

ENDORSED  
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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT  
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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 SMITH VENTURES, LTD. and DOES 1-150,  
18 inclusive,

19 Defendants.

Case No. **RG17848400**

**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 vinyl/PVC exercise balls sold by defendants in California.

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

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

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

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



1           13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
2 person in the course of doing business within the meaning of Health and Safety Code sections  
3 25249.6 and 25249.11.

4           14. MANUFACTURER DEFENDANTS, and each of them, research, test, design,  
5 assemble, fabricate, and manufacture, or imply by their conduct that they research, test, design,  
6 assemble, fabricate, and manufacture 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  
9 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
10 and 25249.11.

11           16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,  
12 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or  
13 retailers for sale or use in the State of California, or imply by their conduct that they distribute,  
14 exchange, transfer, process, and transport one or more of the PRODUCTS to individuals,  
15 businesses, or retailers for sale or use in the State of California.

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

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

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

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1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
2 harm.”

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

7 27. On October 14, 2016, Plaintiff served a sixty-day notice of violation, together  
8 with the accompanying certificate of merit, on SMITH VENTURES, the California Attorney  
9 General, and all other requisite public enforcement agencies alleging that, as a result of  
10 DEFENDANTS’ sales of the PRODUCTS, consumers and other individuals in California are  
11 being exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS,  
12 without these consumers and other individuals first receiving a “clear and reasonable warning”  
13 regarding the harms associated with exposures to DEHP, as required by Proposition 65.

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

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

23 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
24 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
25 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
26 consumers in California are not exempt from the “clear and reasonable” warning requirements of  
27 Proposition 65, yet DEFENDANTS provide no clear and reasonable warning. DEFENDANTS’  
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1 violations of Proposition 65, resulting from their failure to provide warnings to consumers and  
2 other individuals in California exposed to DEHP from the PRODUCTS have continued since as  
3 far back as October 14, 2013.

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

6 32. DEHP is present in or on the PRODUCTS in such a way as to expose consumers  
7 and other individuals through dermal contact and/or ingestion during reasonably foreseeable  
8 use.

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

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

14 35. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable  
15 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the  
16 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale to  
17 consumers in California.

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

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