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**ENDORSED  
FILED  
ALAMEDA COUNTY**

**APR 11 2013**

CLERK OF THE SUPERIOR COURT  
By M Hayes Deputy

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF ALAMEDA  
14 UNLIMITED CIVIL JURISDICTION  
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16 PETER ENGLANDER,

17 Plaintiff,

18 v.

19 ACME FURNITURE INDUSTRY, INC.:  
20 and DOES 1-150, inclusive,

21 Defendants.  
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Case No. **RG 13 675 167**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code. § 25249.6, *et seq.*)

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 Tris(1,3-dichloro-2-propyl) phosphate  
5 (“TDCPP”), a toxic chemical found in padded upholstered furniture sold in California. TDCPP  
6 is a toxic chemical that is used to treat polyurethane foam, which is used as padding or  
7 cushioning in a variety of products.

8 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failures to  
9 warn California citizens about the risks of exposures to TDCPP present in and on the padded  
10 upholstered furniture manufactured, distributed, sold, and offered for sale or use to consumers  
11 throughout the State of California.

12 3. Detectable levels of TDCPP are commonly found in and on the padded  
13 upholstered furniture that Defendants manufacture, distribute, sell, and offer for sale to  
14 consumers, many of whom are infants and children, throughout the State of California.  
15 Individuals in California, including infants and children, are exposed to TDCPP when they  
16 inhale TDCPP released from padded upholstered furniture, and also when TDCPP from padded  
17 upholstered furniture accumulates in ambient particles that are subsequently touched by such  
18 individuals and brought into contact with the mouth.

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

24 5. TDCPP has been used in consumer products as an additive flame retardant since  
25 the 1960s. In the late 1970s, based on findings that exposure to TDCPP could have mutagenic  
26 effects, the United States Consumer Product Safety Commission banned the use of TDCPP in  
27 children’s pajamas.



1 toxic exposures from consumer products; and he brings this action in the public interest  
2 pursuant to Health and Safety Code § 25249.7(d).

3 12. Defendant ACME FURNITURE INDUSTRY, INC. is a person in the course of  
4 doing business within the meaning of Health and Safety Code § 25249.11.

5 13. Defendant ACME FURNITURE INDUSTRY, INC. manufactures, imports,  
6 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California, or  
7 implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the  
8 PRODUCTS for sale or use in the State of California.

9 14. Defendants DOES 1-150 are each persons in the course of doing business within  
10 the meaning of Health and Safety Code § 25249.11(b), which manufacture, distribute, sell,  
11 and/or offer the PRODUCTS for sale in the State of California. At this time, the true names and  
12 capacities of defendants DOES 1 through 150, inclusive, are unknown to Plaintiff, who,  
13 therefore, sues said defendants by their fictitious names pursuant to Code of Civil Procedure §  
14 474. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously  
15 named defendants is responsible for the acts and occurrences alleged herein. When ascertained,  
16 their true names and capacities shall be reflected in an amended complaint.

17 15. Defendant ACME FURNITURE INDUSTRY, INC., and Defendants DOES 1-  
18 150 are collectively referred to herein as “Defendants.”

### 19 VENUE AND JURISDICTION

20 16. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil  
21 Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
22 because Plaintiff seeks civil penalties against Defendants, because one or more instances of  
23 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because  
24 Defendants conducted, and continue to conduct, business in this county with respect to the  
25 PRODUCTS.

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

3 18. The California Superior Court has jurisdiction over Defendants based on  
4 Plaintiff’s information and good faith belief that each Defendant is a person, firm, corporation  
5 or association that is a citizen of the State of California, has sufficient minimum contacts in the  
6 State of California, and/or otherwise purposefully avails itself of the California market.  
7 Defendants’ purposeful availment of California as a marketplace for the PRODUCTS renders  
8 the exercise of personal jurisdiction by California courts over Defendants consistent with  
9 traditional notions of fair play and substantial justice.

