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EMBOISED
FILED
ALAMEDA COUNTY

JUN 18 2013

CLERK OF THE SUPERIOR COURT
By Angela Yamsuan

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

14 RUSSELL BRIMER and PETER
15 ENGLANDER,

16 Plaintiffs,

17 v.

18 JAKKS PACIFIC, INC.; KIDS ONLY, LLC;
19 KIDS ONLY, INC.; KID BRANDS, INC.;
20 KIDS LINE, LLC; TOYS "R" US, INC.; and
21 DOES 1-150, inclusive,

22 Defendants.

Case No. RG13677619

Assigned For All Purposes To The
Honorable Steven A. Brick

Department 17

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

BY FAX

RECORDED
INDEXED
ALASKA COUNTY

1915

CLERK OF THE SUPERIOR COURT
BY [Name]

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1 **NATURE OF THE ACTION**

2 1. This First Amended Complaint is a representative action brought by plaintiffs
3 RUSSELL BRIMER and PETER ENGLANDER in the public interest of the citizens of the State of
4 California to enforce the People’s right to be informed of the presence of Tris(1,3-dichloro-2-
5 propyl)phosphate (“TDCPP”), a toxic chemical found in padded upholstered furniture 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, plaintiffs seek to remedy defendants’ continuing failures to warn
9 California citizens about the risks of exposures to TDCPP present in and on padded upholstered
10 children’s chairs 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 padded upholstered
13 children’s chairs that defendants manufacture, distribute, sell, and offer for sale to consumers
14 throughout the State of California. Individuals in California, including infants and children, are
15 exposed to TDCPP when they inhale TDCPP released from padded upholstered children’s chairs,
16 and also when TDCPP from padded upholstered children’s chairs accumulates in ambient particles
17 that are subsequently touched by such individuals and brought into contact with the mouth.

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

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

27 6. Pursuant to Proposition 65, on October 28, 2011, California identified and listed
28 TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and reasonable

1 warning” requirements of the Act one year later on October 28, 2012. (Cal. Code Regs., Title 27,
2 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).) TDCPP is also referred to
3 hereinafter as the “LISTED CHEMICAL.”

4 7. Defendants manufacture, distribute, import, sell, and/or offer for sale in California
5 padded upholstered children’s chairs containing TDCPP.

6 8. One example of the padded upholstered children’s chairs containing TDCPP that are
7 manufactured, imported, distributed and/or sold by Jakks Pacific, Inc., Kids Only, LLC, Kids Only,
8 Inc., and Toys “R” Us, Inc. is the *Thomas & Friends Table & Chair Set, Item #31025 (#0 39897*
9 *31025 1)*.

10 9. One example of the padded upholstered children’s chairs containing TDCPP that are
11 manufactured, imported, distributed and/or sold by Kids Brands, Inc., Kids Line, LLC, and Toys
12 “R” Us, Inc. is the *Winnie the Pooh Upholstered Chair, #3906AC (#7 89887 26959 4)*.

13 10. All such padded upholstered children’s chairs containing TDCPP identified in
14 paragraphs 7 through 9 above, shall hereinafter be collectively referred to as the “PRODUCTS.”

15 11. Although defendants expose infants, children, and other people to TDCPP in the
16 PRODUCTS, defendants provide no warnings about the carcinogenic hazards associated with these
17 TDCPP exposures. Defendants’ failures to warn consumers and other individuals in the State of
18 California about their exposures to the LISTED CHEMICAL in conjunction with defendants’ sales
19 of the PRODUCTS, is a violation of Proposition 65, and subjects defendants to enjoinder of such
20 conduct as well as civil penalties for each violation. (Health & Safety Code § 25249.7(a) & (b)(1).)

21 12. As a result of defendants’ violations of Proposition 65, plaintiffs seek preliminary and
22 permanent injunctive relief to compel defendants to provide purchasers and users of the
23 PRODUCTS with the required warning regarding the health hazards of the LISTED CHEMICAL.
24 (Health & Safety Code § 25249.7(a).)

25 13. Pursuant to Health and Safety Code § 25249.7(b), plaintiffs also seek civil penalties
26 against defendants for their violations of Proposition 65.

