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By Fax

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PETER ENGLANDER

F I L E D
Superior Court of California
County of San Francisco

AUG 03 2016

CLERK OF THE COURT

BY: *Adeline Ramon*
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,

Plaintiff,

v.

CARLISLE FOOD SERVICE PRODUCTS,
INC.; and DOES 1-150, inclusive,

Defendants.

Case No. CGC-16-553451

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 et seq.)

NATURE OF THE ACTION

1
2 1. This Complaint is a representative action brought by Plaintiff Peter Englander in the
3 public interest of the citizens of the State of California to enforce the People's right to be informed of
4 the health hazards caused by exposures to di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical
5 found in and on the vinyl/PVC dustpan grips sold by defendants in California.

6 2. By this Complaint, Plaintiff seeks to remedy defendants' continuing failure to warn
7 individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 et seq.,
8 who purchase, use or handle defendants' products, about the risks of exposure to DEHP present in
9 and on the vinyl/PVC dustpan grips that defendants manufacture, distribute and offer for sale or use
10 throughout the State of California. Individuals not covered by California's Occupational Safety
11 Health Act, Labor Code § 6300 et seq., who purchase, use or handle defendants' products, are
12 referred to hereinafter as "consumers."

13 3. Detectable levels of DEHP are found in and on the vinyl/PVC dustpan grips that
14 defendants manufacture, distribute, and offer for sale to consumers throughout the State of
15 California.

16 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
17 Health and Safety Code § 25249.6 et seq. ("Proposition 65"), "[n]o person in the course of doing
18 business shall knowingly and intentionally expose any individual to a chemical known to the state to
19 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
20 individual" Health & Safety Code § 25249.6.

21 5. Pursuant to Proposition 65, on October 24, 2003, California listed DEHP as a chemical
22 known to cause birth defects or reproductive harm. DEHP became subject to the "clear and
23 reasonable warning" requirements of the act one year later on October 24, 2004. Cal. Code Regs. tit.
24 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

25 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without health
26 hazard warnings in California, vinyl/PVC dustpan grips containing DEHP including, but not limited
27 to, *Lobby Pan Metal*, #4066300, UPC #0 85404 14907 4. All vinyl/PVC dustpan grips containing
28 DEHP are referred to collectively hereinafter as "PRODUCTS."

1 7. Defendants' failure to warn consumers in the State of California of the health hazards
 2 associated with exposures to DEHP in conjunction with defendants' sales of the PRODUCTS are
 3 violations of Proposition 65, and subject defendants, and each of them, to enjoinder of such
 4 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

5 8. For defendants' violations of Proposition 65, Plaintiff seeks preliminary and
 6 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with the
 7 required warning regarding the health hazards associated with exposures to DEHP. Health & Safety
 8 Code § 25249.7(a).

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

11 **PARTIES**

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

16 11. Defendant CARLISLE FOOD SERVICE PRODUCTS, INC. ("CFSP") is a person in
 17 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
 18 25249.11.

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

22 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a person in
 23 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
 24 25249.11.

25 14. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
 26 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs,
 27 assembles, fabricates, and manufactures one or more of the PRODUCTS offered for sale or use in
 28 California.

1 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person in
2 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
3 25249.11.

4 16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange, transfer,
5 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale
6 or use in the State of California, or each implies by its conduct that it distributes, exchanges,
7 transfers, processes, and transports one or more of the PRODUCTS to individuals, businesses, or
8 retailers for sale or use in the State of California.

9 17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in the
10 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

11 18. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
12 individuals in the State of California.

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

18 20. CFSP, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and
19 RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred to collectively as the
20 "DEFENDANTS."

21 **VENUE AND JURISDICTION**

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

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1 22. The California Superior Court has jurisdiction over this action pursuant to California
2 Constitution Article VI, section 10, which grants the Superior Court "original jurisdiction in all
3 causes except those given by statute to other trial courts." The statute under which this action is
4 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 of the DEFENDANTS are a person, firm,
7 corporation or association that is a citizen of the State of California, has sufficient minimum contacts
8 in the State of California, and/or otherwise purposefully avails itself of the California market.
9 DEFENDANTS' purposeful availment 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 realleges and incorporates by reference, as if fully set forth herein, Paragraphs
14 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 informed
17 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm."

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

22 27. On September 24, 2015, Plaintiff served a sixty-day notice of violation, together with
23 the accompanying certificate of merit, on CFSP, California Attorney General, and all other requisite
24 public enforcers alleging that, as a result of DEFENDANTS' sales of the PRODUCTS, consumers in
25 the State of California are being exposed to DEHP resulting from their reasonably foreseeable use of
26 the PRODUCTS, without the consumers first receiving a "clear and reasonable warning" regarding
27 the harms associated with exposures to DEHP as required by Proposition 65.

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1 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
2 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have
3 continued beyond their receipt of Plaintiff's sixty-day notice of violation. As such, DEFENDANTS'
4 violations are ongoing and continuous and, unless enjoined, will continue in the future.

5 29. After receiving Plaintiff's sixty-day notice of violation, no public enforcement agency
6 has commenced and diligently prosecuted a cause of action against DEFENDANTS under
7 Proposition 65 to enforce the alleged violations that are the subject of Plaintiff's notice of violation.

8 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer
9 for sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable use of
10 the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers in
11 California are not exempt from the "clear and reasonable" warning requirements of Proposition 65.
12 DEFENDANTS' violations of Proposition 65, resulting from their failure to provide warnings to
13 consumers exposed to DEHP from the PRODUCTS, have continued since as far back as September
14 24, 2012.

15 31. DEFENDANTS know or should know that the PRODUCTS they manufacture, import,
16 distribute, sell, and offer for sale in California contain DEHP.

17 32. DEHP is present in or on the PRODUCTS in such a way as to expose consumers
18 through dermal contact and/or ingestion during reasonably foreseeable use.

19 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
20 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code of
21 Regulations, section 25602(b).

22 34. DEFENDANTS know that the normal and reasonably foreseeable use of the
23 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

24 35. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable use
25 of the PRODUCTS will occur by their deliberate, non-accidental participation in the manufacture,
26 importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers in
27 California.

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1 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
2 in California who have been, or will be, exposed to DEHP through dermal contact and/or ingestion
3 resulting from their use of the PRODUCTS.

4 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
5 directly by California voters, consumers exposed to DEHP through dermal contact and/or ingestion
6 as a result of their use of the PRODUCTS that DEFENDANTS sell without a "clear and reasonable"
7 health hazard warning, have suffered, and continue to suffer, irreparable harm for which they have
8 no plain, speedy, or adequate remedy at law.

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

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

14 **PRAYER FOR RELIEF**

15 Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

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

18 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
19 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS
20 for sale or use in California without a "clear and reasonable warning" in accordance with title 27 of
21 the California Code of Regulations, section 25601 *et seq.*, regarding the harms associated with
22 exposures to DEHP;

23 3. That the Court, Pursuant to Health and Safety Code § 25249.7(a), issue preliminary
24 and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the
25 chain of commerce in California without a "clear and reasonable warning" as defined by California
26 Code of Regulations title 27, section 25601 *et seq.*;

27 4. That the Court grant Plaintiff his reasonable attorneys' fees and costs of suit; and

28 5. That the Court grant such other and further relief as may be just and proper.

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Dated: August 3, 2016

Respectfully submitted,
THE CHANLER GROUP



By: _____
Laralei Paras
Attorneys for Plaintiff
PETER ENGLANDER