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CLERK OF THE SUPERIOR COURT  
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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.; WALMART  
20 INC.; SAM'S WEST, INC. and DOES 1-15,  
21 inclusive,

22 Defendants.

Case No. RG17879706

**FIRST AMENDED COMPLAINT  
FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

1 NATURE OF THE ACTION

2 1. This First Amended 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 People’s right  
4 to be 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 First Amended Complaint, Plaintiff seeks to remedy defendants’ continuing  
7 failure to 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 exposure  
9 to DEHP present in and on the materials used in cases with vinyl/PVC handles manufactured,  
10 imported, distributed, sold, and offered for sale or use throughout the State of California. Individuals  
11 not covered by California’s Occupational Safety Health Act, Labor Code section 6300 *et seq.*, who  
12 purchase, use or handle defendants’ products, are referred to hereinafter as “consumers.”

13 3. Detectable levels of DEHP are found in and on cases with vinyl/PVC handles that  
14 defendants manufacture, import, distribute, sell, and offer for sale to consumers and other  
15 individuals throughout the State of California.

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

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

25 6. Defendants manufacture, import, distribute, sell, and offer for sale, without health  
26 hazard warnings, cases with vinyl/PVC handles that contain DEHP including, but not limited to,  
27 *Member’s Mark Rugged Protective Case, #483489, UPC #0 78742 16033* 7. All such cases with  
28 vinyl/PVC handles that are manufactured, imported, distributed, sold, or offered for sale by

1 defendants in the State of California containing DEHP are referred to collectively hereinafter as  
2 “PRODUCTS.”

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

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

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

13 **PARTIES**

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

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

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

23 13. Defendant WALMART INC. (WMI) is a person in the course of doing business within  
24 the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

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1           15. Defendant SAM'S WEST, INC. (SAM'S WEST) is a person in the course of doing  
2 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

3           16. SAM'S WEST manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
4 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
5 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

6           17. Defendants DOES 1-5 (MANUFACTURER DEFENDANTS) are each a person in the  
7 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
8 25249.11.

9           18. MANUFACTURER DEFENDANTS, and each of them, research, test, design,  
10 assemble, fabricate, and manufacture, or imply by their conduct that they research, test, design,  
11 assemble, fabricate, and manufacture one or more of the PRODUCTS offered for sale or use in  
12 California.

13           19. Defendants DOES 6-10 (DISTRIBUTOR DEFENDANTS) are each a person in the  
14 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
15 25249.11.

16           20. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange, transfer,  
17 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale  
18 or use in the State of California, or imply by their conduct that they distribute, exchange, transfer,  
19 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale  
20 or use in the State of California.

21           21. Defendants DOES 11-15 (RETAILER DEFENDANTS) are each a person in the  
22 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
23 25249.11.

24           22. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to  
25 individuals in the State of California.

26           23. At this time, the true names of defendants DOES 1 through 15, inclusive, are unknown  
27 to plaintiff who, therefore, sues said defendants by their fictitious names pursuant to Code of Civil  
28 Procedure section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the

1 fictitiously named defendants is responsible for the acts and occurrences alleged herein. When  
2 ascertained, their true names shall be reflected in further amended complaint.

3 24. WAL-MART, WMI, SAM'S WEST, MANUFACTURER DEFENDANTS,  
4 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where  
5 appropriate, be referred to collectively as the "DEFENDANTS."

6 **VENUE AND JURISDICTION**

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

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

16 27. The California Superior Court has jurisdiction over DEFENDANTS based on  
17 plaintiff's information and good faith belief that DEFENDANTS are each a person, firm, corporation  
18 or association that is a citizen of the State of California, has sufficient minimum contacts in the State  
19 of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS'  
20 purposeful availment renders the exercise of personal jurisdiction by California courts consistent  
21 with traditional notions of fair play and substantial justice.

22 **FIRST CAUSE OF ACTION**

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

24 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs  
25 1 through 27, inclusive.

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

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

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

12           32. On July 25, 2018, Plaintiff served a supplemental sixty-day notice of violation,  
13 together with the accompanying certificate of merit, on WAL-MART, WMI, SAM’S WEST, the  
14 California Attorney General, and all other requisite public enforcement agencies alleging that, as a  
15 result of DEFENDANTS’ sales of the PRODUCTS, consumers and other individuals in California  
16 are being exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS,  
17 without these consumers and other individuals first receiving a “clear and reasonable warning”  
18 regarding the harms associated with exposures to DEHP, as required by Proposition 65.

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

24           34. After receiving Plaintiff’s sixty-day notices of violation, no public enforcement agency  
25 has commenced and diligently prosecuted a cause of action against DEFENDANTS under  
26 Proposition 65 to enforce the alleged violations that are the subject of Plaintiff’s sixty-day notices of  
27 violation.

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1           35. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer  
2 for sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable use of  
3 the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers and other  
4 individuals in California are not exempt from the “clear and reasonable” warning requirements of  
5 Proposition 65, yet DEFENDANTS provide no clear and reasonable warning.

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

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

10          38. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
11 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code of  
12 Regulations, section 25600.1(e).

13          39. DEFENDANTS know that the normal and reasonably foreseeable use of the  
14 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

15          40. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable use  
16 of the PRODUCTS will occur by their deliberate, non-accidental participation in the manufacture,  
17 importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers in  
18 California.

19          41. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers  
20 and other individuals in California who have been, or who will be, exposed to DEHP through dermal  
21 contact and/or ingestion resulting from their use of the PRODUCTS.

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

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