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ENDORSED
FILED
ALAMEDA COUNTY

APR 18 2013

CLERK OF THE SUPERIOR COURT
By *[Signature]*

Attorneys for Plaintiff
PETER ENGLANDER

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

12 PETER ENGLANDER,

13 Plaintiff,

14 v.

15 ELITE MFG. CORP.; MIKHAIL DARAFEEV)
16 INC.; R C FURNITURE, INC.; and DOES 1-)
17 150, inclusive,)

Defendants.)

) Case No.

RG 13676114

) **COMPLAINT FOR CIVIL PENALTIES**
) **AND INJUNCTIVE RELIEF**

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

BY FAX

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff PETER
3 ENGLANDER ("Plaintiff") in the public interest of the citizens of the State of California to
4 enforce the People's right to be informed of the presence of Tris(1,3-dichloro-2-propyl)
5 phosphate ("TDCPP"), a toxic chemical found in products sold in California. TDCPP is a toxic
6 chemical that is used to treat polyurethane foam, which is used as padding or cushioning in a
7 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 products
10 manufactured, distributed, sold, and/or offered for sale or use to consumers throughout the State
11 of California.

12 3. Detectable levels of TDCPP are commonly found in and on the products that
13 Defendants manufacture, distribute, sell, and offer for sale to consumers, many of whom are
14 infants and children, throughout the State of California. Individuals in California, including
15 infants and children, are exposed to TDCPP in the products through various routes of exposure:
16 (i) when they inhale TDCPP released from padded upholstered furniture; (ii) when TDCPP from
17 padded upholstered furniture accumulates in ambient particles that are subsequently touched by
18 such individuals; and (iii) 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" or the "Act"), "[n]o person in
21 the course of doing business shall knowingly and intentionally expose any individual to a
22 chemical known to the state to cause cancer or reproductive toxicity without first giving clear
23 and reasonable 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.

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

5 7. Defendants manufacture, distribute, import, sell, and/or offer for sale products
6 containing TDCPP as follows:

7 a. Defendant Elite Mfg. Corp. manufactures, distributes, imports, sells,
8 and/or offers for sale in California padded upholstered furniture including stools
9 containing TDCPP including, but not limited to, *Elite Barstool, Stock K04*.

10 b. Defendant Mikhail Darafeev Inc. manufactures, distributes, imports, sells,
11 and/or offers for sale in California padded upholstered furniture including stools
12 containing TDCPP including, but not limited to, *Barstools Collection Bartenders Stool,*
13 *#438*.

14 c. Defendant R C Furniture, Inc. manufactures, distributes, imports, sells,
15 and/or offers for sale in California padded upholstered furniture including chairs
16 containing TDCPP including, but not limited to, *Jesse Chair*.

17 8. All padded upholstered furniture including chairs and stools containing TDCPP,
18 as listed in paragraphs 7(a) through (c) above, shall hereinafter be referred to as the
19 “PRODUCTS.” As to each specific defendant, however, PRODUCTS shall refer only to those
20 specific products listed for each specific defendant in paragraphs 7(a) through (c) above.

21 9. Although Defendants expose infants, children, and other people to TDCPP in the
22 PRODUCTS, Defendants provide no warnings about the carcinogenic hazards associated with
23 these TDCPP exposures. Defendants’ failures to warn consumers and other individuals in the
24 State of California not covered by California’s Occupational Safety Health Act, Labor Code
25 § 6300 *et seq.* about their exposures to TDCPP in conjunction with Defendants’ distribution,
26 importation, manufacture, and/or sales of the PRODUCTS, is a violation of Proposition 65, and
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1 subjects Defendants to enjoinder of such conduct as well as civil penalties for each violation.
2 (Health & Safety Code § 25249.7(a) & (b)(1).)

3 10. As a result of Defendants' violations of Proposition 65, Plaintiff seeks preliminary
4 and permanent injunctive relief to compel Defendants to provide purchasers or users of the
5 PRODUCTS with the required warning regarding the health hazards of the TDCPP in the
6 PRODUCTS. (Health & Safety Code § 25249.7(a).)

7 11. Pursuant to Health and Safety Code Section 25249.7(b), Plaintiff also seeks civil
8 penalties against Defendants for their violations of Proposition 65.

9 **PARTIES**

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

14 13. Defendants Elite Mfg. Corp. ("ELITE"), Mikhail Darafeev Inc. ("MIKHAIL")
15 and R C Furniture, Inc. ("R C FURNITURE") are each a person in the course of doing business
16 within the meaning of Health and Safety Code section 25249.11.

