGLANDER is a citizen of the State of California who is
14 dedicated to protecting the health of California citizens through the elimination or reduction of
15 toxic exposures from consumer products; he brings this action in the public interest pursuant to
16 Health and Safety Code § 25249.7(d).

17 11. Defendant BLACK POINT PRODUCTS, INC. ("BLACK POINT") is a person in
18 the course of doing business within the meaning of Health and Safety Code § 25249.11.

19 12. BLACK POINT manufactures, distributes, and/or offers the PRODUCTS for sale
20 or use in the State of California, or implies by its conduct that it manufactures, distributes, and/or
21 offers the PRODUCTS for sale or use in the State of California.

22 13. Defendant STEREN ELECTRONICS INTERNATIONAL, LLC ("STEREN
23 ELECTRONICS") is a person in the course of doing business within the meaning of Health and
24 Safety Code § 25249.11.

25 14. STEREN ELECTRONICS manufactures, distributes, and/or offers the
26 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
27 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

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1 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
2 persons in the course of doing business within the meaning of Health and Safety Code §
3 25249.11.

4 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
5 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
6 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
7 California.

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

10 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
11 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
12 in the State of California.

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

15 20. RETAILER DEFENDANTS offer the PRODUCTS for sale and sell the
16 PRODUCTS to individuals in the State of California.

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

22 22. BLACK POINT, STEREN ELECTRONICS, MANUFACTURER
23 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall,
24 where appropriate, hereinafter collectively be referred to as “DEFENDANTS.”

VENUE AND JURISDICTION

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26 23. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
27 Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
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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, § 10, which grants the Superior Court “original jurisdiction
6 in all causes except those given by statute to other trial courts.” The statute under which this
7 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 fully as though set forth at
17 length herein, Paragraphs 1 through 25, inclusive.

18 27. In passing Proposition 65, the citizens of the State of California expressed their
19 intent through the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986 that
20 they must be “informed about exposures to chemicals that cause cancer, birth defects, or other
21 reproductive harm.”

22 28. Proposition 65 mandates that “[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 or about August 16, 2012, plaintiff’s sixty-day notice of violation, together
27 with the requisite certificate of merit, was provided to BLACK POINT and to STEREN, and to
28

1 certain public enforcement agencies stating that, as a result of DEFENDANTS' sales of the
2 PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State of
3 California were being exposed to the LISTED CHEMICAL resulting from the reasonably
4 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
5 been provided with a "clear and reasonable warning" regarding such toxic exposures, as
6 required by Proposition 65.

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

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

15 32. The PRODUCTS manufactured, distributed, and offered for sale or use in
16 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
17 allowable state limits, such that they require a "clear and reasonable" warning under Proposition
18 65.

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

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

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

1 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
2 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
3 and/or ingestion.

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

8 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
9 consumers and other individuals in the State of California who were or who could become
10 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
11 reasonably foreseeable uses of the PRODUCTS.

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

17 40. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
18 described acts, DEFENDANTS are each liable for a civil penalty of \$2,500 per day for each
19 violation.

20 41. As a consequence of the above-described acts, Health and Safety Code
21 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
22 DEFENDANTS.

PRAYER FOR RELIEF

24 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
25 follows:

26 1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil
27 penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;
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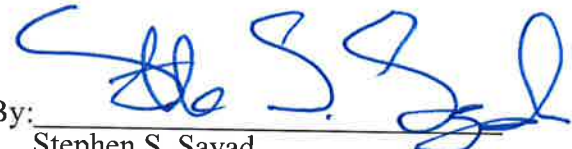
1 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily
2 and permanently enjoin DEFENDANTS from manufacturing, distributing, selling, and/or
3 offering the PRODUCTS for sale or use in California without first providing a “clear and
4 reasonable warning” as defined by California Code of Regulations, Title 27, § 25601 *et seq.*, as
5 to the harms associated with exposures the LISTED CHEMICAL;

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

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

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9 Dated: October 30, 2012

Respectfully Submitted,
THE CHANLER GROUP



By: _____
Stephen S. Sayad
Attorneys for Plaintiff
PETER ENGLANDER

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