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PETER ENGLANDER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,
Plaintiff,
v.
TAPE HOLDING COMPANY, INC.; and DOES
1-150, inclusive,
Defendants.

ENDORSED
FILED
ALAMEDA COUNTY
JUN 20 2017
CLERK OF THE SUPERIOR COURT
Anita Dhir

Case No. Ret 17 864 662
**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
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-
5 ethylhexyl)phthalate (“DEHP”), a toxic chemical found in vinyl/PVC tape sold by defendants in
6 California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn California citizens and other individuals about the risks of exposure to DEHP present in
9 and on vinyl/PVC tape manufactured, distributed, and offered for sale or use to consumers and
10 other individuals throughout the State of California.

11 3. Detectable levels of DEHP are found in and on the vinyl/PVC tape that
12 defendants manufacture, distribute, and offer for sale to consumers and other individuals
13 throughout the State of California.

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

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

24 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without
25 health hazard warnings in California, vinyl/PVC tape containing DEHP including, but not
26 limited to, the *Identification Tape Green, #333C-1/2, CG01-AE01, #434343 M10, UPC #0*
27 *00194 34343 3*. All vinyl/PVC tape containing DEHP that are manufactured, distributed, sold
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1 and/or offered for sale by defendants in the State of California are referred to collectively
2 hereinafter as "PRODUCTS."

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

12 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
13 penalties 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
18 pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant TAPE HOLDING COMPANY, INC. ("THCI") is a person in the
20 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
21 25249.11.

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

25 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
26 person in the course of doing business within the meaning of Health and Safety Code sections
27 25249.6 and 25249.11.

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

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

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

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

14 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
15 State of California.

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

21 20. THCI, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
22 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as
23 “DEFENDANTS.”

24 VENUE AND JURISDICTION

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

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

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

14 **FIRST CAUSE OF ACTION**

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

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

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

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

26 27. On March 30, 2017, plaintiff served a Supplemental 60-day Notice of Violation
27 (the “Notice”), together with the requisite certificate of merit, on THCI and certain public
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1 enforcement agencies alleging that, as a result of DEFENDANTS' sales of the PRODUCTS
2 containing DEHP, purchasers and users in the State of California were being exposed to DEHP
3 resulting from their reasonably foreseeable use of the PRODUCTS, without the individual
4 purchasers and users first having been provided with a "clear and reasonable warning"
5 regarding the harms associated with such exposures, as required by Proposition 65.

6 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
7 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS'
8 violations have continued beyond their receipt of plaintiff's Notice. DEFENDANTS' violations
9 are ongoing and continuous in nature, and, as such, will continue in the future.

10 29. After receiving plaintiff's Notice, none of the appropriate public enforcement
11 agencies have commenced and diligently prosecuted a cause of action against DEFENDANTS
12 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff's Notice.

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

18 31. DEFENDANTS knew or should have known that the PRODUCTS they
19 manufactured, imported, distributed, sold, and offered for sale or use in California contained
20 DEHP.

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

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

26 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
27 the PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

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1 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
2 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

3 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
4 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
5 currently in the chain of commerce in California without a “clear and reasonable warning” as
6 defined by California Code of Regulations title 27, section 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: June 19, 2017

Respectfully Submitted,
THE CHANLER GROUP

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13 By:  _____

Ryan C. Oca
Attorneys for Plaintiff
PETER ENGLANDER