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ALAMEDA COUNTY

April 17, 2013

CLERK OF
THE SUPERIOR COURT
By Rosanne Case, Deputy

CASE NUMBER:
RG13675901

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF ALAMEDA

9 UNLIMITED CIVIL JURISDICTION

11 PETER ENGLANDER,

12 Plaintiff,

13 vs.

14 THREE HANDS CORPORATION and DOES
1-150,

15 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff PETER ENGLANDER,
3 in the public interest of the citizens of the State of California, to enforce the People’s right to be
4 informed of the presence of Tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) found in and on
5 certain furniture products manufactured, distributed and/or otherwise sold by Defendants in
6 California.

7 2. By this Complaint, Plaintiffs seek to remedy Defendants’ continuing failures to warn
8 California citizens about the risks of exposures to TDCPP present in and on the products
9 manufactured, distributed, sold, and offered for sale or use to consumers throughout the State of
10 California.

11 3. TDCPP is a toxic chemical that is used to treat the polyurethane foam used as
12 padding or cushioning in a variety of Defendants’ furniture products. Detectable levels of TDCPP
13 have been found and are commonly found in and on the products that Defendants manufacture,
14 distribute, sell, and offer for sale to California consumers, many of whom are infants and children.
15 Individuals in California, including infants and children, are exposed to TDCPP in the products
16 through inhalation, dermal absorption and ingestion. California consumers of Defendants’
17 products inhale airborne TDCPP released from padded upholstered furniture and ingest TDCPP
18 from touching dust or other surfaces to which the chemical released from padded upholstered
19 furniture has adhered or adsorbed and then transferring such dust, either directly or indirectly, to
20 their mouths. California consumers of Defendants’ products also absorb TDCPP that comes into
21 contact with exposed skin surfaces.

22 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
23 California Health & Safety Code Section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the
24 course of doing business shall knowingly and intentionally expose any individual to a chemical
25 known to the state to cause cancer or reproductive toxicity without first giving clear and
26 reasonable warning to such individual. . . .” (*Cal. Health & Safety Code* § 25249.6.)

27 5. TDCPP has been used in consumer products as an additive flame retardant since
28 the 1960s. In the late 1970s, based on findings that exposure to TDCPP could have mutagenic

1 effects, the United States Consumer Product Safety Commission banned the use of TDCPP in
2 children’s pajamas. Pursuant to Proposition 65, on October 28, 2011, California identified and
3 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
4 reasonable warning” requirements of the Act one year later on October 28, 2012. (Cal. Code
5 Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).)

6 6. Defendant Three Hands Corporation manufactures, causes to be manufactured,
7 distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers
8 for sale in California padded, upholstered furniture, including ottomans, with foam padding
9 containing TDCPP. Defendant Three Hand Corporation also manufactures, causes to be
10 manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or
11 otherwise offers for sale in California the Key Pattern Ottoman, Item #33109, with foam padding
12 containing TDCPP.

13 7. All such padded, upholstered furniture, including ottomans, stool and chairs, made
14 with foam padding or cushion materials containing TDCPP shall hereinafter be referred to as
15 “PRODUCTS.”

16 8. Although Defendants expose infants, children, and other California consumers to
17 TDCPP through the reasonably foreseeable use of the PRODUCTS, Defendants provide no
18 warnings about the carcinogenic hazards associated with these TDCPP exposures. Defendants’
19 failure to warn consumers and/or other individuals in the State of California about their
20 exposures to TDCPP in conjunction with defendants’ sale of the PRODUCTS is a violation of
21 Proposition 65.

22 9. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
23 permanent injunctive relief to compel defendants to provide purchasers or users of any and all of
24 the PRODUCTS with the required warning regarding the health hazards of TDCPP in the
25 PRODUCTS. (*Cal. Health & Safety Code § 25249.7(a).*)

26 10. Plaintiff also seeks civil penalties against defendants for their violations of
27 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

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PARTIES

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2 11. Plaintiff PETER ENGLANDER is a citizen of the State of California who is
3 experienced in protecting the health of California citizens through the elimination or reduction of
4 toxic exposures from consumer products, and brings this action in the public interest pursuant to
5 California Health & Safety Code Section 25249.7.

