

1 Gregory M. Sheffer, State Bar No. 173124
2 THE CHANLER GROUP
3 81 Throckmorton Ave., Suite 202
4 Mill Valley, CA 94941
5 Telephone: 415.388.0911
6 Facsimile: 415.388.9911

7 Attorneys for Plaintiff
8 PETER ENGLANDER

FILED

MAY 14 2014

KIM FURNESS, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: B. Smith, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF MARIN

11 UNLIMITED CIVIL JURISDICTION

12 PETER ENGLANDER

13 Plaintiff,

14 v.

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

16 Defendants.

Case No. CIV1301305

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

Action Filed: March 26, 2013

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 chemical found in and on
5 the vinyl/PVC grips of certain hand tools manufactured, distributed and/or otherwise sold by
6 defendant Q.E.P. CO., INC. in 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 course
9 of doing business shall knowingly and intentionally expose any individual to a chemical known to
10 the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning
11 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 defects
13 and other reproductive harm. DEHP became subject to the warning requirement one year later and
14 was therefore subject to the "clear and reasonable warning" requirements of Proposition 65,
15 beginning on October 24, 2004. (*27 CCR § 27001(c); Cal. Health & Safety Code § 5249.8.*)

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
18 vinyl/PVC grip components of the hand tools that defendants manufacture, distribute, and/or offer
19 for sale to consumers throughout the State of California. An illustrative example of this type of
20 DEHP containing hand tool product includes, but is not limited to, the QEP 14 in. Tile Cutter, QEP
21 Glass Tile Nipper and QEP 4" Razor Scraper.

22 6. All such hand tool products made with vinyl/PVC grips containing DEHP, shall
23 hereinafter be 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 is
26 a violation of Proposition 65.

1 jurisdiction by California courts consistent with traditional notions of fair play and substantial
2 justice.

3 **FIRST CAUSE OF ACTION**

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

5 21. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
6 Paragraphs 1 through 20, inclusive.

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

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

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

21 25. On October 18, 2013, a Supplemental 60-Day Notice ("Supplemental Notice"),
22 supported by the requisite Certificate of Merit, was served upon QEP and various public
23 enforcement agencies stating that as a result of the DEFENDANTS' sales of the PRODUCTS,
24 purchasers and users in the State of California are being exposed to DEHP resulting from the
25 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
26 having been provided with a "clear and reasonable warning" regarding such toxic exposures.

1 26. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the
2 PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
3 plaintiff is informed and believes that DEFENDANTS' manufacture, distribution, and/or offering of
4 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 has
5 continued to occur beyond QEP's receipt of plaintiff's 60-Day Notice and Supplemental Notice.
6 Plaintiff further alleges and believes that such violations are reasonably likely to occur into the
7 future absent express injunctive relief.

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

11 28. The PRODUCTS manufactured, distributed, and/or offered for sale or use
12 in California by DEFENDANTS contain DEHP.

13 29. DEFENDANTS knew or should have known that the PRODUCTS contain DEHP.

14 30. DEHP is present in or on each of the PRODUCTS in such a way as to expose (as such
15 exposure is defined by 27 CCR Section 25602(b)) individuals to DEHP through dermal contact
16 and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

17 31. DEFENDANTS knew or should have known that the reasonably foreseeable use of
18 the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact and/or
19 ingestion.

20 32. DEFENDANTS' participation in the manufacture, distribution and/or offer for sale or
21 use of PRODUCTS to individuals in the State of California was deliberate and non-accidental.

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

25 34. Contrary to the express policy and statutory prohibition of Proposition 65,
26 individuals exposed to the LISTED CHEMICAL through dermal contact and/or ingestion resulting
27 from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS without a "clear and
28

1 reasonable warning", have suffered, and continue to suffer, irreparable harm, for which harm they
2 have no other plain, speedy or adequate remedy at law.

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

6 36. As a consequence of the above-described acts, California Health & Safety Code
7 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as follows:

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

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

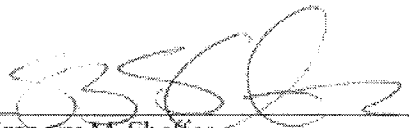
19 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

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

21 Dated: March 11, 2014

Respectfully submitted,

22 THE CHANLER GROUP

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24 By: 
25 Gregory M. Sheffer
26 Attorneys for Plaintiff
27 PETER ENGLANDER
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