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FILED

JUL 09 2013

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: S. Bond, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF MARIN  
UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,  
Plaintiff,

v.

THE ADVANCE EQUIPMENT  
MANUFACTURING COMPANY; F & M  
PLASTICS, INC.; LAKESIDE PLASTICS,  
INC.; and DOES 1 through 150, inclusive,  
Defendants.

) Case No. civ 1302908

) COMPLAINT FOR CIVIL PENALTIES  
) AND INJUNCTIVE RELIEF

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

**NATURE OF THE ACTION**

1  
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 hand tool grips sold in California.

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

10          3.     Detectable levels of DEHP and lead are commonly found in and on the hand tool  
11 grips 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 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).

23          6.     On February 27, 1987, California identified and listed lead as a chemical known to  
24 cause birth defects and other reproductive harm. Lead became subject to the warning  
25 requirement one year later and was therefore subject to the “clear and reasonable warning”  
26 requirements of Proposition 65, beginning on February 27, 1988. (Title 27 of the California  
27 Code of Regulation (“CCR”) § 27001 (c); Cal. Health & Safety Code § 25249.8.).  
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1 wrongful conduct occurred, and continue to occur, in Marin County, and/or because  
2 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the  
3 PRODUCTS.

4 22. 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 23. 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 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
17 Paragraphs 1 through 23, inclusive.

18 25. 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 26. 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 27. On September 21, 2012, plaintiff’s sixty-day notice of violation, together with the  
27 requisite certificate of merit, was provided to ADVANCE EQUIPMENT and certain public  
28

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

6 28. On December 28, 2012, plaintiff's supplemental sixty-day notice of violation,  
7 together with the requisite certificate of merit, was provided to ADVANCE EQUIPMENT,  
8 F & M, LAKESIDE, and certain public enforcement agencies stating that, as a result of  
9 DEFENDANTS' sales of the PRODUCTS, purchasers and users in the State of California were  
10 being exposed to the Listed Chemicals resulting from the reasonably foreseeable uses of the  
11 PRODUCTS, without the individual purchasers and users first having been provided with a  
12 "clear and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

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

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

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

24 32. DEFENDANTS knew or should have known that the PRODUCTS they  
25 manufacture, distribute, and offer for sale or use in California contain the Listed Chemicals.

26 33. The Listed Chemicals are present in or on the PRODUCTS in such a way as to  
27 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

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1           34. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
2 continue to cause, exposures to the Listed Chemicals, as such exposures are defined by  
3 California Code of Regulations title 27, section 25602(b).

4           35. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
5 of the PRODUCTS expose individuals to the Listed Chemicals through dermal contact and/or  
6 ingestion.

7           36. DEFENDANTS intended that such exposures to the Listed Chemicals from the  
8 reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental  
9 participation in the manufacture, distribution, and offering of the PRODUCTS for sale or use to  
10 individuals in the State of California.

11           37. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
12 consumers and other individuals in the State of California who were or who would become  
13 exposed to the Listed Chemicals through dermal contact and/or ingestion during the reasonably  
14 foreseeable uses of the PRODUCTS.

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

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

23           40. As a consequence of the above-described acts, Health and Safety Code  
24 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
25 DEFENDANTS.

1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as  
3 follows:

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

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
8 offering the PRODUCTS for sale or use in California without first providing a “clear and  
9 reasonable warning” as defined by Title 27 of the California Code of Regulations, Section  
10 25601 *et seq.*, as to the harms associated with exposures to the Listed Chemicals;

11 3. That the Court, pursuant to Health and Safety Code section 25249.7(a), issue  
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS  
13 currently in the chain of commerce in California without a “clear and reasonable warning” as  
14 defined by California Code of Regulations title 27, section 25601 *et seq.*;

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

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

17 Dated: July 9, 2013

18 Respectfully Submitted,  
19 THE CHANLER GROUP

20   
21 By: \_\_\_\_\_  
22 Clifford A. Chanler  
23 Attorneys for Plaintiff  
24 PETER ENGLANDER  
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