

ENDORSED
FILED
ALAMEDA COUNTY

APR 23 2013

CLERK OF THE SUPERIOR COURT

By Glenn Baker

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION

12
13 PETER ENGLANDER,

14 Plaintiff,

15 v.

16 IDEAVILLAGE PRODUCTS CORP; CVS
17 CAREMARK CORPORATION; and DOES
18 1-150, inclusive,

19 Defendants.

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Case No. ^{RG} 13676717

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) **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 massaging pillows sold in the State of California.
6 TDCPP 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 massaging
10 pillows manufactured, distributed, sold, and offered for sale or use to consumers throughout the
11 State of California.

12 3. Detectable levels of TDCPP are commonly found in and on massaging pillows
13 that Defendants manufacture, distribute, sell, and offer for sale to consumers throughout the
14 State of California. Individuals in California, including infants and children, are exposed to
15 TDCPP in the products through various routes of exposure: (i) through inhalation when TDCPP
16 is released from massaging pillows; (ii) through dermal exposure when TDCPP from massaging
17 pillows accumulates in ambient particles that are subsequently touched by such individuals; and
18 (iii) through ingestion when such particles are 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 Section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course
21 of doing business shall knowingly and intentionally expose any individual to a chemical known
22 to 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 pursuant
2 to Health and Safety Code Section 25249.7(d).

3 13. IDEAVILLAGE is a person in the course of doing business within the meaning of
4 Health and Safety Code Section 25249.11.

5 14. IDEAVILLAGE manufactures, imports, distributes, sells, and/or offers the
6 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
7 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
8 State of California.

9 15. CVS is a person in the course of doing business within the meaning of Health and
10 Safety Code Section 25249.11.

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

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

22 18. IDEAVILLAGE, CVS, and Defendants DOES 1-150 are collectively referred to
23 herein as "DEFENDANTS."

24 **VENUE AND JURISDICTION**

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

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

8 21. The California Superior Court has jurisdiction over DEFENDANTS based on
9 Plaintiff’s information and good faith belief that each Defendant is a person, firm, corporation
10 or association that is a citizen of the State of California, has sufficient minimum contacts in the
11 State of California, and/or otherwise purposefully avails itself of the California market.
12 DEFENDANTS’ purposeful availment of California as a marketplace for the PRODUCTS
13 renders the exercise of personal jurisdiction by California courts over DEFENDANTS
14 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 realleges 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
21 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
22 harm.”

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

1 25. On February 8, 2013, Plaintiff's sixty-day notice of violation, together with the
2 requisite certificate of merit, was provided to IDEAVILLAGE, CVS, and certain public
3 enforcement agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS
4 containing TDCPP, purchasers and users in the State of California were being exposed to
5 TDCPP resulting from their reasonably foreseeable uses of the PRODUCTS, without the
6 individual purchasers and users first having been provided with a "clear and reasonable
7 warning" regarding such toxic exposures, as required by Proposition 65.

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

13 27. After receiving Plaintiff's sixty-day notice of violation, the appropriate public
14 enforcement agencies have failed to commence and diligently prosecute a cause of action
15 against DEFENDANTS under Proposition 65.

16 28. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
17 or use in the State of California by DEFENDANTS contain TDCPP such that they require a
18 "clear and reasonable" warning under Proposition 65.

19 29. DEFENDANTS knew or should have known that the PRODUCTS they
20 manufacture, import, distribute, sell, and offer for sale or use in the State of California contain
21 TDCPP.

22 30. TDCPP is present in or on the PRODUCTS in such a way as to expose
23 individuals to TDCPP through dermal contact, ingestion, and/or inhalation during reasonably
24 foreseeable uses of the PRODUCTS.

25 31. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
26 continue to cause, consumer exposures and workplace exposures to TDCPP, as such exposures
27 are defined by Title 27 of the California Code of Regulations, Section 25602(b).

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1 2. That the Court, pursuant to Health and Safety Code Section 25249.7(a),
2 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
3 offering the PRODUCTS for sale or use in the State of California without first providing a
4 “clear and reasonable warning” as defined by Title 27 of the California Code of Regulations,
5 Section 25601 *et seq.*, as to the harms associated with exposures TDCPP;

6 3. That the Court grant Plaintiff his reasonable attorneys’ fees and costs of suit; and

7 4. That the Court grant such other and further relief as may be just and proper.
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9 Dated: April 22, 2013

THE CHANLER GROUP

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11 By: 

12 Stephen E. Cohen
13 Attorneys for Plaintiff
14 PETER ENGLANDER
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