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28 ///

PARTIES

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2 14. Plaintiffs RUSSELL BRIMER and PETER VINOCUR are each a citizen of the State
3 of California dedicated to protecting the health of California citizens through the elimination or
4 reduction of toxic exposures from consumer products; and they bring this action in the public
5 interest pursuant to Health and Safety Code § 25249.7(d).

6 15. Defendant JAKKS PACIFIC, INC. is a person in the course of doing business within
7 the meaning of Health and Safety Code § 25249.11.

8 16. Defendant JAKKS PACIFIC, INC. manufactures, imports, distributes, sells, and/or
9 offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it
10 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State
11 of California.

12 17. Defendant KIDS ONLY, LLC is a person in the course of doing business within the
13 meaning of Health and Safety Code § 25249.11.

14 18. Defendant KIDS ONLY, LLC manufactures, imports, distributes, sells, and/or offers
15 the PRODUCTS for sale or use in the State of California, or implies by its conduct that it imports,
16 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

17 19. Defendant KIDS ONLY, INC. is a person in the course of doing business within the
18 meaning of Health and Safety Code § 25249.11.

19 20. Defendant KIDS ONLY, INC. manufactures, imports, distributes, sells, and/or offers
20 the PRODUCTS for sale or use in the State of California, or implies by its conduct that it imports,
21 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

22 21. Defendant KID BRANDS, INC. is a person in the course of doing business within the
23 meaning of Health and Safety Code § 25249.11.

24 22. Defendant KID BRANDS, INC. manufactures, imports, distributes, sells, and/or
25 offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it
26 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

27 23. Defendant KIDS LINE, LLC. is a person in the course of doing business within the
28 meaning of Health and Safety Code § 25249.11.

1 except those given by statute to other trial courts.” The statute under which this action is brought
2 does not specify any other basis of subject matter jurisdiction.

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

10 **FIRST CAUSE OF ACTION**

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

12 32. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, Paragraphs
13 1 through 31, inclusive.

14 33. 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 informed
16 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

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

21 35. On February 15, 2013, plaintiff RUSSELL BRIMER’s sixty-day notice of violation,
22 together with the requisite certificate of merit, was provided to JAKKS PACIFIC, INC., KIDS
23 ONLY, LLC, KIDS ONLY, INC., TOYS “R” US, INC., and certain public enforcement agencies
24 stating that, as a result of Defendants’ sales of the PRODUCTS containing the LISTED
25 CHEMICAL, purchasers and users in the State of California were being exposed to the LISTED
26 CHEMICAL resulting from their reasonably foreseeable uses of the PRODUCTS, without the
27 individual purchasers and users first having been provided with a “clear and reasonable warning”
28 regarding such toxic exposures, as required by Proposition 65.

1 36. On March 27, 2013, plaintiff PETER ENGLANDER's sixty-day notice of violation,
2 together with the requisite certificate of merit, was provided to KID BRANDS, INC., KIDS LINE,
3 LLC, TOYS "R" US, INC., and certain public enforcement agencies stating that, as a result of
4 Defendants' sales of the PRODUCTS containing the LISTED CHEMICAL, purchasers and users in
5 the State of California were being exposed to the LISTED CHEMICAL resulting from their
6 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
7 having been provided with a "clear and reasonable warning" regarding such toxic exposures, as
8 required by Proposition 65.

9 37. Defendants have engaged in the manufacture, importation, distribution, sale, and
10 offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6, and
11 Defendants' violations have continued to occur beyond their receipt of one or more of plaintiffs'
12 sixty-day notices of violation. As such, Defendants' violations are ongoing and continuous in
13 nature, and will continue to occur in the future.

14 38. After receiving plaintiffs' sixty-day notices of violation, the appropriate public
15 enforcement agencies have not commenced and are not diligently prosecuted a cause of action
16 against Defendants under Proposition 65.

17 39. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or
18 use in California by Defendants contain the LISTED CHEMICAL such that they require a "clear
19 and reasonable" warning under Proposition 65.

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

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

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

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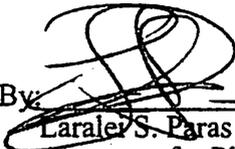
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as defined by Title 27 of the California Code of Regulations, § 25601 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

- 3. That the Court grant plaintiffs their 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: June 17, 2013

THE CHANLER GROUP

By: 
Laralee S. Paras
Attorneys for Plaintiffs
RUSSELL BRIMER and
PETER ENGLANDER