6 12. Defendant Three Hands Corporation (“THREE HANDS”) is a person doing business
7 within the meaning of California Health & Safety Code Section 25249.11.

8 13. THREE HANDS manufactures, causes to be manufactured, distributes, causes to be
9 distributed, imports, causes to be imported, sells and/or otherwise offers for sale or use in
10 California the PRODUCTS or implies by its conduct that it does so.

11 14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons
12 doing business within the meaning of California Health & Safety Code Section 25249.11.
13 MANUFACTURER DEFENDANTS engage in the process of research, testing, designing,
14 assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the
15 process of research, testing, designing, assembling, fabricating, and/or manufacturing, one or
16 more of the PRODUCTS for sale or use in the State of California.

17 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons doing
18 business within the meaning of California Health & Safety Code Section 25249.11. DISTRIBUTOR
19 DEFENDANTS distribute, exchange, transfer, process and/or transport one or more of the
20 PRODUCTS to individuals, businesses or retailers for sale or use in the State of California.

21 16. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing
22 business within the meaning of California Health & Safety Code Section 25249.11. RETAIL
23 DEFENDANTS offer the PRODUCTS for sale to individuals in the State of California.

24 17. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
25 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
26 Code of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges,
27 that each of the fictitiously named defendants is responsible for the acts and occurrences herein
28 alleged. When ascertained, their true names shall be reflected in an amended complaint.

1 18. THREE HANDS, MANUFACTURER DEFENDANTS, DISTRIBUTOR
2 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to
3 hereinafter as "DEFENDANTS".

4 **VENUE AND JURISDICTION**

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

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

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

21 **FIRST CAUSE OF ACTION**

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

23 22. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
24 Paragraphs 1 through 21, inclusive.

25 23. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
26 Enforcement Act of 1986, the People of California expressly declared their right "[t]o be informed
27 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm."
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1 24. Proposition 65 states, “[n]o person in the course of doing business shall knowingly
2 and intentionally expose any individual to a chemical known to the state to cause cancer or
3 reproductive toxicity without first giving clear and reasonable warning to such individual”
4 (Health & Safety Code § 25249.6.)

5 25. On January 4, 2013, ENGLANDER served a sixty-day notice of violation (“60-Day
6 Notice”), supported by the requisite Certificate of Merit, upon THREE HANDS and various public
7 enforcement agencies stating that as a result of the such defendants’ sales of the PRODUCTS,
8 purchasers and users in the State of California are being exposed to TDCPP resulting from the
9 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
10 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

11 26. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
12 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
13 plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or offering
14 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
15 has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notice. Plaintiff
16 further alleges and believes that such violations are reasonably likely to occur into the future
17 absent express injunctive relief.

18 27. After receipt of the claims asserted in the 60-Day Notice, the appropriate public
19 enforcement agencies have failed to commence and diligently prosecute a cause of action against
20 DEFENDANTS under Proposition 65.

21 28. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
22 California by DEFENDANTS contain TDCPP.

23 29. DEFENDANTS knew or should have known that the PRODUCTS contain TDCPP.

24 30. TDCPP is present in or on each of the PRODUCTS in such a way as to expose (as
25 such exposure is defined by 27 CCR Section 25602(b)) individuals to TDCPP through dermal
26 contact, inhalation and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

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1 warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to the
2 TDCPP;

3 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

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

5 Dated: April 16, 2013

Respectfully submitted,

6 THE CHANLER GROUP

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8 By: 

Gregory M. Sheffer
Attorneys for Plaintiff
9 PETER ENGLANDER
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