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**FILED BY FAX**  
ALAMEDA COUNTY  
May 08, 2013  
CLERK OF  
THE SUPERIOR COURT  
By Denise Dalton, Deputy  
CASE NUMBER:  
**RG13675901**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,

Plaintiff,

vs.

THREE HANDS CORPORATION,  
BURLINGTON COAT FACTORY  
WAREHOUSE CORPORATION  
and DOES 1-150,

Defendants.

Case No. RG13675901

**FIRST AMENDED 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. Defendants Three Hands Corporation and Burlington Coat Factory Warehouse  
7 Corporation each manufactures, causes to be manufactured, distributes, causes to be distributed,  
8 imports, causes to be imported, sells and/or otherwise offers for sale in California padded,  
9 upholstered furniture, including ottomans, with foam padding containing TDCPP. Defendants  
10 Three Hand Corporation and Burlington Coat Factory Warehouse Corporation each also  
11 manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to  
12 be imported, sells and/or otherwise offers for sale in California the Key Pattern Ottoman, Item  
13 #33109, with foam padding containing TDCPP.

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

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

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

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

**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. Defendant Burlington Coat Factory Warehouse Corporation (“BURLINGTON”) is a  
12 person doing business within the meaning of California Health & Safety Code Section 25249.11.

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

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

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

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



1 FIRST CAUSE OF ACTION

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

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

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

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

12 27. On January 4, 2013, ENGLANDER served a compliant 60-Day Notice of Violation  
13 (“Notice” or “60-Day Notice”), supported by the requisite Certificate of Merit, upon THREE  
14 HANDS and various public enforcement agencies stating that as a result of the such defendants’  
15 sales of the PRODUCTS, purchasers and users in the State of California are being exposed to  
16 TDCPP resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
17 purchasers and users first having been provided with a “clear and reasonable warning” regarding  
18 such toxic exposures.

19 28. On February 25, 2013, ENGLANDER served a compliant Supplemental 60-Day  
20 Notice of Violation (“Supplemental Notice”), supported by the requisite Certificate of Merit, upon  
21 THREE HANDS, BURLINGTON and various public enforcement agencies stating that as a result  
22 of the such defendants’ sales of the PRODUCTS, purchasers and users in the State of California are  
23 being exposed to TDCPP resulting from the reasonably foreseeable uses of the PRODUCTS,  
24 without the individual purchasers and users first having been provided with a “clear and  
25 reasonable warning” regarding such toxic exposures.

26 29. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
27 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and  
28 plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or offering

1 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6  
2 has continued to occur beyond DEFENDANTS' receipt of plaintiff's Notice and Supplemental  
3 Notice. Plaintiff further alleges and believes that such violations are reasonably likely to occur into  
4 the future absent express injunctive relief.

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

8 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
9 California by DEFENDANTS contain TDCPP.

10 32. DEFENDANTS knew or should have known that the PRODUCTS contain TDCPP.

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

14 34. DEFENDANTS knew or should have known that the reasonably foreseeable use of  
15 the PRODUCTS exposes individuals to TDCPP through dermal contact, inhalation and/or  
16 ingestion.

17 35. DEFENDANTS' participation in the manufacture, distribution and/or offer for sale  
18 or use of PRODUCTS to individuals in the State of California was deliberate and non-accidental.

19 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
20 consumers and/or other individuals in the State of California who were or who could become  
21 exposed to TDCPP during the reasonably foreseeable use of the PRODUCTS.

22 37. Contrary to the express policy and statutory prohibition of Proposition 65,  
23 individuals exposed to the TDCPP through dermal contact, inhalation and/or ingestion resulting  
24 from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS without a "clear  
25 and reasonable warning", have suffered, and continue to suffer, irreparable harm, for which harm  
26 they have no other plain, speedy or adequate remedy at law.

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