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ENDORSED  
FILED  
ALAMEDA COUNTY  
DEC 26 2012  
CLERK OF THE SUPERIOR COURT  
By Esther Coleman, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

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15 PETER ENGLANDER,

16 Plaintiff,

17 v.

18 HANGZHOU GREATSTAR TOOL CO.,  
19 LTD.; and DOES 1-150, inclusive,

20 Defendants.

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

22 **COMPLAINT FOR CIVIL PENALTIES  
23 AND INJUNCTIVE RELIEF**

24 (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 tools 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 tools  
8 manufactured, distributed, and/or offered for sale or use to consumers throughout the State of  
9 California.

10 3. Detectable levels of DEHP are commonly found in and on tools that defendants  
11 manufacture, distribute, and/or offer for sale to consumers throughout the State of California.

12 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
13 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of  
14 doing business shall knowingly and intentionally expose any individual to a chemical known to  
15 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
16 warning to such individual . . . .” Health & Safety Code § 25249.6.

17 5. On October 24, 2003, California identified and listed DEHP pursuant to  
18 Proposition 65 as a chemical known to cause birth defects and other reproductive harm. DEHP  
19 became subject to the “clear and reasonable warning” requirements of the Act one year later on  
20 October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
21 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

22 6. Defendants manufacture, distribute, and/or sell without warnings tools that  
23 contain DEHP, including, but not limited to, those offered in connection with the *Lil’ Helper*  
24 *Junior Tool Set, Item #0314797, Model #61461 (#8 20909 61461 6)*. All such tools containing  
25 DEHP are referred to collectively hereinafter as “PRODUCTS.”

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

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

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

#### 10 PARTIES

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

15 11. Defendant HANGZHOU GREATSTAR TOOL CO., LTD. ("HANGZHOU") is a  
16 person in the course of doing business within the meaning of Health and Safety Code section  
17 25249.11.

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

21 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a  
22 person in the course of doing business within the meaning of Health and Safety Code section  
23 25249.11.

24 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
25 and/or manufacture one or more of the PRODUCTS offered for sale or use in the State of  
26 California, or imply by their conduct that they research, test, design, assemble, fabricate, and/or  
27 manufacture, one or more of the PRODUCTS offered for sale or use in the State of California.  
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1           15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
2 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

3           16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
4 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
5 in the State of California.

6           17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
7 the course of doing business within the meaning of Health and Safety Code section 25249.11.

8           18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
9 State of California.

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

15          20. HANGZHOU, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
16 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
17 referred to as “DEFENDANTS.”

18                                 **VENUE AND JURISDICTION**

19          21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
20 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
21 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda  
22 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this  
23 county with respect to the PRODUCTS.

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

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1           23. The California Superior Court has jurisdiction over DEFENDANTS based on  
2 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or  
3 association that is a citizen of the State of California, has sufficient minimum contacts in the  
4 State of California, or otherwise purposefully avails itself of the California market.  
5 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
6 California courts consistent with traditional notions of fair play and substantial justice.

7                                 **FIRST CAUSE OF ACTION**

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

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

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

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

19           27. On or about October 12, 2012, plaintiff's sixty-day notice of violation, together  
20 with the requisite certificate of merit, was provided to HANGZHOU, and certain requisite  
21 public enforcement agencies stating that, as a result of DEFENDANTS' sales of the  
22 PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State of  
23 California were being exposed to the LISTED CHEMICAL resulting from the reasonably  
24 foreseeable use of the PRODUCTS, without the individual purchasers and users first having  
25 been provided with a “clear and reasonable warning” regarding such toxic exposures, as  
26 required by Proposition 65.

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1           28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
2 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and  
3 such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day  
4 notice of violation. Plaintiff further alleges that DEFENDANTS' violations are ongoing and  
5 continuous in nature and, as such, will continue to occur in the future.

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

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

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

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

18           33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
19 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
20 defined by California Code of Regulations title 27, section 25602(b).

21           34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
22 the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact  
23 and/or ingestion.

24           35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
25 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
26 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for  
27 sale or use to individuals in the State of California.

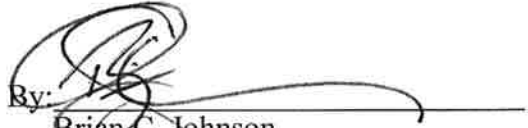


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4. That the Court grant such other and further relief as may be just and proper.

Dated: December 20, 2012

Respectfully Submitted,  
THE CHANLER GROUP

By: 

Brian C. Johnson  
Attorneys for Plaintiff  
PETER ENGLANDER