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PETER ENGLANDER

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

PETER ENGLANDER,
Plaintiff,
v.
KATY INDUSTRIES, INC.; CONTINENTAL
COMMERCIAL PRODUCTS L.L.C.; and
DOES 1 – 150, inclusive,
Defendants.

Case No. 17 CV 307123
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(Health & Safety Code § 25249.5 *et seq.*)

ENTERED
2017 MAR -8 P 2:39
CLERK OF SUPERIOR COURT
COUNTY OF SANTA CLARA
BY: CAO-NGUYEN

BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff PETER
3 ENGLANDER in the public interest of the citizens of the State of California to enforce the
4 People’s right to be informed of the health hazards caused by exposures to di(2-ethylhexyl)
5 phthalate (“DEHP”), a toxic chemical found in and on the vinyl/PVC grips of dust pans sold by
6 Defendants 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 vinyl/PVC grips of dust pans manufactured,
11 distributed, and offered for sale or use by defendants 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 dust pans with vinyl/PVC
16 grips that defendants manufacture, distribute, and offer for sale to consumers throughout
17 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. On October 24, 2003, , California listed DEHP, pursuant to Proposition 65 as a
24 chemical known to cause birth defects or other reproductive harm. DEHP became subject to the
25 “clear and reasonable warning” requirements of the act one year later on October 24, 2004. Cal.
26 Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

1 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
2 hazard warnings in California, dust pans with vinyl/PVC grips that contain DEHP including, but
3 not limited to, the *Lobby Dust Pan Self Open, COM808, #21150400, UPC #0 20027 01311 1*.
4 All such dust pans with vinyl/PVC grips containing DEHP are referred to collectively
5 hereinafter as "PRODUCTS."

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

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

15 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
16 penalties against defendants for their violations of Proposition 65.

17 **PARTIES**

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

22 11. Defendant KATY INDUSTRIES, INC. ("KATY") is a person in the course of
23 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

24 12. KATY manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
25 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
26 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

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1 13. Defendant CONTINENTAL COMMERICAL PRODUCTS L.L.C.
2 (“CONTINENTAL”) is a person in the course of doing business within the meaning of Health
3 and Safety Code sections 25249.6 and 25249.11.

4 14. CONTINENTAL manufactures, imports, distributes, sells, and/or 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/or offers the PRODUCTS for sale or use in the
7 State of California.

8 15. 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 16. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
12 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
13 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
14 sale in California.

15 17. 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 18. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
19 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
20 retailers for sale or use in the State of California, or each implies by its conduct that it
21 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
22 individuals, businesses, or retailers for sale in the State of California.

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

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

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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 October 28, 2016, plaintiff served a sixty-day notice of violation, together
14 with the accompanying certificate of merit, on KATY, CONTINENTAL, the California
15 Attorney General’s Office, and all other requisite public enforcement agencies alleging that, as a
16 result of DEFENDANTS’ sales of the PRODUCTS, consumers and other individuals in the
17 State of California are being exposed to DEHP resulting from their reasonably foreseeable use
18 of the PRODUCTS, without the consumers and other individuals first receiving a “clear and
19 reasonable warning” regarding the harms associated with exposures to DEHP, as required by
20 Proposition 65.

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

1 31. After receiving plaintiff's sixty-day notice of violation, no public enforcement
2 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS to
3 enforce the alleged violations that are the subject of plaintiff's 60-day notice of violation.

4 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
5 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
6 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
7 consumers and other individuals in California are not exempt from the "clear and reasonable"
8 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.
9 DEFENDANTS' violations of Proposition 65 stemming from their failure to warn consumers
10 and other individuals in California of the health risks associated with exposures to DEHP from
11 the PRODUCTS have continued since at least October 28, 2013.

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

14 34. DEHP is present in or on the PRODUCTS in such a way as to expose consumers
15 and other individuals through dermal contact and ingestion during reasonably foreseeable use.

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

19 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
20 PRODUCTS exposes individuals to DEHP through dermal contact and ingestion.

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

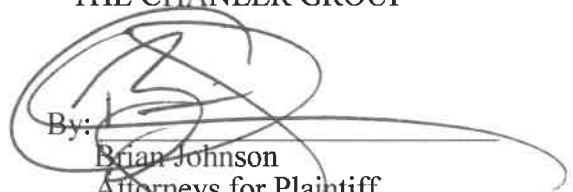
25 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those
26 consumers and other individuals in California who have been, or who will be, exposed to DEHP
27 through dermal contact and/or ingestion resulting from their use of the PRODUCTS.
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5. That the Court grant such other and further relief as may be just and proper.

Dated: March 9, 2017

Respectfully submitted,
THE CHANLER GROUP

By: 
Brian Johnson
Attorneys for Plaintiff
PETER ENGLANDER