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ENDORSED
FILED
ALAMEDA COUNTY

APR 11 2013

CLERK OF THE SUPERIOR COURT
By M Hayes Deputy

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
15

16 PETER ENGLANDER,

17 Plaintiff,

18 v.

19 BLOUNT INTERNATIONAL, INC.;;
20 SPEECO INC.; and DOES 1-150, inclusive,

21 Defendants.
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Case No. RG13675162

**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”) and lead,
5 toxic chemicals found in hand tool grips 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 and/or lead present in and on the
8 hand tools with grips manufactured, distributed, and offered for sale or use to consumers
9 throughout the State of California.

10 3. Detectable levels of DEHP and/or lead are commonly found in and on the hand
11 tools with grips 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 February 27, 1987, and October 24, 2003,
19 California identified and listed lead and then DEHP, respectively, as chemicals known to cause
20 birth defects and other reproductive harm. Lead and DEHP became subject to the “clear and
21 reasonable warning” requirements of the act one year later on February 27, 1988, and October
22 24, 2004, respectively. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8
23 & 25249.10(b). Lead and DEHP are referred to hereinafter as the “LISTED CHEMICALS.”

24 6. Defendants manufacture, distribute, import, sell, and/or offer for sale hand tools
25 with grips containing DEHP and/or lead without a warning, including, but not limited to, the
26 *Speeco 7/8 x 6.5 GR5 Hitchpin, P700542 (#0 87196 70542 1)*. All such hand tools with grips
27 containing DEHP and/or lead shall hereinafter be referred to as the “PRODUCTS.”
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1 **FIRST CAUSE OF ACTION**

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

3 20. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 19, inclusive.

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

9 22. 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 23. On November 21, 2012, plaintiff’s sixty-day notice of violation, together with the
14 requisite certificate of merit, was provided to BLOUNT, SPEECO, and certain public
15 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS
16 containing the LISTED CHEMICALS, purchasers and users in the State of California were
17 being exposed to the LISTED CHEMICALS resulting from their reasonably foreseeable use of
18 the PRODUCTS, without the individual purchasers and users first having been provided with a
19 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

20 24. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
21 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
22 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
23 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
24 continuous in nature, and will continue to occur in the future.

25 25. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
26 enforcement agencies have failed to commence and diligently prosecute a cause of action
27 against DEFENDANTS under Proposition 65.
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1 26. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
2 or use in California by DEFENDANTS contain the LISTED CHEMICALS such that they
3 require a “clear and reasonable” warning under Proposition 65.

4 27. DEFENDANTS knew or should have known that the PRODUCTS they
5 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
6 CHEMICALS.

7 28. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
8 to expose individuals to the LISTED CHEMICALS through dermal contact and/or ingestion
9 during reasonably foreseeable use.

10 29. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
11 continue to cause, consumer exposures to the LISTED CHEMICALS, as such exposures are
12 defined by the California Code of Regulations title 27, section 25602(b).

13 30. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
14 of the PRODUCTS expose individuals to the LISTED CHEMICALS through dermal contact
15 and/or ingestion.

16 31. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from
17 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
18 accidental participation in the manufacture, importation, distribution, sale, and offering of the
19 PRODUCTS for sale or use to individuals in the State of California.

20 32. DEFENDANTS failed to provide a “clear and reasonable warning” to those
21 consumers and other individuals in the State of California who were or who would become
22 exposed to the LISTED CHEMICALS through dermal contact and/or ingestion during the
23 reasonably foreseeable uses of the PRODUCTS.

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

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

6 35. As a consequence of the above-described acts, Health and 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 as follows:

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


13 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
14 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
15 offering the PRODUCTS for sale or use in California without first providing a “clear and
16 reasonable warning” as defined by the California Code of Regulations title 27, section 25601 *et*
17 *seq.*, as to the harms associated with exposures the LISTED CHEMICALS;

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

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

20 Dated: April 10, 2013

21 Respectfully Submitted,
THE CHANLER GROUP

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23 By: 
24 John C. Mayo
25 Attorneys for Plaintiff
26 PETER ENGLANDER
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