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PETER ENGLANDER

ENDORSED
FILED
Superior Court of California
County of San Francisco

APR 05 2017

CLERK OF THE COURT
BY: HOBBALY DELAVEGA
Deputy Clerk

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

PETER ENGLANDER,

Plaintiff,

v.

AUTO METER PRODUCTS, INC.; and
DOES 1-150, inclusive,

Defendants.

Case No. CGC 17-557976

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

1 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
2 25249.10(b).

3 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
4 hazard warnings in California, battery extenders with spring clips with vinyl/PVC grips (battery
5 terminal clamps) and vinyl/PVC cords that contain DEHP including, but not limited to, the grip
6 and cord components of the *Auto Meter Battery Extender, BEX-1500, UPC #0 46074 15935 0*.
7 All such battery extender products with vinyl/PVC spring clip grips (for the battery terminal
8 clamps) and/or vinyl/PVC cords containing DEHP are referred to collectively hereinafter as
9 "PRODUCTS."

10 7. Defendants' failure to warn consumers and other individuals in California of the
11 health hazards associated with exposures to DEHP in conjunction with defendants' sales of the
12 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to
13 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
14 § 25249.7(a) & (b)(1).

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

19 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
20 penalties against defendants, and each of them, for each violation of Proposition 65.

21 **PARTIES**

22 10. Plaintiff PETER ENGLANDER is a citizen of the State of California who is
23 dedicated to protecting the health of California citizens through the elimination or reduction of
24 toxic exposures from consumer products; and brings this action in the public interest pursuant to
25 Health and Safety Code section 25249.7(d).

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1 11. Defendant AUTO METER PRODUCTS, INC. ("AUTO METER") is a person in
2 the course of doing business within the meaning of Health and Safety Code sections 25249.6
3 and 25249.11.

4 12. AUTO METER manufactures, imports, distributes, sells, and offers the
5 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
6 manufactures, imports, distributes, sells, and offers the PRODUCTS for sale or use in the State
7 of California.

8 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
9 person in the course of doing business within the meaning of Health and Safety Code sections
10 25249.6 and 25249.11.

11 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
12 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
13 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
14 California.

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

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

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

24 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
25 State of California.

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

4 20. AUTO METER, MANUFACTURER DEFENDANTS, DISTRIBUTOR
5 DEFENDANTS, and RETAILER DEFENDANTS are collectively referred to hereinafter as
6 "DEFENDANTS."

7 VENUE AND JURISDICTION

8 21. Venue is proper in the County of San Francisco pursuant to Code of Civil
9 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
10 because Plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
11 wrongful conduct occurred, and continue to occur, in this county, and because DEFENDANTS
12 conduct business in San Francisco with respect to the PRODUCTS.

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

17 23. The California Superior Court has jurisdiction over DEFENDANTS based on
18 plaintiff's information and good faith belief that each defendant is a person, firm, corporation,
19 or association that is a citizen of the State of California, has sufficient minimum contacts in the
20 State of California, and/or otherwise purposefully avails itself of the California market.
21 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
22 California courts consistent with traditional notions of fair play and substantial justice.

23 FIRST CAUSE OF ACTION

24 (Violation of Proposition 65 - Against All Defendants)

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

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

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

9 27. On October 14, 2016, plaintiff served a sixty-day notice of violation, together
10 with the accompanying certificate of merit on AUTO METER, the California Attorney General,
11 and all other requisite public enforcement agencies stating that, as a result of DEFENDANTS’
12 sales of the PRODUCTS containing DEHP, consumers and other individuals in the State of
13 California are being exposed to DEHP resulting from their reasonably foreseeable use of the
14 PRODUCTS, without the individual purchasers and users first having received a “clear and
15 reasonable warning” regarding the health risks associated with exposures to DEHP, as required
16 by Proposition 65.

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

22 29. After receiving plaintiff’s sixty-day notice of violation, no public enforcement
23 agency has commenced and diligently prosecuted a cause of action against any of the
24 DEFENDANTS to enforce the alleged violations of Proposition 65 that are the subject of
25 plaintiff’s sixty-day notice.

26 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
27 in California by DEFENDANTS cause exposures to DEHP as a result of the reasonably
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1 foreseeable uses of these PRODUCTS. Such exposures caused by DEFENDANTS and endured
2 by consumers and other individuals in California are not exempt from the clear and reasonable
3 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.
4 DEFENDANTS violations of Proposition 65 with respect to exposures to DEHP from the
5 PRODUCTS sold and offered for sale in California have continued since at least as far back as
6 October 14, 2013.

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

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

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

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

16 35. DEFENDANTS intend for exposures to DEHP from the reasonably foreseeable
17 uses of the PRODUCTS to occur by their deliberate, non-accidental participation in the
18 manufacture, distribution, sale, and offering of the PRODUCTS for sale or use to consumers
19 and other individuals in the State of California.

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

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

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

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

7 **PRAYER FOR RELIEF**

8 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

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

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

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

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

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23 Dated: April 4, 2017

Respectfully submitted,
THE CHANLER GROUP

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26 By: 
27 Brian Johnson
Attorneys for Plaintiff
28 PETER ENGLANDER