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By: _____
Clerk of Court

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SANTA CLARA

13 UNLIMITED CIVIL JURISDICTION

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PETER ENGLANDER,

Plaintiff,

v.

THE COLEMAN COMPANY, INC.; and
DOES 1-150, inclusive,

Defendants.

Case No. _____

112CV232185

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Cal. Health & Safety Code § 25249.6 et seq.)

BY FAX

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 presence of di(2-ethylhexyl)phthalate ("DEHP"), a toxic
5 chemical found in air mattresses sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant's continuing failure to warn
7 California citizens about their exposure to DEHP, present in or on certain air mattresses that
8 defendant manufactures, imports, distributes, and/or offers for sale to consumers and businesses
9 throughout the State of California.

10 3. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
11 California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"), "No person in the course
12 of doing business shall knowingly and intentionally expose any individual to a chemical known
13 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
14 warning to such individual..." (*Cal. Health & Safety Code § 25249.6.*)

15 4. On October 24, 2003, California identified and listed DEHP as a chemical known
16 to cause birth defects and other reproductive harm. DEHP became subject to the warning
17 requirement one year later and was, therefore, subject to the "clear and reasonable warning"
18 requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code §§ 25249.8.*)

20 5. Defendant THE COLEMAN COMPANY, INC. ("COLEMAN" or "Defendant")
21 manufactures, imports, distributes, and/or sells air mattresses containing DEHP including, but
22 not limited to, *The Original Aerobed Premium Air-Filled Mattress Sleep Away, #969IT (#7*
23 *60433 07711 5).*

24 6. All such air mattresses containing DEHP shall hereinafter be referred to as the
25 "PRODUCTS."

26 7. Defendant's failure to warn consumers and/or other individuals in the State of
27 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*
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1 *seq.* about their exposure to DEHP in conjunction with Defendant's distribution, importation,
2 manufacturing, and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects
3 Defendant to enjoinder of such conduct as well as civil penalties for each such violation.

4 8. For Defendant's violation of Proposition 65, plaintiff seeks preliminary injunctive
5 and permanent injunctive relief to compel Defendant to provide purchasers or users of the
6 PRODUCTS with the required warning regarding the health hazards of DEHP. (*Cal. Health &*
7 *Safety Code § 25249.7(a).*)

8 9. Plaintiff also seeks civil penalties against Defendant for its violations of
9 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

10 PARTIES

11 10. PETER ENGLANDER is a citizen of the State of California who is dedicated to
12 protecting the health of California citizens through the elimination or reduction of toxic
13 exposures from consumer and commercial products, and brings this action in the public interest
14 pursuant to California Health & Safety Code § 25249.7.

15 11. COLEMAN is a person doing business within the meaning of California Health &
16 Safety Code § 25249.11.

17 12. COLEMAN manufactures, imports, distributes, sells and/or offers the PRODUCTS
18 for sale or use in the State of California or implies by its conduct that it manufactures, imports,
19 distributes, sells and/or offers the PRODUCTS for sale or use in the State of California.

20 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons
21 doing business within the meaning of California Health & Safety Code § 25249.11.

22 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,
23 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
24 engage in the process of research, testing, designing, assembling, fabricating, and/or
25 manufacturing one or more of the PRODUCTS for sale or use in the State of California.

26 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
27 doing business within the meaning of California Health & Safety Code § 25249.11.

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1 association that either are citizens of the State of California, have sufficient minimum contacts in
2 the State of California, or otherwise purposefully avail themselves of the California market.
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
4 courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

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

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

9 25. The citizens of the State of California have expressly stated in Proposition 65 that
10 they must be informed "about exposures to chemicals that cause cancer, birth defects and other
11 reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)

12 26. Proposition 65 states, "[n]o person in the course of doing business shall knowingly
13 and intentionally expose any individual to a chemical known to the state to cause cancer or
14 reproductive toxicity without first giving clear and reasonable warning to such individual..."
15 (*Id.*)

16 27. On or about December 13, 2011, a 60-Day Notice of Violation, together with the
17 requisite Certificate of Merit (the "Notice"), was provided to COLEMAN and various public
18 enforcement agencies stating that as a result of DEFENDANTS' manufacture, distribution and/or
19 sale of the PRODUCTS, purchasers and users in the State of California were being exposed to
20 DEHP resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
21 purchasers and users first having been provided with a "clear and reasonable warning" regarding
22 such toxic exposures.

23 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale
24 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety
25 Code § 25249.6 and DEFENDANTS' manufacture, importation, distribution, sale and/or
26 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code

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1 § 25249.6 has continued to occur beyond COLEMAN's receipt of the Notice. Plaintiff further
2 alleges and believes that such violations will continue to occur into the future.

3 29. After receipt of the claims asserted in the Notice, the appropriate public
4 enforcement agencies have failed to commence and diligently prosecute a cause of action against
5 DEFENDANTS under Proposition 65.

6 30. The PRODUCTS manufactured, imported, distributed, sold and/or offered for sale
7 or use in California by DEFENDANTS contained DEHP above the allowable state limits.

8 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
9 imported, distributed, sold and/or offered for sale or use by DEFENDANTS in California
10 contained DEHP.

11 32. DEHP was present in or on the PRODUCTS in such a way as to expose
12 individuals to DEHP through dermal contact, inhalation, and ingestion during the reasonably
13 foreseeable use of the PRODUCTS.

14 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
15 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by
16 27 California Code of Regulations ("CCR") § 25602(b).

17 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
18 the PRODUCTS would expose individuals to DEHP through dermal contact, inhalation, and
19 ingestion.

20 35. DEFENDANTS intended that such exposures to DEHP from the reasonably
21 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
22 in the manufacture, importation, distribution, sale and/or offering for sale or use of PRODUCTS
23 to individuals in the State of California.

24 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
25 consumers and/or other individuals in the State of California who were or who could become
26 exposed to DEHP through dermal contact, inhalation and/or ingestion during the reasonably
27 foreseeable use of the PRODUCTS.


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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: September 12, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 

Troy C. Bailey
Attorneys for Plaintiff
PETER ENGLANDER