

1 Christopher M. Martin, State Bar No. 186021
2 Josh Voorhees, State Bar No. 241436
3 Stephen E. Cohen, State Bar No. 284416
4 THE CHANLER GROUP
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2565
8 Telephone: (510) 848-8880
9 Facsimile: (510) 848-8118

ENDORSED
FILED
ALAMEDA COUNTY

APR 23 2013

CLERK OF THE SUPERIOR COURT
By Glenn Barker Deputy

6 Attorneys for Plaintiff
7 PETER ENGLANDER

8
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 BENETTI'S ITALIA, INC.; GOMEN
17 FURNITURE MANUFACTURING, INC.;
and DOES 1-150, inclusive,

18 Defendants.

) Case No. RG 13676719

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

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

19
20
21
22
23
24
25
26
27
28
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 including ottomans sold in
6 California. TDCPP is a toxic chemical that is used to treat polyurethane foam, which is used as
7 padding or 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 padded
10 upholstered furniture including ottomans manufactured, distributed, sold, and offered for sale or
11 use to consumers throughout the State of California.

12 3. Detectable levels of TDCPP are commonly found in and on padded upholstered
13 furniture including ottomans that Defendants manufacture, distribute, sell, and offer for sale to
14 consumers throughout the State of California. Individuals in California, including infants and
15 children, are exposed to TDCPP in the products through various routes of exposure: (i) through
16 inhalation when TDCPP is released from padded upholstered furniture; (ii) through dermal
17 exposure when TDCPP from padded upholstered furniture accumulates in ambient particles that
18 are subsequently touched by such individuals; and (iii) through ingestion when such particles
19 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.)

25 5. TDCPP has been used in consumer products as an additive flame retardant since
26 the 1960s. In the late 1970s, based on findings that exposure to TDCPP could have mutagenic
27
28

1 effects, the United States Consumer Product Safety Commission banned the use of TDCPP in
2 children's pajamas.

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

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

9 a. Defendant Benetti's Italia, Inc. ("BENETTI'S") manufactures, distributes,
10 imports, sells and/or offers for sale in California padded upholstered furniture including
11 ottomans containing TDCPP without a warning including, but not limited to, padded
12 upholstered chairs with ottoman;

13 b. Defendant Gomen Furniture Manufacturing, Inc. ("GOMEN")
14 manufactures, distributes, imports, sells and/or offers for sale in California padded
15 upholstered furniture including ottomans containing TDCPP without a warning including,
16 but not limited to, padded upholstered chairs.

17 8. All padded upholstered furniture including ottomans containing TDCPP, as listed
18 in paragraphs 7(a) through (b) above, shall hereinafter be referred to as the "PRODUCTS." As
19 to each specific Defendant, however, PRODUCTS shall refer only to those specific products
20 listed for each specific Defendant in paragraphs 7(a) through (b) 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 Health Act, Labor Code § 6300 et
25 seq. about their exposures to TDCPP in conjunction with Defendants' sales of the PRODUCTS,
26 is a violation of Proposition 65, and subjects Defendants to enjoinder of such conduct as well
27 as civil penalties for each violation. (Health & Safety Code § 25249.7(a) & (b)(1).)

1 Section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the
2 fictitiously named defendants is responsible for the acts and occurrences alleged herein. When
3 ascertained, their true names and capacities shall be reflected in an amended complaint.

4 18. BENETTI'S, GOMEN and Defendants DOES 1-150 are collectively referred to
5 herein as "DEFENDANTS."

6 VENUE AND JURISDICTION

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

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

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

24 FIRST CAUSE OF ACTION

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

26 22. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
27 Paragraphs 1 through 21, inclusive.
28

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

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

9 25. On February 15, 2013, Plaintiff’s sixty-day notices of violation, together with the
10 requisite certificates of merit, were provided to BENETTI’S, GOMEN and certain public
11 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS
12 containing TDCPP, purchasers and users in the State of California were being exposed to
13 TDCPP resulting from their reasonably foreseeable uses of the PRODUCTS, without the
14 individual purchasers and users first having been provided with a “clear and reasonable
15 warning” regarding such toxic exposures, as required by Proposition 65.

16 26. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
17 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code Section
18 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
19 Plaintiff’s sixty-day notices of violation. As such, DEFENDANTS’ violations are ongoing and
20 continuous in nature, and will continue to occur in the future.

21 27. After receiving Plaintiff’s sixty-day notices of violation, the appropriate public
22 enforcement agencies have failed to commence and diligently prosecute a cause of action
23 against DEFENDANTS under Proposition 65.

24 28. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
25 or use in California by DEFENDANTS contain TDCPP such that they require a “clear and
26 reasonable” warning under Proposition 65.

1 29. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufacture, import, distribute, sell, and offer for sale or use in the state of California contain
3 TDCPP.

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

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

10 32. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
11 of the PRODUCTS expose individuals to TDCPP through dermal contact, ingestion, and/or
12 inhalation.

13 33. DEFENDANTS intended that such exposures to TDCPP from the reasonably
14 foreseeable uses of the PRODUCTS would occur by DEFENDANTS' deliberate, non-
15 accidental participation in the manufacture, importation, distribution, sale, and offering of the
16 PRODUCTS for sale or use to individuals in the State of California.

17 34. DEFENDANTS failed to provide a "clear and reasonable warning" to those
18 consumers and other individuals in the State of California who were or who would become
19 exposed to TDCPP through dermal contact, ingestion, and/or inhalation during the reasonably
20 foreseeable uses of the PRODUCTS.

21 35. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
22 directly by California voters, individuals exposed to TDCPP through dermal contact, ingestion,
23 and/or inhalation resulting from the reasonably foreseeable uses of the PRODUCTS sold by
24 DEFENDANTS without a "clear and reasonable warning" have suffered, and continue to suffer,
25 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

