

(ENDORSED)
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CLERK OF SUPERIOR COURT
COUNTY OF SANTA CLARA
T. NGO

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION

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12 PETER ENGLANDER,
13 Plaintiff,
14 v.
15 DOVER CORPORATION; OPW FUELING
16 COMPONENTS INC.; and DOES 1-150,
17 inclusive,
18 Defendants.

Case No. **16CV293539**
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(Health & Safety Code § 25249.5 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff Peter Englander in
3 the public interest of the citizens of the State of California to enforce the People’s right to be
4 informed of the health hazards caused by exposures to di(2-ethylhexyl)phthalate (“DEHP”), a
5 toxic chemical found in and on the fuel pump nozzles with vinyl/PVC covers sold by defendants
6 in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
9 section 6300 et seq., who purchase, use or handle defendants’ products, about the risks of
10 exposure to DEHP present in and on the fuel pump nozzles with vinyl/PVC covers
11 manufactured, distributed, and offered for sale or use throughout the State of California.
12 Individuals not covered by California’s Occupational Safety Health Act, Labor Code section
13 6300 et seq., who purchase, use or handle defendants’ products, are referred to hereinafter as
14 “consumers.”

15 3. Detectable levels of DEHP are found in and on the fuel pump nozzles with
16 vinyl/PVC covers that defendants manufacture, distribute, and offer for sale to consumers
17 throughout the State of California.

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

23 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
24 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became
25 subject to the “clear and reasonable warning” requirements of the act one year later on October
26 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
27 25249.10(b).

1 13. Defendant OPW FUELING COMPONENTS INC. (“OPW”) is a person in the
2 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
3 25249.11.

4 14. OPW manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
5 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
6 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

7 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
8 person in the course of doing business within the meaning of Health and Safety Code sections
9 25249.6 and 25249.11.

10 16. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
11 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
12 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
13 sale or use in California.

14 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
15 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
16 and 25249.11.

17 18. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
18 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
19 retailers for sale or use in the State of California, or each implies by its conduct that it
20 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
21 individuals, businesses, or retailers for sale or use in the State of California.

22 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
23 the course of doing business within the meaning of Health and Safety Code sections 25249.6
24 and 25249.11.

25 20. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
26 individuals in the State of California.

1 **FIRST CAUSE OF ACTION**

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

3 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 25, inclusive.

5 27. 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 28. 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 29. On December 29, 2015, Plaintiff served a sixty-day notice of violation, together
14 with the accompanying certificate of merit, on DOVER, OPW, California Attorney General’s
15 Office, and the requisite public enforcement agencies alleging that, as a result of
16 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being
17 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without
18 the consumers first receiving a “clear and reasonable warning” regarding the harms associated
19 with exposures to DEHP, as required by Proposition 65.

20 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
21 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
22 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation. As
23 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined
24 will continue in the future.

25 31. After receiving plaintiff’s sixty-day notice of violation, no public enforcement
26 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
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1 under Proposition 65 to enforce the alleged violations that are the subject of Plaintiff's notice of
2 violation.

3 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
4 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
5 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
6 consumers in California are not exempt from the "clear and reasonable" warning requirements
7 of Proposition 65, yet DEFENDANTS provide no clear & reasonable warning.

8 33. DEFENDANTS knew or should have known that the PRODUCTS they
9 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.

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

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

15 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
16 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

17 37. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable
18 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
19 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
20 consumers in California.

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

24 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
25 directly by California voters, consumers exposed to DEHP through dermal contact and/or
26 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear
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1 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm
2 for which they have no plain, speedy, or adequate remedy at law.

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

6 41. 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, and each of them, in the amount of \$2,500 per day for
13 each violation;

14 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
16 offering the PRODUCTS for sale or use in California without first providing a “clear and
17 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
18 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

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

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- 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: April 4, 2016

Respectfully submitted,
THE CHANLER GROUP

By: 
Clifford Chanler
Attorneys for Plaintiff
PETER ENGLANDER