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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA
12 UNLIMITED CIVIL JURISDICTION

13 PETER ENGLANDER,

14 Plaintiff,

15 v.

16 AMES TRUE TEMPER, INC.; and DOES 1
17 through 150, inclusive,

18 Defendants.

Case No. **113CV242946**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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BY FAX

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 the grips of hand 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 the grips of hand
8 tools manufactured, distributed, and 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 the grips of hand tools
11 that Defendants manufacture, distribute, and offer for sale to consumers throughout the State of
12 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. Defendants manufacture, distribute, and sell hand tools with grips that contain
24 DEHP in levels that require a warning under Proposition 65, including, but not limited to, the
25 *Hand Combo Hoe/Cultivator Tool, #1984500 (#0 49206 19845 6)*. All such hand tools with
26 grips containing DEHP are referred to collectively hereinafter as “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. ATT and defendants DOES 1-150 are collectively referred to herein as
4 “DEFENDANTS.”

5 **VENUE AND JURISDICTION**

6 15. Venue is proper in the Santa Clara County Superior Court, pursuant to Code of
7 Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent
8 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more
9 instances of wrongful conduct occurred, and continue to occur, in Santa Clara County, and/or
10 because DEFENDANTS conducted, and continue to conduct, business in this county with
11 respect to the 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 declare 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 ATT and certain public enforcement agencies
9 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS, purchasers and users in the
10 State of California were being exposed to DEHP resulting from the reasonably foreseeable uses
11 of the PRODUCTS, without the individual purchasers and users first having been provided with
12 a “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

13 22. 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 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature,
17 and will continue to occur in the future.

18 23. After receiving the claims asserted in the sixty-day notice 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 24. The PRODUCTS manufactured, distributed, and offered for sale or use in
22 California by DEFENDANTS contain DEHP in amounts above the allowable state limits, such
23 that they require a “clear and reasonable” warning under Proposition 65.

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

26 26. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
27 through dermal contact and/or ingestion during reasonably foreseeable use.

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

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

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

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

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

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

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

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PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;
2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a "clear and reasonable warning" as defined by California Code of Regulations title 27, section 25601 *et seq.*, as to the harms associated with exposures DEHP;
3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
4. That the Court grant such other and further relief as may be just and proper.

Dated: March 14, 2013

Respectfully Submitted,
THE CHANLER GROUP

By: Cliff Chanler
Clifford A. Chanler
Attorneys for Plaintiff
PETER ENGLANDER