10 **FIRST CAUSE OF ACTION**

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

12 19. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
13 Paragraphs 1 through 18, inclusive.

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

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

22 22. On January 30, 2013, Plaintiff’s sixty-day notice of violation, together with the  
23 requisite certificate of merit, was provided to ACME FURNITURE INDUSTRY, INC., and  
24 certain public enforcement agencies stating that, as a result of Defendants’ sales of the  
25 PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State of  
26 California were being exposed to the LISTED CHEMICAL resulting from their reasonably  
27 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having  
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1 been provided with a “clear and reasonable warning” regarding such toxic exposures, as  
2 required by Proposition 65.

3 23. Defendants have engaged in the manufacture, importation, distribution, sale, and  
4 offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6,  
5 and Defendants’ violations have continued to occur beyond their receipt of Plaintiff’s sixty-day  
6 notice of violation. As such, Defendants’ violations are ongoing and continuous in nature, and  
7 will continue to occur in the future.

8 24. After receiving Plaintiff’s sixty-day notice of violation, the appropriate public  
9 enforcement agencies have failed to commence and diligently prosecute a cause of action  
10 against Defendants under Proposition 65.

11 25. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
12 or use in California by Defendants contain the LISTED CHEMICAL such that they require a  
13 “clear and reasonable” warning under Proposition 65.

14 26. Defendants knew or should have known that the PRODUCTS they manufacture,  
15 import, distribute, sell, and offer for sale or use in California contain the LISTED CHEMICAL.

16 27. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
17 expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or  
18 inhalation during reasonably foreseeable uses of the PRODUCTS.

19 28. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
20 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
21 defined by Title 27 of the California Code of Regulations, § 25602(b).

22 29. Defendants have had knowledge that the normal and reasonably foreseeable uses  
23 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact,  
24 ingestion, and/or inhalation.

25 30. Defendants intended that such exposures to the LISTED CHEMICAL from the  
26 reasonably foreseeable uses of the PRODUCTS would occur by Defendants’ deliberate, non-  
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1 accidental participation in the manufacture, importation, distribution, sale, and offering of the  
2 PRODUCTS for sale or use to individuals in the State of California.

3 31. Defendants failed to provide a “clear and reasonable warning” to those consumers  
4 and other individuals in the State of California who were or who would become exposed to the  
5 LISTED CHEMICAL through dermal contact, ingestion, and/or inhalation during the  
6 reasonably foreseeable uses of the PRODUCTS.

7 32. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
8 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
9 contact, ingestion, and/or inhalation resulting from the reasonably foreseeable uses of the  
10 PRODUCTS sold by Defendants without a “clear and reasonable warning,” have suffered, and  
11 continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at  
12 law.

13 33. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-  
14 described acts, Defendants are liable for a civil penalty of \$2,500 per day for each violation.

15 34. As a consequence of the above-described acts, Health and Safety Code  
16 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against Defendants.

17 **PRAYER FOR RELIEF**

18 Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as  
19 follows:

20 1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil  
21 penalties against Defendants in the amount of \$2,500 per day for each violation;

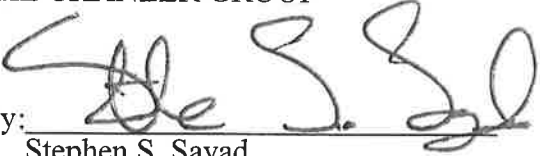
22 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily  
23 and permanently enjoin Defendants from manufacturing, distributing, selling, or offering the  
24 PRODUCTS for sale or use in California without first providing a “clear and reasonable  
25 warning” as defined by Title 27 of the California Code of Regulations, § 25601 *et seq.*, as to the  
26 harms associated with exposures the LISTED CHEMICAL;

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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: April 11, 2013

THE CHANLER GROUP

By: 

Stephen S. Sayad  
Attorneys for Plaintiff  
PETER ENGLANDER