

**FILED**  
SAN MATEO COUNTY

DEC 10 2012

Clerk of the Superior Court  
**GEORGE JACKSON**  
DEPUTY CLERK

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN MATEO

13 UNLIMITED CIVIL JURISDICTION

14 **CIV 518420**

15 PETER ENGLANDER,

Case No. \_\_\_\_\_

16 Plaintiff,

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

17 v.

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

18 ACCESSORY ZONE, LLC; and  
19 DOES 1-150, inclusive,

20 Defendants.  
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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 People’s  
4 right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found  
5 in vinyl/PVC accessory bags/pouches sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn  
7 California citizens about the risk of exposure to DEHP present in and on the vinyl/PVC accessory  
8 bags/pouches manufactured, distributed, and offered for sale or use to consumers throughout the  
9 State of California.

10 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC accessory  
11 bags/pouches that defendants manufacture, distribute, and offer for sale to consumers throughout  
12 the 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 the  
16 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to  
17 such individual . . . .” Health & Safety Code § 25249.6.

18 5. Pursuant to Proposition 65, on October 24, 2003, 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 24,  
21 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).  
22 DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, import, sell, and/or offer for sale vinyl/PVC  
24 accessory bags/pouches containing DEHP without a warning, including, but not limited to, the  
25 *FreshSweet Pouch, Item #BMFS6148 (#8 45763 02840 9)*. All such vinyl/PVC accessory  
26 bags/pouches containing DEHP are referred to collectively hereinafter as “PRODUCTS.”

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1 association that is a citizen of the State of California, has sufficient minimum contacts in the State  
2 of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS'  
3 purposeful availment renders the exercise of personal jurisdiction by California courts consistent  
4 with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

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

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

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

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

16 27. On August 16, 2012, plaintiff’s sixty-day notice of violation, together with the  
17 requisite certificate of merit, was provided to ACCESSORY ZONE and certain public enforcement  
18 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the  
19 LISTED CHEMICAL, purchasers and users in the State of California were being exposed to the  
20 LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS, without  
21 the individual purchasers and users first having been provided with a “clear and reasonable  
22 warning” regarding such toxic exposures, as required by Proposition 65.

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

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

4           30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or  
5 use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require a  
6 "clear and reasonable" warning under Proposition 65.

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

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

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

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

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

22           36. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
23 consumers and other individuals in the State of California who were or who would become exposed  
24 to the LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably  
25 foreseeable uses of the PRODUCTS.

26           37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
27 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
28 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by

1 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer,  
2 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

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

9 **PRAYER FOR RELIEF**

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

- 11 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil  
12 penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;
- 13 2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily  
14 and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the  
15 PRODUCTS for sale or use in California without first providing a “clear and reasonable warning”  
16 as defined by title 27 of the California Code of Regulations, section 25601 *et seq.*, as to the harms  
17 associated with exposures the LISTED CHEMICAL;
- 18 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and  
19 4. That the Court grant such other and further relief as may be just and proper.

20 Dated: December 10, 2012

21 Respectfully Submitted,  
22 THE CHANLER GROUP

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24 By:   
25 Laralei Paras  
26 Attorneys for Plaintiff  
27 PETER ENGLANDER  
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