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ENDORSED
FILED
Superior Court of California
County of San Francisco

JUL 05 2016

CLERK OF THE COURT
BY: ARLENE RAMOS
Deputy Clerk

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

11 PETER ENGLANDER,

12 Plaintiff,

13 v.

14 THE FOUNTAINHEAD GROUP, INC.; and
15 DOES 1-150, inclusive,

16 Defendants.

CGC -16-552854

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

NATURE OF THE ACTION

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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
4 of the health hazards caused by exposures to di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical
5 found in and on the vinyl/PVC tubing of sprayers 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 tubing of sprayers that defendants manufacture, distribute and offer for sale or
10 use 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 sprayers with vinyl/PVC tubing
14 that 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).

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1 13. Defendants DOES 1-50 (“MANUFACTURER 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 14. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
5 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs,
6 assembles, fabricates, and manufactures one or more of the PRODUCTS offered for sale or use in
7 California.

8 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person in
9 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
10 25249.11.

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

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

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

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

25 20. FOUNTAINHEAD, MANUFACTURER DEFENDANTS, DISTRIBUTOR
26 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred
27 to collectively as the “DEFENDANTS.”

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1 VENUE AND JURISDICTION

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

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

12 23. The California Superior Court has jurisdiction over DEFENDANTS based on
13 Plaintiff’s information and good faith belief that each of the DEFENDANTS are a person, firm,
14 corporation or association that is a citizen of the State of California, has sufficient minimum contacts
15 in the State of California, and/or otherwise purposefully avails itself of the California market.
16 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
17 courts consistent with traditional notions of fair play and substantial justice.

18 FIRST CAUSE OF ACTION

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

20 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs
21 1 through 23, inclusive.

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

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

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

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

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

15 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer
16 for sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable use of
17 the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers in
18 California are not exempt from the "clear and reasonable" warning requirements of Proposition 65.
19 DEFENDANTS' violations of Proposition 65, resulting from their failure to provide warnings to
20 consumers exposed to DEHP from the PRODUCTS, have continued since as far back as September
21 24, 2012.

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

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

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

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

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

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

Dated: July 5, 2016

Respectfully submitted,

THE CHANLER GROUP



By: _____

Laralei Paras
Attorneys for Plaintiff
PETER ENGLANDER