

COPY

BY FAX

1 Clifford A. Chanler, State Bar No. 135534
 2 Josh Voorhees, State Bar No. 241436
 3 THE CHANLER GROUP
 4 2560 Ninth Street
 5 Parker Plaza, Suite 214
 6 Berkeley, CA 94710
 7 Telephone: (510) 848-8880
 8 Facsimile: (510) 848-8118
 9 clifford@chanler.com
 10 josh@chanler.com

11 Attorneys for Plaintiff
 12 PETER ENGLANDER

ENDORSED
FILED

OCT 23 2017

CLERK OF THE COURT
 SUPERIOR COURT OF CA
 COUNTY OF SANTA CLARA
 BY _____ DEPUTY

8
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF SANTA CLARA
 11 UNLIMITED CIVIL JURISDICTION

12
13 PETER ENGLANDER,

14 Plaintiff,

15 v.

16 G-III APPAREL GROUP, LTD.; and DOES 1 -
 17 150, inclusive,

18 Defendants.

Case No. **17 CV317957**

**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-ethylhexyl)
5 phthalate (“DEHP”), a toxic chemical found in and on the vinyl/PVC ponchos 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 ponchos manufactured, distributed, and
11 offered for sale or use throughout the State of California. Individuals not covered by
12 California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase,
13 use or handle Defendants’ products, are referred to hereinafter as “consumers.”

14 3. Detectable levels of DEHP are found in and on the vinyl/PVC ponchos 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).

27 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
28 hazard warnings in California, vinyl/PVC ponchos that contain DEHP including, but not limited

1 to, *Official Team Poncho 49ers, Style LA400448, UPC #7 00291 84623* 2. All such vinyl/PVC
2 ponchos containing DEHP are referred to collectively hereinafter as “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
10 with the required warning regarding the health hazards associated with exposures to DEHP.
11 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 G-III APPAREL GROUP, LTD. (“G-III APPAREL”) is a person in
20 the course of doing business within the meaning of Health and Safety Code sections 25249.6
21 and 25249.11.

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

26 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
27 person in the course of doing business within the meaning of Health and Safety Code sections
28 25249.6 and 25249.11.

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

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

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

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

23 20. G-III APPAREL, MANUFACTURER DEFENDANTS, DISTRIBUTOR
24 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be
25 referred to collectively as the “DEFENDANTS.”

26 **VENUE AND JURISDICTION**

27 21. Venue is proper in the Superior Court for the County of Santa Clara pursuant to
28 Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of

1 competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because
2 one or more instances of wrongful conduct occurred, and continue to occur, in this county,
3 and/or because DEFENDANTS conducted, and continue to conduct, business in Santa Clara
4 with respect to the PRODUCTS.

5 22. The California Superior Court has jurisdiction over this action pursuant to
6 California Constitution Article VI, section 10, which grants the Superior Court “original
7 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
8 which this action is 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
21 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
22 harm.”

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

27 27. On August 1, 2017, Plaintiff served a sixty-day notice of violation, together with
28 the accompanying certificate of merit, on G-III APPAREL, the California Attorney General’s

1 Office, and the requisite public enforcement agencies alleging that, as a result of
2 DEFENDANTS' sales of the PRODUCTS, consumers in the State of California are being
3 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without
4 the consumers first receiving a "clear and reasonable warning" regarding the harms associated
5 with exposures to DEHP, 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 sixty-day notice of violation. As
9 such, DEFENDANTS' violations are ongoing and continuous in nature and, unless enjoined
10 will 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
13 under 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
19 of Proposition 65, yet DEFENDANTS provide no 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
26 of Regulations, section 25602(b).

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

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

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

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

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

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

19 **PRAYER FOR RELIEF**

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

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

24 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
25 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
26 offering the PRODUCTS for sale or use in California without first providing a “clear and
27 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
28 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

Dated: October 19, 2017

Respectfully submitted,
THE CHANLER GROUP

By: 
Josh Voorhees
Attorneys for Plaintiff
PETER ENGLANDER