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ALAMEDA COUNTY
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CLERK OF
THE SUPERIOR COURT
By Alicia Espinoza, Deputy
CASE NUMBER:
RG13673678

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

PETER ENGLANDER,

Plaintiff,

vs.

BASSETT FURNITURE INDUSTRIES,
INCORPORATED, BUTLER SPECIALTY
COMPANY, COA, INC., FOREMOST
GROUPS, INC., IDEA NUOVA INC.,
NAJARIAN FURNITURE COMPANY, INC.,
PKOLINO, LLC, THE TJX COMPANIES,
INC. and DOES 1-150,

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. Defendants cause products containing TDCPP to be sold in California as follows:

7 a. Defendant Bassett Furniture Industries, Incorporated manufactures, causes to
8 be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells
9 and/or otherwise offers for sale in California padded, upholstered ottomans with foam
10 padding containing TDCPP. Defendant Bassett Furniture Industries, Incorporated also
11 manufactures, causes to be manufactured, distributes, causes to be distributed, imports,
12 causes to be imported, sells and/or otherwise offers for sale in California the Bassett Baby
13 Premier Ottoman, Item #1062-01, with foam padding containing TDCPP.

14 b. Defendant Butler Specialty Company manufactures, causes to be
15 manufactured, distributes, causes to be distributed, imports, causes to be imported, sells
16 and/or otherwise offers for sale in California padded, upholstered furniture, including
17 ottomans, with foam padding containing TDCPP. Defendant Butler Specialty Company
18 also manufactures, causes to be manufactured, distributes, causes to be distributed, imports,
19 causes to be imported, sells and/or otherwise offers for sale in California the Bunching
20 Cocktail Ottoman, Item #240683, with foam padding containing TDCPP.

21 c. Defendant COA, Inc. manufactures, causes to be manufactured, distributes,
22 causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for
23 sale in California padded, upholstered furniture, including stools, with foam padding
24 containing TDCPP. Defendant COA, Inc. also manufactures, causes to be manufactured,
25 distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise
26 offers for sale in California the Coaster Fine Furniture Bar Stool, Item #122010, with foam
27 padding containing TDCPP.

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d. Defendant Foremost Groups, Inc. manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California padded, upholstered furniture, including ottomans, with foam padding containing TDCPP. Defendant Foremost Groups, Inc. also manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California the Room Essentials Storage Ottoman, Item #0321, with foam padding containing TDCPP.

e. Defendants Idea Nuova Inc. and The TJX Companies, Inc. manufacture, cause to be manufactured, distribute, cause to be distributed, import, cause to be imported, sell and/or otherwise offer for sale in California padded, upholstered furniture, including ottomans, with foam padding containing TDCPP. Defendants Idea Nuova Inc. and The TJX Companies, Inc. manufacture, cause to be manufactured, distribute, cause to be distributed, import, cause to be imported, sell and/or otherwise offer for sale in California the Storehouse Eyelet Ottoman (05121474769) with foam padding containing TDCPP.

f. Defendant Najarian Furniture Company, Inc. manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California padded, upholstered furniture, including chairs, with foam padding containing TDCPP. Defendant Najarian Furniture Company, Inc. also manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California the Malibu 2 Arm Chairs + Table set, with foam padding containing TDCPP.

g. Defendant P’Kolino, LLC manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California padded, upholstered furniture, including children’s chairs, with foam padding containing TDCPP. Defendant P’Kolino, LLC also manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California the P’Kolino Little Reader Chair, Item PKFFNLRBR, with foam padding containing TDCPP.

1 7. All such padded, upholstered furniture, including ottomans, stool and chairs, made
2 with foam padding or cushion materials containing TDCPP and identified in paragraphs 6(a)
3 through 6(g) above, shall hereinafter be referred to as "PRODUCTS." However, as to each
4 defendant, PRODUCTS shall only mean or reference only those specific products or types of
5 products listed for each specific defendant in paragraphs 6(a) through 6(g).

