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ENDORSED  
FILED  
ALAMEDA COUNTY

MAY 03 2013

CLERK OF THE SUPERIOR COURT  
By Kmel Dhillon Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF ALAMEDA  
13 UNLIMITED CIVIL JURISDICTION

14 PETER ENGLANDER, )

15 Plaintiff, )

16 v. )

17 UNIVERSAL FURNITURE )  
18 INTERNATIONAL, INC.; and )  
19 DOES 1-150, inclusive, )

20 Defendants. )

Case No. RG13 678154

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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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 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 in the  
16 PRODUCTS through various routes of exposure: (i) when they inhale TDCPP released from  
17 padded upholstered furniture; (ii) when TDCPP from padded upholstered furniture accumulates  
18 in ambient particles that are subsequently touched by such individuals; and (iii) when such  
19 particles are brought into contact with the mouth.

20 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
21 Health and Safety Code Section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course  
22 of doing business shall knowingly and intentionally expose any individual to a chemical known  
23 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
24 warning to such individual . . .” (Health & Safety Code § 25249.6.)  
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1           5.     TDCPP has been used in consumer products as an additive flame retardant since  
2 the 1960s. In the late 1970s, based on findings that exposure to TDCPP could have mutagenic  
3 effects, the United States Consumer Product Safety Commission banned the use of TDCPP in  
4 children’s pajamas.

5           6.     Pursuant to Proposition 65, on October 28, 2011, California identified and listed  
6 TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and  
7 reasonable warning” requirements of the Act one year later on October 28, 2012. (Cal. Code  
8 Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).)

9           7.     Defendant Universal Furniture International, Inc. manufactures, distributes,  
10 imports, sells, and/or offers for sale in California padded upholstered furniture containing  
11 TDCPP including, but not limited to, benches such as the *Bed End Bench, Item #932380-RTA*.  
12 All such padded upholstered furniture, including benches, containing TDCPP, are hereinafter  
13 collectively referred to as “PRODUCTS.”

14           8.     Although defendants expose infants, children, and other people to TDCPP in the  
15 PRODUCTS, defendants provide no warnings about the carcinogenic hazards associated with  
16 these TDCPP exposures. Defendants’ failures to warn consumers and other individuals in the  
17 State of California not covered by California’s Occupational Health Act, Labor Code § 6300 et  
18 seq. about their exposures to TDCPP in conjunction with defendants’ sales of the PRODUCTS,  
19 is a violation of Proposition 65, and subjects defendants to enjoinder of such conduct as well  
20 as civil penalties for each violation. (Health & Safety Code § 25249.7(a) & (b)(1).)

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

25           10.    Pursuant to Health and Safety Code Section 25249.7(b), plaintiff also seeks civil  
26 penalties against defendants for their violations of Proposition 65.

1 **PARTIES**

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

6 12. Defendant UNIVERSAL FURNITURE INTERNATIONAL, INC.  
7 (“UNIVERSAL”) is a person in the course of doing business within the meaning of Health and  
8 Safety Code Section 25249.11.

9 13. UNIVERSAL manufactures, imports, distributes, sells, and/or offers the  
10 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
11 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
12 State of California.

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

21 15. UNIVERSAL and defendants DOES 1-150 are collectively referred to herein as  
22 “Defendants.”

23 **VENUE AND JURISDICTION**

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

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

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

14 **FIRST CAUSE OF ACTION**

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

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

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

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

26 22. On February 5, 2013, plaintiff’s sixty-day notice of violation, together with the  
27 requisite certificate of merit, was provided to UNIVERSAL and certain public enforcement  
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1 agencies stating that, as a result of Defendants' sales of the PRODUCTS containing TDCPP,  
2 purchasers and users in the State of California were being exposed to TDCPP resulting from  
3 their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and  
4 users first having been provided with a "clear and reasonable warning" regarding such toxic  
5 exposures, as required by Proposition 65.

6 23. Defendants have engaged in the manufacture, importation, distribution, sale, and  
7 offering of the PRODUCTS for sale or use in violation of Health and Safety Code Section  
8 25249.6, and Defendants' violations have continued to occur beyond their receipt of plaintiff's  
9 sixty-day notice of violation. As such, Defendants' violations are ongoing and continuous in  
10 nature, and will continue to occur in the future.

11 24. After receiving plaintiff's sixty-day notice of violation, the appropriate public  
12 enforcement agencies have failed to commence and diligently prosecute a cause of action  
13 against Defendants under Proposition 65.

14 25. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
15 or use in California by Defendants contain TDCPP such that they require a "clear and  
16 reasonable" warning under Proposition 65.

17 26. Defendants knew or should have known that the PRODUCTS they manufacture,  
18 import, distribute, sell, and offer for sale or use in California contain TDCPP.

19 27. TDCPP is present in or on the PRODUCTS in such a way as to expose  
20 individuals to TDCPP through dermal contact, ingestion, and/or inhalation during reasonably  
21 foreseeable uses of the PRODUCTS.

22 28. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
23 continue to cause, consumer products exposures and occupational exposures to TDCPP, as such  
24 exposures are defined by Title 27 of the California Code of Regulations, section 25602(b).

25 29. Defendants had knowledge that the normal and reasonably foreseeable uses of the  
26 PRODUCTS expose individuals to TDCPP through dermal contact, ingestion, and/or inhalation.  
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1 warning” as defined by Title 27 of the California Code of Regulations, Section 25601 *et seq.*, as  
2 to the harms associated with exposures to 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.

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6 Dated: May 3, 2013

THE CHANLER GROUP

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8 By:   
9 Troy C. Bailey  
10 Attorneys for Plaintiff  
11 PETER ENGLANDER  
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