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7	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
8	FOR THE COUNTY OF MARIN	
9	UNLIMITED CIVIL JURISDICTION	
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11	PETER ENGLANDER,	Case No. 21300878
12	Plaintiff,	
13	v.	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF
14	HOPKINS MANUFACTURING	
15	CORPORATION, CARRAND COMPANIES, INC. and DOES 1-150,	(Cal. Health & Safety Code § 25249.6 et seq.)
16	Defendants.	
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		ATTES AND DUI NOTRE DEL DE
	COMPLAINT FOR CIVIL PEN	IALTIES AND INJUNCTIVE RELIEF
	2012년 1월 18일 - 18일	

# NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff PETER ENGLANDER, in the public interest of the citizens of the State of California, to enforce the People's right to be informed of the presence of Di(2-ethylhexl)phthalate ("DEHP"), a toxic chemical found in certain hand tools with vinyl/PVC grips or handles manufactured, distributed and/or otherwise sold by defendants in California.

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

3. On October 24, 2003, the State listed Di(2-ethylhexl)phthalate as a chemical
known to cause birth defects and other reproductive harm. DEHP became subject to the
warning requirement one year later and was therefore subject to the "clear and reasonable
warning" requirements of Proposition 65, beginning on October 24, 2004. (27 CCR § 27001(c); *Cal. Health & Safety Code* § 25249.8.)

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4. DEHP shall hereinafter be referred to as the "LISTED CHEMICAL."

Significant levels of the LISTED CHEMICAL have been discovered in or on hand
 tools with vinyl/PVC grips or handles that defendants manufacture, distribute, and/or offer
 for sale to consumers throughout the State of California including, but not limited to, Carrand
 Smart Detail Brush Set (#92052). All such hand tools with vinyl/PVC grips or handles
 containing the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

6. Defendants' failure to warn consumers and/or other individuals in the State of
California about their exposures to the LISTED CHEMICAL in conjunction with defendants'
sale of the PRODUCTS is a violation of Proposition 65.

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7. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
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PRODUCTS with the required warning regarding the health hazards of the LISTEDCHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

Plaintiff also seeks civil penalties against defendants for their violations of
 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

# PARTIES

9. Plaintiff PETER ENGLANDER is a citizen of the State of California who has determined to protect the health of California citizens through the elimination or reduction of toxic exposures from consumer products, and brings this action in the public interest pursuant to California Health & Safety Code Section 25249.7.

10 10. Defendant HOPKINS MANUFACTURING CORPORATION (hereafter
 "HOPKINS") is a person doing business within the meaning of California Health & Safety
 12 Code Section 25249.11. Defendant CARRAND COMPANIES, INC. (hereafter "CARRAND") is
 13 also a person doing business within the meaning of California Health & Safety Code Section
 14 25249.11.

15 11. Each Defendants HOPKINS and CARRAND manufactures, distributes, and/or
offers the PRODUCTS for sale or use in the State of California or implies by its conduct that it
manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of
California.

12.Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each personsdoing business within the meaning of California Health & Safety Code Section 25249.11.

MANUFACTURER DEFENDANTS engage in the process of research, testing,
 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
 engage in the process of research, testing, designing, assembling, fabricating, and/or
 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

25 14. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
26 doing business within the meaning of California Health & Safety Code Section 25249.11.

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

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16. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing business within the meaning of California Health & Safety Code Section 25249.11.

17. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State of California.

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

14 19. HOPKINS, CARRAND, MANUFACTURER DEFENDANTS, DISTRIBUTOR
15 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred
16 to hereinafter as "DEFENDANTS".

# VENUE AND JURISDICTION

20. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil
Procedure Sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction,
because one or more instances of wrongful conduct occurred, and continues to occur, in the
County of Marin and/or because DEFENDANTS conducted, and continue to conduct,
business in this County with respect to the PRODUCTS.

23 21. The California Superior Court has jurisdiction over this action pursuant to
24 California Constitution Article VI, Section 10, which grants the Superior Court "original
25 jurisdiction in all causes except those given by statute to other trial courts." The statute under
26 which this action is brought does not specify any other basis of subject matter jurisdiction.

27 22. The California Superior Court has jurisdiction over DEFENDANTS based on
28 plaintiff's information and good faith belief that each defendant is a person, firm, corporation

or association that either are citizens of the State of California, have sufficient minimum contacts in the State of California, or otherwise purposefully avail themselves of the California market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

### FIRST CAUSE OF ACTION

### (Violation of Proposition 65 - Against All Defendants)

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

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

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

26. On November 21, 2012, a sixty-day notice of violation ("60-Day Notice"), together with the requisite Certificate of Merit, was provided to HOPKINS and CARRAND and various public enforcement agencies stating that as a result of HOPKINS' and CARRAND's manufacture, distribution and sales of the PRODUCTS, purchasers and users in the State of California are being exposed to DEHP resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been provided with a "clear and reasonable warning" regarding such toxic exposures.

27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 appear to have

continued to occur beyond HOPKINS' AND CARRAND's receipt of plaintiff's 60-Day Notice. Plaintiff further alleges and believes that such violations will continue to occur into the future.

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

29. The PRODUCTS manufactured, distributed, and/or offered for sale or use in California by DEFENDANTS, contain the LISTED CHEMICAL.

30. DEFENDANTS knew or should have known that the PRODUCTS contained the LISTED CHEMICAL.

31. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section
25602(b), through dermal contact and/or ingestion during or as a consequence of the
reasonably foreseeable use of the PRODUCTS.

14 32. DEFENDANTS knew or should have known that the reasonably foreseeable use
15 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact
16 and/or ingestion.

17 33. DEFENDANTS' participation in the manufacture, distribution and/or offer for
18 sale or use of PRODUCTS to individuals in the State of California was deliberate and non19 accidental.

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

35. Contrary to the express policy and statutory prohibition of Proposition 65,
individuals exposed to the LISTED CHEMICAL through dermal contact and/or ingestion
resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS
without a "clear and reasonable warning", have suffered, and continue to suffer, irreparable
harm, for which harm they have no other plain, speedy or adequate remedy at law.

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

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

#### PRAYER FOR RELIEF

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

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

2. That the Court, pursuant to California Health & 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 providing "clear and reasonable warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to the LISTED CHEMICAL;

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That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
 That the Court grant such other and further relief as may be just and proper.

Dated: February 28, 2013

Respectfully submitted,

THE CHANLER GROUP

Gregory M

Attorneys for Plaintiff PETER ENGLANDER

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF