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**ENDORSED
FILED
ALAMEDA COUNTY**

MAR 20 2013

CLERK OF THE SUPERIOR COURT
By K. Ghee Deputy

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
15

16 PETER ENGLANDER,

17 Plaintiff,

18 v.

19 PETSMART, INC.; and DOES 1-150,
20 inclusive,

21 Defendants.
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Case No. RG 13-672243

**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”), a toxic
5 chemical found in hand tool grips and vinyl/PVC key covers 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 DEHP present in and on the hand tool
8 grips and vinyl/PVC key covers manufactured, distributed, and offered for sale or use to
9 consumers throughout the state of California.

10 3. High levels of DEHP are commonly found in and on the hand tool grips and
11 vinyl/PVC key covers that defendants manufacture, distribute, and offer for sale to consumers
12 throughout 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
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 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
21 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, and sell hand tool grips, including, but not
24 limited to, the *Whisker City Litter Scoop* (#7 37257 22896 2), and vinyl/PVC key covers,
25 including, but not limited to, the *LittleGifts 2-pack Key Covers Pug* (#8 46998 04105 8) that
26 contain DEHP in levels that require a warning under Proposition 65. All such hand tool grips
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1 and vinyl/PVC key covers containing DEHP are referred to collectively hereinafter as
2 “PRODUCTS.”

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

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

12 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
13 penalties against defendants for their violations of Proposition 65.

14 **PARTIES**

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

19 11. Defendant PETSMART, INC. (“PETSMART”) is a person in the course of doing
20 business within the meaning of Health and Safety Code section 25249.11.

21 12. PETSMART manufactures, distributes, and/or offers the PRODUCTS for sale or
22 use in the state of California, or implies by its conduct that it manufactures, distributes, and/or
23 offers the PRODUCTS for sale or use in the state of California.

24 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
25 persons in the course of doing business within the meaning of Health and Safety Code section
26 25249.11.

1 without the individual purchasers and users first having been provided with a “clear and
2 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

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

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

11 30. The PRODUCTS manufactured, distributed, and offered for sale or use in
12 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
13 allowable state limits, such that they require a “clear and reasonable” warning under Proposition
14 65.

15 31. DEFENDANTS knew or should have known that the PRODUCTS they
16 manufacture, distribute, and offer for sale or use in California contain the LISTED
17 CHEMICAL.

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

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

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

26 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
27 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-

1 accidental participation in the manufacture, distribution, and offering of the PRODUCTS for
2 sale or use to individuals in the state of California.

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers and other individuals in the state of California who were or who would become
5 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
6 reasonably foreseeable uses of the PRODUCTS.

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

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

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

18 **PRAYER FOR RELIEF**

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

20 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
21 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

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

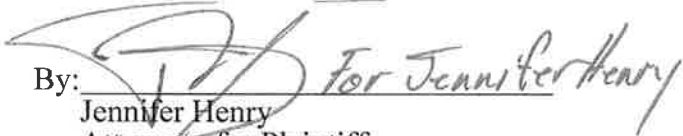
27 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
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4. That the Court grant such other and further relief as may be just and proper.

Dated: March 20, 2013

Respectfully Submitted,
THE CHANLER GROUP

By:  For Jennifer Henry
Jennifer Henry
Attorneys for Plaintiff
PETER ENGLANDER