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ENDORSED
FILED
ALAMEDA COUNTY

FEB 13 2013 *ST*

CLERK OF THE SUPERIOR COURT

By S. IYAMU Deputy

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

13 PETER ENGLANDER,

14 Plaintiff,

15 v.

16 HANS JOHNSON COMPANY; and DOES 1-
17 150, inclusive,

18 Defendants.

Case No. RG 13 66 7 221

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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 seat post binders with vinyl/PVC handles 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 seat post
8 binders with vinyl/PVC handles manufactured, distributed, and offered for sale or use to
9 consumers throughout the State of California.

10 3. Detectable levels of DEHP are commonly found in and on the seat post binders
11 with vinyl/PVC handles that defendants manufacture, distribute, and offer for sale to consumers
12 throughout 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 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). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, import, sell, and/or offer for sale seat post
24 binders with vinyl/PVC handles containing DEHP without a warning including, but not limited
25 to, the *Summit Cycling Products Genuine Components QR Seat Post Binder, SUM 30689568M*
26 *(#7 45755 04423 6)*. All such seat post binders with vinyl/PVC handles containing DEHP is
27 referred to collectively hereinafter as “PRODUCTS.”
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1 7. Defendants' failure to warn consumers and other individuals in the State of
2 California about their exposure to the LISTED CHEMICAL in conjunction with defendants'
3 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder
4 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)
5 & (b)(1).

6 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
7 permanent injunctive relief to compel defendants to provide purchasers or users of the
8 PRODUCTS with the required warning regarding the health hazards of the LISTED
9 CHEMICAL. Health & Safety Code § 25249.7(a).

10 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
11 penalties against defendants for their violations of Proposition 65.

12 **PARTIES**

13 10. Plaintiff PETER ENGLANDER is a citizen of the State of California who is
14 dedicated to protecting the health of California citizens through the elimination or reduction of
15 toxic exposures from consumer products; he brings this action in the public interest pursuant to
16 Health and Safety Code section 25249.7(d).

17 11. Defendant HANS JOHNSEN COMPANY ("HANS JOHNSEN") is a person in
18 the course of doing business within the meaning of Health and Safety Code section 25249.11.

19 12. HANS JOHNSEN manufactures, imports, distributes, sells, and/or offers the
20 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
21 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
22 State of California.

23 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
24 persons in the course of doing business within the meaning of Health and Safety Code section
25 25249.11.

26 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
27 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
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1 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
2 California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
4 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

5 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
6 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
7 in the State of California.

8 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
9 the course of doing business within the meaning of Health and Safety Code section 25249.11.

10 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
11 State of California.

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

17 20. HANS JOHNSEN, MANUFACTURER DEFENDANTS, DISTRIBUTOR
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
19 referred to as “DEFENDANTS.”

20 **VENUE AND JURISDICTION**

21 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
22 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
23 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
24 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because
25 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the
26 PRODUCTS.

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

5 23. The California Superior Court has jurisdiction over DEFENDANTS based on
6 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
7 association that is a citizen of the State of California, has sufficient minimum contacts in the
8 State of California, and/or otherwise purposefully avails itself of the California market.
9 DEFENDANTS’ purposeful availing renders the exercise of personal jurisdiction by California
10 courts consistent with traditional notions of fair play and substantial justice.

11 **FIRST CAUSE OF ACTION**

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

13 24. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
14 Paragraphs 1 through 23, inclusive.

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

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

23 27. On November 21, 2012, plaintiff’s sixty-day (60) notice of violation, together
24 with the requisite certificate of merit, was provided to HANS JOHNSEN and certain public
25 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS
26 containing the LISTED CHEMICAL, purchasers and users in the State of California were being
27 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the
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1 PRODUCTS, without the individual purchasers and users first having been provided with a
2 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

3 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
4 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
5 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
6 plaintiff’s sixty-day (60) notice of violation. As such, DEFENDANTS’ violations are ongoing
7 and continuous in nature, and will continue to occur in the future.

8 29. After receiving plaintiff’s sixty-day (60) notice of violation, the appropriate
9 public enforcement agencies have failed to commence and diligently prosecute a cause of action
10 against DEFENDANTS under Proposition 65.

11 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
12 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require
13 a “clear and reasonable” warning under Proposition 65.

14 31. DEFENDANTS knew or should have known that the PRODUCTS they
15 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
16 CHEMICAL.

17 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
18 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
19 reasonably foreseeable use.

20 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
21 continue to cause, consumer exposures to the LISTED CHEMICAL as such exposures are
22 defined by title 27 of the California Code of Regulations, section 25602(b).

23 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
24 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
25 and/or ingestion.

26 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
27 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
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1 accidental participation in the manufacture, importation, distribution, sale, and offering of the
2 PRODUCTS for sale or use to individuals in the State of California.

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers and other individuals in the State of California who were or who would become
5 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
6 reasonably foreseeable uses of the PRODUCTS.

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

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

15 39. As a consequence of the above-described acts, Health and Safety Code
16 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

19 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:


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

Dated: February 8, 2013

Respectfully Submitted,
THE CHANLER GROUP

By: 

Jonathan Bornstein
Attorneys for Plaintiff
PETER ENGLANDER