

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 94710-2565
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

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San Francisco County Superior Court

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CLEARING THE COURT
BY: Margaret C. [Signature]
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION

13 PETER ENGLANDER,

14 Plaintiff,

15 v.

16 WORLD AND MAIN (CRANBURY), LLC;
17 and DOES 1-15, inclusive,

18 Defendants.

CGC-18-566066

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

859 HARRISON STREET SF, CA 94103
415-351-0400
NATIONWIDE LEGAL LLC
BY FAX

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NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff Peter Englander in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazards caused by exposures to di(2-ethylhexyl) phthalate ("DEHP"), di-n-butyl phthalate ("DBP") and Lead, toxic chemicals found in and/or on the following categories of consumer products as follows: (i) vinyl/PVC hoses containing DEHP; (ii) electrical components and accessories containing DEHP and Lead; (iii) flashlights containing DEHP and Lead; (iv) hand tools containing DEHP, DBP, and/or Lead; (v) household hardware accessories containing DEHP and Lead; (vi) household plumbing accessories containing DEHP; and (vii) tape measures containing DEHP sold by defendants in California.

2. By this Complaint, Plaintiff seeks to remedy defendants' continuing failure to warn individuals not covered by California's Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase, use or handle consumer products sold and distributed for sale in California by defendants, about the risks of exposures to DEHP, DBP and Lead present in and on the materials used in (i) vinyl/PVC hoses containing DEHP; (ii) electrical components and accessories containing DEHP and Lead; (iii) flashlights containing DEHP and Lead; (iv) hand tools containing DEHP, DBP, and/or Lead; (v) household hardware accessories containing DEHP and Lead; (vi) household plumbing accessories containing DEHP; and (vii) tape measures containing DEHP manufactured, distributed, and offered for sale or use throughout the State of California. Individuals not covered by California's Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase, use or handle defendants' products, are referred to hereinafter as "consumers."

3. Detectable levels of DEHP, DBP and Lead (collectively, the "LISTED CHEMICALS") are found in and on the (i) vinyl/PVC hoses containing DEHP; (ii) electrical components and accessories containing DEHP and Lead; (iii) flashlights containing DEHP and Lead; (iv) hand tools containing DEHP, DBP, and/or Lead; (v) household hardware accessories containing DEHP and Lead; (vi) household plumbing accessories containing DEHP; and (vii)

1 tape measures containing DEHP that defendants manufacture, distribute, and offer for sale to
2 consumers throughout the State of California.

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

8 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed
9 Lead as a chemical known to cause birth defects or other reproductive harm. Lead became
10 subject to the "clear and reasonable warning" requirements of the act one year later on February
11 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
12 25249.10(b).

13 6. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
14 DEHP as a chemical known to cause birth defects or other reproductive harm. DEHP became
15 subject to the "clear and reasonable warning" requirements of the act one year later on October
16 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
17 25249.10(b).

18 7. Pursuant to Proposition 65, on December 2, 2005, California identified and listed
19 DBP as a chemical known to cause birth defects or other reproductive harm. DBP became
20 subject to the "clear and reasonable warning" requirements of the act one year later on
21 December 2, 2006. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b).

23 8. Defendants manufacture, sell, distribute for sale, import for sale, and offer for sale
24 without health hazard warnings in California the following categories of consumer products:

25 (i) vinyl/PVC hoses containing DEHP, such products include, but are not limited to the
26 hose component of the *Helping Hand 3-Setting Hand-Held Shower, FQ01167, #156090-*
27 *23314, UPC #0 70792 01167 6;*
28

(ii) electrical components and accessories containing DEHP and Lead, such products include but are not limited to the *Bright-Way 3 Outlet Grounded Wall Tap, 30HDCWT-32810, UPC #0 71555 10335 5*;

(iii) flashlights containing DEHP and Lead, such products include but are not limited to *Flashlight with Nonslip Grip, #146863, UPC #0 75877 51016 7*;

(iv) hand tools containing DEHP, DBP, and/or Lead, such products include but are not limited to the *Claw Hammer, UPC #0 74972 96605 3, Ripping Hammer UPC #0 74972 96600 8, Steel Hammer UPC #0 74972 96709 8, and Forged Hammer UPC #0 74972 96617 6*;

(v) household hardware accessories containing DEHP and Lead, such products include but are not limited to the *Ultra Door Stop Hinge Pin, UPC #7 49694 70058 1*;

(vi) household plumbing accessories containing DEHP, such products include, but are not limited to the *Aqua Plumb Shower Sensations Massage Hand Shower, C0290, UPC #7 53274 02904 7*; and

(vii) tape measures containing DEHP, such products include, but are not limited to the *16' Monster Tape, UPC #0 74972 90115 3*.

Each of the above categories of products and the exemplars identified as representative(s) of their respective category or categories, and the respective LISTED CHEMICALS they are alleged to contain in paragraphs 8(i) through 8(vii), above, are referred to collectively hereinafter as the "PRODUCTS."

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

10. For defendants' violations of Proposition 65, plaintiff seeks preliminary and permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with

1 the required warning regarding the health hazards associated with exposures to the LISTED
2 CHEMICALS. Health & Safety Code § 25249.7(a).