17 14. ELITE, MIKHAIL and R C FURNITURE manufacture, import, distribute, sell,
18 and/or offer the PRODUCTS for sale or use in the State of California, or imply by their conduct
19 that they manufacture, import, distribute, sell, and/or offer the PRODUCTS for sale or use in the
20 State of California.

21 15. Defendants DOES 1-150 are each persons in the course of doing business within
22 the meaning of Health and Safety Code section 25249.11(b), that manufacture, distribute, sell,
23 and/or offer the PRODUCTS for sale or use in the State of California. At this time, the true
24 names and capacities of Defendants DOES 1 through 150, inclusive, are unknown to Plaintiff,
25 who, therefore, sue said defendants by their fictitious names pursuant to Code of Civil
26 Procedure section 474. Plaintiff is informed and believes, and on that basis alleges, that each of
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1 the fictitiously named Defendants is responsible for the acts and occurrences alleged herein.

2 When ascertained, their true names and capacities shall be reflected in an amended complaint.

3 16. ELITE, MIKHAIL, R C FURNITURE and Defendants DOES 1-150 are
4 collectively referred to herein as "DEFENDANTS."

5 **VENUE AND JURISDICTION**

6 17. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil
7 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
8 because Plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
9 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because
10 Defendants conducted, and continue to conduct, business in this county with respect to the
11 PRODUCTS.

12 18. The California Superior Court has jurisdiction over this action pursuant to
13 California Constitution Article VI, section 10, which grants the Superior Court "original
14 jurisdiction in all causes except those given by statute to other trial courts." The statute under
15 which this action is brought does not specify any other basis of subject matter jurisdiction.

16 19. The California Superior Court has jurisdiction over DEFENDANTS based on
17 Plaintiff's information and good faith belief that each defendant is a person, firm, corporation,
18 or association that is a citizen of the State of California, has sufficient minimum contacts in the
19 State of California, and/or otherwise purposefully avails itself of the California market.
20 DEFENDANTS' purposeful availment of California as a marketplace for the PRODUCTS
21 renders the exercise of personal jurisdiction by California courts over DEFENDANTS
22 consistent with traditional notions of fair play and substantial justice.

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FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

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

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

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

23. On February 5, 2013, Plaintiff’s sixty-day notices of violation, together with the requisite certificates of merit, were provided to MIKHAIL, R C FURNITURE and certain public enforcement agencies stating that, as a result of MIKHAIL and R C FURNITURE’s sales of the PRODUCTS, purchasers and users in the State of California were being exposed to TDCPP resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been provided with a “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

24. On February 8, 2013, Plaintiff’s sixty-day notice of violation, together with the requisite certificate of merit, was provided to ELITE, and certain public enforcement agencies stating that, as a result of ELITE’s sales of the PRODUCTS, purchasers and users in the State of California were being exposed to TDCPP resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been provided with a “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

1 25. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
2 and offering of the PRODUCTS for sale or use in California in violation of Health and Safety
3 Code section 25249.6, and DEFENDANTS' violations have continued to occur beyond their
4 receipt of Plaintiff's sixty-day notices of violation. As such, DEFENDANTS' violations are
5 ongoing and continuous in nature, and will continue to occur in the future.

6 26. After receiving Plaintiff's sixty-day notices of violation, the appropriate public
7 enforcement agencies have failed to commence and diligently prosecute a cause of action
8 against DEFENDANTS under Proposition 65.

9 27. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
10 or use in California by DEFENDANTS contain TDCPP such that they require a "clear and
11 reasonable" warning under Proposition 65.

12 28. DEFENDANTS knew or should have known that the PRODUCTS they
13 manufacture, import, distribute, sell, and offer for sale or use in California contain TDCPP.

14 29. TDCPP is present in or on the PRODUCTS in such a way as to expose
15 individuals to TDCPP through dermal contact, ingestion, and/or inhalation during reasonably
16 foreseeable uses of the PRODUCTS.

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

20 31. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
21 of the PRODUCTS expose individuals to TDCPP through dermal contact, ingestion, and/or
22 inhalation.

23 32. DEFENDANTS intended that such exposures to TDCPP from the reasonably
24 foreseeable uses of the PRODUCTS would occur by DEFENDANTS' deliberate, non-
25 accidental participation in the manufacture, importation, distribution, sale, and offering of the
26 PRODUCTS for sale or use to individuals in the State of California.

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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 18, 2013

THE CHANLER GROUP

By: 
Troy C. Bailey
Attorneys for Plaintiff
PETER ENGLANDER