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**FILED**

**FEB 15 2013**

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: J. Chen, Deputy

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

PETER ENGLANDER,

Plaintiff,

v.

FPC CORPORATION and DOES 1-150,

Defendants.

Case No. h✓ 1300705

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

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NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff PETER ENGLANDER, in the public interest of the citizens of the State of California, to enforce the People's right to be informed of the presence of Di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical found in certain hand tools with vinyl/PVC grips manufactured, distributed and/or otherwise sold by defendants in California.

2. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.6 *et seq.* ("Proposition 65"), "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. . . ." (*Cal. Health & Safety Code* § 25249.6.)

3. On October 24, 2003, the State listed Di(2-ethylhexyl)phthalate as a chemical known to cause birth defects and other reproductive harm. DEHP became subject to the warning requirement one year later and was therefore subject to the "clear and reasonable warning" requirements of Proposition 65, beginning on October 24, 2004. (27 CCR § 27001(c); *Cal. Health & Safety Code* § 25249.8.)

4. DEHP shall hereinafter be referred to as the "LISTED CHEMICAL."

5. Significant levels of the LISTED CHEMICAL have been discovered in or on hand tools with vinyl/PVC grips that defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of California including, but not limited to, Craftsman Stapler/Nail Gun (#968517). All such hand tools with vinyl/PVC grips containing the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

6. Defendants' failure to warn consumers and/or other individuals in the State of California about their exposures to the LISTED CHEMICAL in conjunction with defendants' sale of the PRODUCTS is a violation of Proposition 65.

7. For defendants' violations of Proposition 65, plaintiff seeks preliminary and permanent injunctive relief to compel defendants to provide purchasers or users of the

1 PRODUCTS with the required warning regarding the health hazards of the LISTED  
2 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

3 8. Plaintiff also seeks civil penalties against defendants for their violations of  
4 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

5 **PARTIES**

6 9. Plaintiff PETER ENGLANDER is a citizen of the State of California who has  
7 determined to protect the health of California citizens through the elimination or reduction of  
8 toxic exposures from consumer products, and brings this action in the public interest pursuant  
9 to California Health & Safety Code Section 25249.7.

10 10. Defendant FPC CORPORATION is a person doing business within the meaning  
11 of California Health & Safety Code Section 25249.11.

12 11. Defendant FPC CORPORATION manufactures, distributes, and/or offers the  
13 PRODUCTS for sale or use in the State of California or implies by its conduct that it  
14 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of  
15 California.

16 12. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons  
17 doing business within the meaning of California Health & Safety Code Section 25249.11.

18 13. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
19 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
20 engage in the process of research, testing, designing, assembling, fabricating, and/or  
21 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

22 14. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons  
23 doing business within the meaning of California Health & Safety Code Section 25249.11.

24 15. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
25 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use  
26 in the State of California.

27 16. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing  
28 business within the meaning of California Health & Safety Code Section 25249.11.

17. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State of California.

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

19. FPC CORPORATION, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as "DEFENDANTS".

## VENUE AND JURISDICTION

20. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil Procedure Sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction, because one or more instances of wrongful conduct occurred, and continues to occur, in the County of Marin and/or because DEFENDANTS conducted, and continue to conduct, business in this County with respect to the PRODUCTS.

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

22. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation or association that either are citizens of the State of California, have sufficient minimum contacts in the State of California, or otherwise purposefully avail themselves of the California market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

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1 FIRST CAUSE OF ACTION

2 (Violation of Proposition 65 - Against All Defendants)

3 23. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,  
4 Paragraphs 1 through 22, inclusive.

5 24. In passing Proposition 65, the citizens of the State of California expressed their  
6 intent through the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986  
7 that they must be "informed about exposures to chemicals that cause cancer, birth defects, or  
8 other reproductive harm."

9 25. 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 26. On November 21, 2012, a sixty-day notice of violation ("60-Day Notice"),  
14 together with the requisite Certificate of Merit, was provided to FPC CORPORATION and  
15 various public enforcement agencies stating that as a result of the FPC CORPORATION's  
16 manufacture, distribution and sales of the PRODUCTS, purchasers and users in the State of  
17 California are being exposed to DEHP resulting from the reasonably foreseeable uses of the  
18 PRODUCTS, without the individual purchasers and users first having been provided with a  
19 "clear and reasonable warning" regarding such toxic exposures.

20 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering  
21 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section  
22 25249.6 and DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for  
23 sale or use in violation of California Health & Safety Code Section 25249.6 appear to have  
24 continued to occur beyond FPC CORPORATION's receipt of plaintiff's 60-Day Notice.  
25 Plaintiff further alleges and believes that such violations will continue to occur into the future.

26 28. After receipt of the claims asserted in the 60-Day Notice, the appropriate public  
27 enforcement agencies have failed to commence and diligently prosecute a cause of action  
28 against DEFENDANTS under Proposition 65.

1           29.    The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
2 California by DEFENDANTS, contain the LISTED CHEMICAL.

3           30.    DEFENDANTS knew or should have known that the PRODUCTS contained the  
4 LISTED CHEMICAL.

5           31.    The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
6 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section  
7 25602(b), through dermal contact and/or ingestion during or as a consequence of the  
8 reasonably foreseeable use of the PRODUCTS.

9           32.    DEFENDANTS knew or should have known that the reasonably foreseeable use  
10 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact  
11 and/or ingestion.

12           33.    DEFENDANTS' participation in the manufacture, distribution and/or offer for  
13 sale or use of PRODUCTS to individuals in the State of California was deliberate and non-  
14 accidental.

15           34.    DEFENDANTS failed to provide a "clear and reasonable warning" to those  
16 consumers and/or other individuals in the State of California who were or who could become  
17 exposed to the LISTED CHEMICAL during the reasonably foreseeable use of the PRODUCTS.

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

23           36.    As a consequence of the above-described acts, DEFENDANTS are liable for a  
24 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to  
25 California Health & Safety Code Section 25249.7(b).

26           37.    As a consequence of the above-described acts, California Health & Safety Code  
27 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
28 DEFENDANTS.