6 8. Although Defendants expose infants, children, and other California consumers to
7 TDCPP through the reasonably foreseeable use of the PRODUCTS, Defendants provide no
8 warnings about the carcinogenic hazards associated with these TDCPP exposures. Defendants'
9 failure to warn consumers and/or other individuals in the State of California about their
10 exposures to TDCPP in conjunction with defendants' sale of the PRODUCTS is a violation of
11 Proposition 65.

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

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

18 **PARTIES**

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

23 12. Each defendant Bassett Furniture Industries, Incorporated ("BASSETT"), Butler
24 Specialty Company ("BUTLER"), CAO, Inc. ("COA"), Foremost Groups, Inc. ("FOREMOST"), Idea
25 Nuova Inc. ("NUOVA"), Najarian Furniture Company, Inc. ("NAJARIAN"), P'Kolino, LLC
26 ("P'KOLINO") and The TJX Companies, Inc. ("TJX") is a person doing business within the
27 meaning of California Health & Safety Code Section 25249.11.

1 13. Each defendant BASSETT, BUTLER, COA, FOREMOST, NUOVA, NAJARIAN,
2 P'KOLINO and TJX manufactures, causes to be manufactured, distributes, causes to be
3 distributed, imports, causes to be imported, sells and/or otherwise offers for sale or use in
4 California the PRODUCTS or implies by its conduct that it does so.

5 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons
6 doing business within the meaning of California Health & Safety Code Section 25249.11.
7 MANUFACTURER DEFENDANTS engage in the process of research, testing, designing,
8 assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the
9 process of research, testing, designing, assembling, fabricating, and/or manufacturing, one or
10 more of the PRODUCTS for sale or use in the State of California.

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

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

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

23 18. BASSETT, BUTLER, COA, FOREMOST, NUOVA, NAJARIAN, P'KOLINO, TJX,
24 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS
25 shall, where appropriate, collectively be referred to hereinafter as "DEFENDANTS".

26 **VENUE AND JURISDICTION**

27 19. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
28 Procedure Sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,

1 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
2 wrongful conduct occurred, and continues to occur, in this County and/or because
3 DEFENDANTS conducted, and continue to conduct, business in this County with respect to the
4 PRODUCTS.

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

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

15 **FIRST CAUSE OF ACTION**

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

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

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

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

26 25. On January 4, 2013, ENGLANDER served a sixty-day notice of violation (“60-Day
27 Notice”), supported by the requisite Certificate of Merit, upon COA, FOREMOST, P’KOLINO and
28 various public enforcement agencies stating that as a result of the such defendants’ sales of the

1 PRODUCTS, purchasers and users in the State of California are being exposed to TDCPP resulting
2 from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
3 users first having been provided with a “clear and reasonable warning” regarding such toxic
4 exposures.

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

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

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

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

24 30. DEFENDANTS knew or should have known that the PRODUCTS contain TDCPP.

25 31. TDCPP is present in or on each of the PRODUCTS in such a way as to expose (as
26 such exposure is defined by 27 CCR Section 25602(b)) individuals to TDCPP through dermal
27 contact, inhalation and/or ingestion during the reasonably foreseeable use of the PRODUCTS.
28

1 32. DEFENDANTS knew or should have known that the reasonably foreseeable use of
2 the PRODUCTS exposes individuals to TDCPP through dermal contact, inhalation and/or
3 ingestion.

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

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

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

14 36. As a consequence of the above-described acts, DEFENDANTS are liable for a
15 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to
16 California Health & Safety Code Section 25249.7(b).

17 37. As a consequence of the above-described acts, California Health & Safety Code
18 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
19 DEFENDANTS.

20 **PRAYER FOR RELIEF**

21 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
22 follows:

23 1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b),
24 assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
25 alleged herein;

26 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
27 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
28 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable

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: March 29, 2013

Respectfully submitted,

6 THE CHANLER GROUP

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8 By: 

9 Gregory M. Sheffer
10 Attorneys for Plaintiff
11 PETER ENGLANDER
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