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San Francisco County Superior Court

SEP 18 2017

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PETER ENGLANDER

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

PETER ENGLANDER,

Plaintiff,

v.

THE ORVIS COMPANY, INC.; and DOES 1-
150, inclusive,

Defendants.

Case No. **CCC-17-561346**
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(Health & Safety Code § 25249.5 *et seq.*)

FAXED

1 NATURE OF THE ACTION

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 tool grips 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*
8 *seq.*, who purchase, use or handle defendants' products, about the risks of exposure to DEHP
9 present in and on the tool grips manufactured, distributed, sold and offered for sale or use
10 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 tool grips that defendants
14 manufacture, distribute, sell and offer for sale to consumers throughout the State of California.

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

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

24 6. Defendants manufacture, distribute, import, sell, and offer for sale, without health
25 hazard warnings in California, tool grips that contain DEHP including, but not limited to the:
26 (a) *Orvis Rod and Tackle Comfy Grip TC Nipper, #5A04-000*; and (b) *Orvis Power Jaw Forceps*,
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1 #74GH-1000. All such tool grips containing DEHP are referred to, collectively, hereinafter as the
2 "PRODUCTS."

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

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

12 9. Pursuant to Health and Safety Code § 25249.7(b), Plaintiff also seeks civil penalties
13 against defendants for their violations of Proposition 65.

14 **PARTIES**

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

19 11. Defendant THE ORVIS COMPANY, INC. ("ORVIS") is a person in the course of
20 doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

21 12. ORVIS manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
22 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
23 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

24 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a person
25 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
26 25249.11.

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1 14. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
2 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
3 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for sale
4 or use in California.

5 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person in
6 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
7 25249.11.

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

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

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

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

22 20. ORVIS, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
23 and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred to collectively as
24 the "DEFENDANTS."

25 **VENUE AND JURISDICTION**

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

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

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

15 **FIRST CAUSE OF ACTION**

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

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

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

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

26 27. On October 28, 2016, Plaintiff served a sixty-day notice of violation, together with
27 the accompanying certificate of merit, on ORVIS, the California Attorney General's Office, and
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1 the requisite public enforcement agencies, alleging that, as a result of DEFENDANTS' sales of the
2 PRODUCTS, consumers in the State of California are being exposed to DEHP resulting from their
3 reasonably foreseeable use of the PRODUCTS, without the consumers first receiving a "clear and
4 reasonable warning" regarding the harms associated with exposures to DEHP, as required by
5 Proposition 65.

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

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

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

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

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

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

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

3 35. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable use
4 of the PRODUCTS will occur by their deliberate, non-accidental participation in the manufacture,
5 importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers in
6 California.

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

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

15 38. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
16 described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of
17 \$2,500 per day for each violation.

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

20 **PRAYER FOR RELIEF**

21 Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

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

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

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

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

8 5. That the Court grant such other and further relief as may be just and proper.
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10 Dated: September 15, 2017

Respectfully submitted,
THE CHANLER GROUP

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12 By: Kimberly Gates
13 Kimberly Gates
14 Attorneys for Plaintiff
15 PETER ENGLANDER
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