

1 Brian C. Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 PETER ENGLANDER

ENDORSED
FILED
ALAMEDA COUNTY
MAY - 8 2013
CLERK OF THE SUPERIOR COURT
By MICHELLE BANKS
Deputy

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

14 PETER ENGLANDER,
15 Plaintiff,

16 v.

17 PET FOOD EXPRESS, LTD.; CHUCK
18 LATHAM ASSOCIATES, INC.; and
19 DOES 1-150, inclusive,
20 Defendants.

Case No. RG12657879

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

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

NATURE OF THE ACTION

1
2 1. This First Amended Complaint is a representative action brought by plaintiff
3 PETER ENGLANDER in the public interest of the citizens of the State of California to enforce
4 the 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, specifically pet grooming tools, sold in California.

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

10 3. Detectable levels of DEHP are commonly found in and on the grips of the hand
11 tools 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). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, import, sell, and/or offer for sale hand tool
24 grips containing the LISTED CHEMICAL without a warning, including, but not limited to, the
25 *DuraScoop Original (#8 93725 00000 0)*. All such hand tool grips containing the LISTED
26 CHEMICAL are referred to collectively hereinafter as “PRODUCTS.”

1 and capacities of defendants DOES 1 through 150, inclusive, are unknown to Plaintiff, who,
2 therefore, sues said defendants by their fictitious names pursuant to Code of Civil Procedure
3 section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the
4 fictitiously named defendants is responsible for the acts and occurrences alleged herein. When
5 ascertained, their true names and capacities shall be reflected in an amended complaint.

6 14. PET FOOD EXPRESS, CHUCK LATHAM, and Defendants DOES 1-150 shall
7 collectively be referred “DEFENDANTS.”

8 **VENUE AND JURISDICTION**

9 15. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
10 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
11 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
12 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because
13 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the
14 PRODUCTS.

15 16. The California Superior Court has jurisdiction over this action pursuant to
16 California Constitution Article VI, section 10, which grants the Superior Court “original
17 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
18 which this action is brought does not specify any other basis of subject matter jurisdiction.

19 17. The California Superior Court has jurisdiction over DEFENDANTS based on
20 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
21 association that is a citizen of the State of California, has sufficient minimum contacts in the
22 State of California, and/or otherwise purposefully avails itself of the California market.
23 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
24 California courts consistent with traditional notions of fair play and substantial justice.

1 **FIRST CAUSE OF ACTION**

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

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

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

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

13 21. On February 22, 2013, plaintiff’s supplemental sixty-day notice of violation,
14 together with the requisite certificate of merit, was provided to PET FOOD EXPRESS, CHUCK
15 LATHAM, and certain public enforcement agencies stating that, as a result of DEFENDANTS’
16 sales of the PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State
17 of California were being exposed to the LISTED CHEMICAL resulting from their reasonably
18 foreseeable use of the PRODUCTS, without the individual purchasers and users first having
19 been provided with a “clear and reasonable warning” regarding such toxic exposures, as
20 required by Proposition 65.

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

26 23. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
27 enforcement agencies have failed to commence and diligently prosecute a cause of action
28

1 against DEFENDANTS under Proposition 65.

2 24. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
3 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require
4 a “clear and reasonable” warning under Proposition 65.

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

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

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

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

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

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

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

3 32. 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
5 for each violation.

6 33. 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
12 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

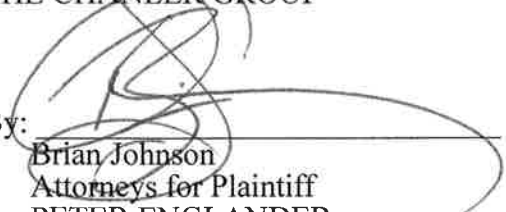
13 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
14 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
15 offering the PRODUCTS for sale or use in California without first providing a “clear and
16 reasonable warning” as defined by the California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

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21 Dated: May 7, 2013

22 Respectfully Submitted,
23 THE CHANLER GROUP

24
25 By: 
26 Brian Johnson
27 Attorneys for Plaintiff
28 PETER ENGLANDER