

1 Brian Johnson, State Bar No. 235965  
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 brian@chanler.com  
10 josh@chanler.com

11 Attorneys for Plaintiff  
12 PETER ENGLANDER

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

16 PETER ENGLANDER,

17 Plaintiff,

18 v.

19 ALLEN COMPANY INC.; and DOES 1 – 15,  
20 inclusive,

21 Defendants.

**FILED**

DEC - 4 2017

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: C. Luchoesi, Deputy

Case No. CW 1704441

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5)

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 components of bags sold  
6 by 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 components of bags with manufactured,  
11 distributed, and offered for sale or use throughout the State of California. Individuals not  
12 covered by California's Occupational Safety Health Act, Labor Code section 6300 et seq., who  
13 purchase, 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 components of  
15 bags that defendants manufacture, distribute, and offer for sale to consumers throughout  
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 listed DEHP as a  
23 chemical known to cause birth defects or other reproductive harm. DEHP became subject to the  
24 "clear and reasonable warning" requirements of the act one year later on October 24, 2004. Cal.  
25 Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

26 6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
27 hazard warnings in California, bags with vinyl/PVC components that contain DEHP including,  
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1 but not limited to, the vinyl/PVC components of the *Allen Two Compartment Shotgun Shell*  
2 *Bag, BB2102, UPC #0 26509 02102 5*. All such bags with vinyl/PVC components containing  
3 DEHP are referred to collectively hereinafter as "PRODUCTS."

4 7. Defendants' failure to warn consumers in California of the health hazards  
5 associated with exposures to DEHP in conjunction with defendants' sales of the PRODUCTS  
6 are violations of Proposition 65, and subject defendants, and each of them, to enjoinder of  
7 such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) &  
8 (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 consumers and other individuals in California through the  
18 elimination or reduction of toxic exposures from consumer products; and he brings this action in  
19 the public interest pursuant to Health and Safety Code section 25249.7(d).

20 11. Defendant ALLEN COMPANY INC. ("ALLEN COMPANY") 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. ALLEN COMPANY manufactures, imports, distributes, sells, and/or offers the  
24 PRODUCTS for sale in California, or it implies by its conduct that it manufactures, imports,  
25 distributes, sells, and/or offers the PRODUCTS for sale in California.

26 13. Defendants DOES 1-5 ("MANUFACTURER DEFENDANTS") are each a  
27 person in the course of doing business within the meaning of Health and Safety Code sections  
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1 25249.6 and 25249.11.

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

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

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

13 17. Defendants DOES 11-15 (“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. Each of the RETAILER DEFENDANTS offer the PRODUCTS for sale to  
17 consumers and other individuals in the State of California.

18 19. At this time, the true names of defendants DOES 1 through 15, 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. ALLEN COMPANY, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
24 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be  
25 referred to collectively as the “DEFENDANTS.”  
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1 **VENUE AND JURISDICTION**

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

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

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

17 **FIRST CAUSE OF ACTION**

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

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

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

25 26. Proposition 65 states, “[n]o person in the course of doing business shall  
26 knowingly and intentionally expose any individual to a chemical known to the state to cause  
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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 17, 2017, plaintiff served a sixty-day notice of violation, together with  
4 the requisite certificate of merit, on ALLEN COMPANY, the California Attorney General, and  
5 all other required 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 such  
8 individuals first receiving a “clear and reasonable warning” regarding the harms associated with  
9 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 and, unless enjoined will continue  
14 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 to  
17 enforce the violations alleged in plaintiff’s sixty-day notice of violation.

18 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
19 offer for sale in California cause exposures to DEHP as a result of the reasonably foreseeable  
20 use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers  
21 in California are not exempt from the “clear and reasonable” warning requirements of  
22 Proposition 65, yet DEFENDANTS provide no warning. DEFENDANTS’ violations as alleged  
23 herein have been going on since at least August 1, 2014.

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.

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

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

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

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

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

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

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

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

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1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
8 offering the PRODUCTS for sale or use in California without first providing a “clear and  
9 reasonable warning” in accordance with title 27 of the California Code of Regulations, section  
10 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

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

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

16 5. That the Court grant such other and further relief as may be just and proper.  
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18 Dated: December 1, 2017

Respectfully submitted,  
THE CHANLER GROUP

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21 By. 

Brian Johnson  
Attorneys for Plaintiff  
PETER ENGLANDER  
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