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

5 **PARTIES**

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

10 13. Defendant WORLD AND MAIN (CRANBURY), LLC ("WORLD AND
11 MAIN") is a person in the course of doing business within the meaning of Health and Safety
12 Code sections 25249.6 and 25249.11.

13 14. WORLD AND MAIN manufactures, imports, distributes, sells, and/or offers the
14 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
15 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
16 State of California.

17 15. Defendants DOES 1-5 ("MANUFACTURER DEFENDANTS") are each a
18 person in the course of doing business within the meaning of Health and Safety Code sections
19 25249.6 and 25249.11.

20 16. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
21 assemble, fabricate, and manufacture, or imply by their conduct that they research, test, design,
22 assemble, fabricate, and manufacture one or more of the PRODUCTS offered for sale or use in
23 California.

24 17. Defendants DOES 6-10 ("DISTRIBUTOR DEFENDANTS") are each a person in
25 the course of doing business within the meaning of Health and Safety Code sections 25249.6
26 and 25249.11.

27 18. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
28 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or

1 retailers for sale or use in the State of California, or imply by their conduct that they distribute,
2 exchange, transfer, process, and transport one or more of the PRODUCTS to individuals,
3 businesses, or retailers for sale or use in the State of California.

4
5 19. Defendants DOES 11-15 ("RETAILER 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 20. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
9 individuals in the State of California.

10 21. At this time, the true names of defendants DOES 1 through 15, inclusive, are
11 unknown to plaintiff who, therefore, sues said defendants by their fictitious names pursuant to
12 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
13 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
14 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

15 22. WORLD AND MAIN, MANUFACTURER DEFENDANTS, DISTRIBUTOR
16 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be
17 referred to collectively as the "DEFENDANTS."

18 **VENUE AND JURISDICTION**

19 23. Venue is proper in the County of San Francisco pursuant to Code of Civil
20 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
21 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
22 wrongful conduct occurred, and continue to occur, in this county, and/or because
23 DEFENDANTS conducted, and continue to conduct business in San Francisco with respect to
24 the PRODUCTS.

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

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

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

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

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

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

29. On August 1, 2017, Plaintiff served a sixty-day notice of violation, together with the accompanying certificate of merit on WORLD AND MAIN, alleging that, as a result of DEFENDANTS' sales of the PRODUCTS, consumers and other individuals in California are being exposed to DEHP in the vinyl/PVC hose components of World and Main's hand-held shower products during reasonably foreseeable uses. Plaintiff's August 1, 2017, sixty-day notice further alleged that WORLD AND MAIN has caused such exposures without first providing consumers and other individuals in California with the "clear and reasonable warning" regarding the harms associated with exposures to DEHP, as required by Proposition 65.

1 30. On February 14, 2018, Plaintiff served a supplemental sixty-day notice of
2 violation, together with the accompanying certificate of merit on WORLD AND MAIN, the
3 California Attorney General, and all other requisite public enforcement agencies alleging that,
4 as a result of DEFENDANTS' sales of the PRODUCTS, consumers and other individuals in
5 California are being exposed to DEHP, DBP and Lead resulting from their reasonably
6 foreseeable uses of the PRODUCTS (as alleged in paragraph 8, above). Plaintiff's February 14,
7 2018, supplemental sixty-day notice, also alleges that WORLD AND MAIN has done so
8 without first providing such consumers and other individuals with a "clear and reasonable
9 warning" regarding the harms associated with exposures to the LISTED CHEMICALS as
10 required by Proposition 65.

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

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

20 33. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
21 offer for sale or use in California cause exposures to the LISTED CHEMICALS as a result of
22 the reasonably foreseeable uses of the PRODUCTS. Such exposures caused by DEFENDANTS
23 and endured by consumers and other individuals in California are not exempt from the "clear
24 and reasonable" warning requirements of Proposition 65, yet DEFENDANTS provide no clear
25 and reasonable warning.

26 34. DEFENDANTS knew or should have known that the PRODUCTS they
27 manufacture, import, distribute, sell, and offer for sale in California contain the LISTED
28 CHEMICALS.

1 35. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
2 to expose consumers and other individuals through dermal contact and/or ingestion during
3 reasonably foreseeable uses.

4 36. The normal and reasonably foreseeable uses of the PRODUCTS has caused, and
5 continues to cause, consumer exposures to the LISTED CHEMICALS, as defined by title 27 of
6 the California Code of Regulations, section 25602(b).

7 37. DEFENDANTS know that the normal and reasonably foreseeable uses of the
8 PRODUCTS expose individuals to the LISTED CHEMICALS through dermal contact and/or
9 ingestion.

10 38. DEFENDANTS intend that exposures to the LISTED CHEMICALS from the
11 reasonably foreseeable uses of the PRODUCTS will occur by their deliberate, non-accidental
12 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS
13 for sale to consumers in California.

14 39. DEFENDANTS failed to provide a "clear and reasonable warning" to those
15 consumers and other individuals in California who have been, or who will be, exposed to the
16 LISTED CHEMICALS through dermal contact and/or ingestion resulting from their uses of the
17 PRODUCTS.

18 40. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
19 directly by California voters, consumers exposed to the LISTED CHEMICALS through dermal
20 contact and/or ingestion as a result of their uses of the PRODUCTS that DEFENDANTS sold
21 without a "clear and reasonable" health hazard warning have suffered, and continue to suffer,
22 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

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

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