

1 John C. Mayo, State Bar No. 233359
2 Brian C. Johnson, State Bar No. 235965
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 - 2 2013

CLERK OF THE SUPERIOR COURT
By MARGARET J. DOWNL
Deputy

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
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16 PETER ENGLANDER,

17 Plaintiff,

18 v.

19 ORBIT IRRIGATION PRODUCTS, INC.;;
20 and DOES 1-150, inclusive,

21 Defendants.
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Case No. RG13678021

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

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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 exposure to DEHP and lead present in and on the hand
8 tools with grips manufactured, distributed, and offered for sale or use to consumers throughout
9 the State of California.

10 3. Detectable levels of DEHP and lead are commonly found in and on the hand tools
11 with grips 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
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 February 27, 1987, and October 24, 2003,
19 California identified and listed lead and then DEHP, respectively, as chemicals known to cause
20 birth defects and other reproductive harm. Lead and DEHP became subject to the “clear and
21 reasonable warning” requirements of the act one year later on February 27, 1988, and October
22 24, 2004, respectively. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8
23 & 25249.10(b). Lead and DEHP are referred to hereinafter as the “LISTED CHEMICALS.”

24 6. Defendants manufacture, distribute, import, sell, and/or offer for sale hand tools
25 with grips containing DEHP and lead without a warning, including, but not limited to, the *Orbit*
26 *Sprinkler Tool Kit, Model #26098, PN 26098-03 (#0 46878 26098 6)*. All such hand tools with
27 grips containing DEHP and lead shall hereinafter be referred to as the “PRODUCTS.”
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1 fictitiously named defendants is responsible for the acts and occurrences alleged herein. When
2 ascertained, their true names and capacities shall be reflected in an amended complaint.

3 14. ORBIT, and DOES 1-150 shall, where appropriate, collectively be referred to as
4 “DEFENDANTS.”

5 **VENUE AND JURISDICTION**

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

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

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

22 **FIRST CAUSE OF ACTION**

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

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

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

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

7 21. On November 21, 2012, plaintiff’s sixty-day notice of violation, together with the
8 requisite certificate of merit, was provided to ORBIT, and certain public enforcement agencies
9 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED
10 CHEMICALS, purchasers and users in the State of California were being exposed to the
11 LISTED CHEMICALS resulting from their reasonably foreseeable use of the PRODUCTS,
12 without the individual purchasers and users first having been provided with a “clear and
13 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

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

19 23. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
20 enforcement agencies have failed to commence and diligently prosecute a cause of action
21 against DEFENDANTS under Proposition 65.

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

25 25. DEFENDANTS knew or should have known that the PRODUCTS they
26 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
27 CHEMICALS.

1 26. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
2 to expose individuals to the LISTED CHEMICALS through dermal contact and/or ingestion
3 during reasonably foreseeable use.

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

7 28. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
8 of the PRODUCTS expose individuals to the LISTED CHEMICALS through dermal contact
9 and/or ingestion.

10 29. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from
11 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
12 accidental participation in the manufacture, importation, distribution, sale, and offering of the
13 PRODUCTS for sale or use to individuals in the State of California.

14 30. DEFENDANTS failed to provide a “clear and reasonable warning” to those
15 consumers and other individuals in the State of California who were or who would become
16 exposed to the LISTED CHEMICALS through dermal contact and/or ingestion during the
17 reasonably foreseeable uses of the PRODUCTS.

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

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

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