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FILED

MAR 26 2013

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

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

12 PETER ENGLANDER,

13 Plaintiff,

14 vs.

15 Q.E.P CO., INC. and DOES 1-150,

16 Defendants.

Case No. 1301305

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff PETER ENGLANDER,
3 in the public interest of the citizens of the State of California, to enforce the People’s right to be
4 informed of the presence of Di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemicals found in and
5 on certain tile cutter hand grips manufactured, distributed and/or otherwise sold by defendants in
6 California.

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

12 3. On October 24, 2003, the State listed DEHP as a chemical known to cause birth
13 defects and other reproductive harm. DEHP became subject to the warning requirement one year
14 later and was therefore subject to the “clear and reasonable warning” requirements of Proposition
15 65, beginning on October 24, 2004. (*27 CCR § 27001(c); Cal. Health & Safety Code § 25249.8.*)

16 4. Where appropriate, DEHP shall hereinafter be referred to as “LISTED CHEMICAL.”

17 5. The presence of DEHP has been detected in and/or on the consumer accessible grip
18 components of the tile cutters that defendants manufacture, distribute, and/or offer for sale to
19 consumers throughout the State of California. An illustrative example of this type of DEHP-
20 containing tile cutter product includes, but is not limited to, the QEP 14 in. Tile Cutter, Item
21 #10214.

22 6. All such tile cutter products made with grips containing DEHP, shall hereinafter be
23 referred to collectively as the “PRODUCTS.”

24 7. Defendants’ failure to warn consumers and/or other individuals in the State of
25 California about their exposures to DEHP in conjunction with defendants’ sale of the PRODUCTS
26 is a violation of Proposition 65.

27 8.

28

1 **FIRST CAUSE OF ACTION**

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

3 22. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 21, inclusive.

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

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

13 25. On November 21, 2012, a sixty-day notice of violation (“60-Day Notice”), supported
14 by the requisite Certificate of Merit, was served upon QEP and various public enforcement
15 agencies stating that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and
16 users in the State of California are being exposed to DEHP resulting from the reasonably
17 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been
18 provided with a “clear and reasonable warning” regarding such toxic exposures.

19 26. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
20 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
21 plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or offering
22 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
23 has continued to occur beyond QEP’s receipt of plaintiff’s 60-Day Notice. Plaintiff further alleges
24 and believes that such violations are reasonably likely to occur into the future absent express
25 injunctive relief.

26 27. 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 against
28 DEFENDANTS under Proposition 65.

1 1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b),
2 assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
3 alleged herein;

4 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
5 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
6 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable
7 warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to the
8 LISTED CHEMICAL;


9 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

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

11 Dated: March 26, 2013

Respectfully submitted,

THE CHANLER GROUP

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14 By: 
15 Gregory M. Sheffer
16 Attorneys for Plaintiff
17 PETER ENGLANDER
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