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ENDORSED
FILED
ALAMEDA COUNTY
OCT 23 2017

By SUE PESKO

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA
15 UNLIMITED CIVIL JURISDICTION

16 PETER ENGLANDER,

17 Plaintiff,

18 v.

19 WAL-MART STORES, INC.; and DOES 1-
20 15, inclusive,

21 Defendants.

Case No. HG17879706

**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 cases with vinyl/PVC handles 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 cases with vinyl/PVC handles
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 cases with vinyl/PVC handles 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, cases with vinyl/PVC handles that contain DEHP including, but

1 not limited to, *Member's Mark Rugged Protective Case, #483489, UPC #0 78742 16033 7*. All
2 such cases with vinyl/PVC handles containing DEHP are referred to collectively hereinafter as
3 "PRODUCTS."

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

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

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

15 **PARTIES**

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

20 11. Defendant WAL-MART STORES, INC. ("WAL-MART") is a person in the
21 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
22 25249.11.

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

1 13. Defendants DOES 1-5 (“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 6-10 (“DISTRIBUTOR DEFENDANTS”) are each a person in
9 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 11-15 (“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 15, 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.

26 20. WAL-MART, MANUFACTURER DEFENDANTS, DISTRIBUTOR
27 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be
28 referred to collectively as the “DEFENDANTS.”

1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual” Health & Safety Code § 25249.6.

3 27. On August 1, 2017, Plaintiff served a sixty-day notice of violation, together with
4 the accompanying certificate of merit, on WAL-MART, the California Attorney General, and
5 all other requisite public enforcement agencies alleging that, as a result of DEFENDANTS’
6 sales of the PRODUCTS, consumers and other individuals in California are being exposed to
7 DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without these
8 consumers and other individuals first receiving a “clear and reasonable warning” regarding the
9 harms associated with exposures to DEHP, as required by Proposition 65.

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

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

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

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

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

1 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
2 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
3 offering the PRODUCTS for sale or use in California without first providing a “clear and
4 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
5 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

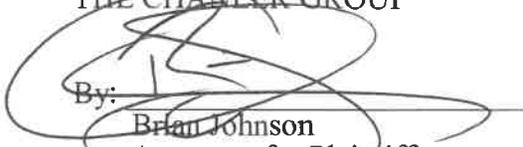
6 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
7 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
8 currently in the chain of commerce in California without a “clear and reasonable warning” as
9 defined by California Code of Regulations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

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

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

12
13 Dated: October 12, 2017

Respectfully submitted,
THE CHANLER GROUP

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15 By: 

Brian Johnson
Attorneys for Plaintiff
PETER ENGLANDER