

1 Clifford A. Chanler, State Bar No. 135534
2 Gregory M. Sheffer, State Bar No. 173124
3 THE CHANLER GROUP
4 81 Throckmorton Ave., Suite 202
5 Mill Valley, CA 94941
6 Telephone: 415.388.0911
7 Facsimile: 415.388.9911

8 Attorneys for Plaintiff
9 PETER ENGLANDER

FILED

FEB 28 2013

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

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

13 PETER ENGLANDER,

14 Plaintiff,

15 v.

16 HOPKINS MANUFACTURING
17 CORPORATION, CARRAND COMPANIES,
18 INC. and DOES 1-150,

19 Defendants.

Case No. 1300878

**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
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 certain hand tools with vinyl/PVC grips or handles manufactured,
6 distributed and/or otherwise sold by defendants 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
9 course of doing business shall knowingly and intentionally expose any individual to a
10 chemical known to the state to cause cancer or reproductive toxicity without first giving clear
11 and reasonable warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

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

17 4. DEHP shall hereinafter be referred to as the “LISTED CHEMICAL.”

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

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

26 7. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
27 permanent injunctive relief to compel defendants to provide purchasers or users of the
28

1 PRODUCTS with the required warning regarding the health hazards of the LISTED
2 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

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

5 **PARTIES**

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

10 10. Defendant HOPKINS MANUFACTURING CORPORATION (hereafter
11 "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
16 offers the PRODUCTS for sale or use in the State of California or implies by its conduct that it
17 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of
18 California.

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

21 13. MANUFACTURER DEFENDANTS engage in the process of research, testing,
22 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
23 engage in the process of research, testing, designing, assembling, fabricating, and/or
24 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.

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

5 **FIRST CAUSE OF ACTION**

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

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

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

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

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

24 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering
25 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section
26 25249.6 and DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for
27 sale or use in violation of California Health & Safety Code Section 25249.6 appear to have
28

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

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

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

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

10 31. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
11 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section
12 25602(b), through dermal contact and/or ingestion during or as a consequence of the
13 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 non-
19 accidental.

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

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

28

