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**ENDORSED  
FILED  
ALAMEDA COUNTY**

MAR 11 2014

CLERK OF THE SUPERIOR COURT

By Barbara LaMotte Deputy

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

12 PETER ENGLANDER and ANTHONY E. )  
13 HELD, PH.D., P.E. )

14 Plaintiffs, )

15 v. )

16 Z GALLERIE; and DOES 1-150, inclusive, )

17 Defendants. )

Case No. RG14716959

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff Peter Englander  
3 (“Englander”) and plaintiff Anthony E. Held, Ph.D., P.E. (“Held”)(collectively “Plaintiffs”) in  
4 the public interest of the citizens of the State of California to enforce the People’s right to be  
5 informed of the presence of Tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”), a toxic chemical  
6 found in padded upholstered chairs sold in California, and Di(2-ethylhexyl)phthalate (“DEHP”)  
7 found in chairs with vinyl/PVC upholstery. TDCPP is a toxic chemical that is used to treat  
8 polyurethane foam, which is used as padding or cushioning in a variety of products. DEHP is  
9 listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth  
10 defects and other reproductive harm.

11 2. By this Complaint, Plaintiffs seek to remedy defendants’ continuing failures to  
12 warn California citizens about the risks of exposures to TDCPP present in and on padded  
13 upholstered chairs, and DEHP present in and on chairs with vinyl/PVC upholstery  
14 manufactured, distributed, sold, and offered for sale or use to consumers throughout the State of  
15 California.

16 3. Detectable levels of TDCPP are found in and on padded upholstered chairs that  
17 defendants manufacture, distribute, sell, and offer for sale to consumers, many of whom are  
18 infants and children, throughout the State of California. Individuals in California, including  
19 infants and children, are exposed to TDCPP in the products through various routes of exposure:  
20 (i) when they inhale TDCPP released from padded upholstered furniture; (ii) and when TDCPP  
21 from padded upholstered furniture accumulates in ambient particles that are subsequently  
22 touched by such individuals; and (iii) when such particles are brought into contact with the  
23 mouth. Detectable levels of DEHP are found in and on chairs with vinyl/PVC upholstery that  
24 defendants manufacture, distribute, sell, and offer for sale to consumers throughout the state of  
25 California. Individuals in California, including infants and children, are exposed to DEHP in  
26 the products though various routes of exposure via: (i) inhalation of DEHP released from  
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1 upholstery; (ii) dermal contact from particle accumulation; and (iii) ingestion when particles are  
2 brought into contact with the mouth.

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

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

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

16 7. Pursuant to Proposition 65, on October 24, 2003, California identified and listed  
17 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became  
18 subject to the “clear and reasonable warning” requirements one year later on October 24, 2004.  
19 (Cal. Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).)

20 8. Defendant Z Gallerie (“ZG”) manufactures, causes to be manufactured,  
21 distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers  
22 for sale in California padded upholstered chairs containing TDCPP including, but not limited to,  
23 the *Renecourt Side Chair-Molasses*, *Item Code: 013623597* (“Tris Products”), and chairs with  
24 vinyl/PVC upholstery containing DEHP including, but not limited to, *Malcolm Low Back Office*  
25 *Chair*, *SKU: 015974197*, *SNOF00674GRY*, *#727511920121* (“Phthalate Products”). Tris  
26 Products and Phthalate Products shall collectively hereinafter be referred to as “Products.”  
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1 9. Although defendants expose infants, children, and other people to TDCPP and/or  
2 DEHP in the Products, defendants provide no warnings about the hazards associated with these  
3 exposures. Defendants' failures to warn consumers and other individuals in the State of  
4 California not covered by California's Occupational Health Act, Labor Code § 6300 et seq.  
5 about their exposures to TDCPP and/or DEHP in conjunction with defendants' sales of the  
6 Products, is a violation of Proposition 65, and subjects defendants to enjoinder of such  
7 conduct as well as civil penalties for each violation. (Health & Safety Code § 25249.7(a) &  
8 (b)(1).)

9 10. As a result of defendants' violations of Proposition 65, Plaintiffs seek preliminary  
10 and permanent injunctive relief to compel defendants to provide purchasers or users of the  
11 Products with the required warning regarding the health hazards of TDCPP and/or DEHP in the  
12 Products. (Health & Safety Code § 25249.7(a).)

13 11. Pursuant to Health and Safety Code Section 25249.7(b), Plaintiffs also seek civil  
14 penalties against defendants for their violations of Proposition 65.

### 15 **PARTIES**

16 12. Plaintiffs are citizens of the State of California who are dedicated to protecting the  
17 health of California citizens through the elimination or reduction of toxic exposures from  
18 consumer products; and they bring this action in the public interest pursuant to Health and  
19 Safety Code Section 25249.7(d).

20 13. Defendant ZG is a person in the course of doing business within the meaning of  
21 Health and Safety Code Section 25249.11.

22 14. ZG manufactures, imports, distributes, sells, and/or offers the Products for sale or  
23 use in the State of California, or implies by its conduct that it manufactures, imports, distributes,  
24 sells, and/or offers the Products for sale or use in the State of California.

25 15. Defendants DOES 1-150 are each persons in the course of doing business within  
26 the meaning of Health and Safety Code Section 25249.11(b), that manufacture, distribute, sell,  
27 and/or offer the Products for sale in the State of California.  
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1 16. Defendants DOES 1-50 (“Manufacturer Defendants”) are each persons in the  
2 course of doing business within the meaning of Health and Safety Code section 25249.11.

3 17. Manufacturer Defendants research, test, design, assemble, fabricate, or imply by  
4 their conduct that they research, test, design, assemble, fabricate, and manufacture one or more  
5 of the Products offered for sale in the State of California.

6 18. Defendants DOES 51-100 (“Distributor Defendants”) are each a person in the  
7 course of doing business within the meaning of Health and Safety Code section 25249.11.

8 19. Distributor Defendants distribute, exchange, transfer, process, and/or transport  
9 one or more of the Products to individuals, businesses, or retailers for sale or use in the State of  
10 California.

11 20. Defendants DOES 101-150 (“Retailer Defendants”) are each a person in the  
12 course of doing business within the meaning of Health and Safety Code section 25249.11.

13 21. Retailer Defendants offer Products for sale to individuals in the State of  
14 California.

15 22. At this time, the true names and capacities of defendants DOES 1 through 150,  
16 inclusive, are unknown to Plaintiffs, who, therefore, sue said defendants by their fictitious  
17 names pursuant to Code of Civil Procedure Section 474. Plaintiffs are informed and believe,  
18 and on that basis allege, that each of the fictitiously named defendants is responsible for the acts  
19 and occurrences alleged herein. When ascertained, their true names and capacities shall be  
20 reflected in an amended complaint.

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

### 23 **VENUE AND JURISDICTION**

24 24. Venue is proper in the 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 Plaintiffs seek 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 Defendant conducted, and continues to conduct, business in this county with respect to the  
2 PRODUCTS.

3 25. 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 26. The California Superior Court has jurisdiction over Defendants based on  
8 Plaintiffs’ information and good faith belief that each Defendant is a person, firm, corporation  
9 or 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 the  
12 exercise of personal jurisdiction by California courts over Defendants consistent with traditional  
13 notions of fair play and substantial justice.

14 **FIRST CAUSE OF ACTION**

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

16 27. Plaintiffs reallege and incorporate by reference, as if fully set forth herein,  
17 Paragraphs 1 through 26, inclusive.

18 28. 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 29. 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 30. On March 18, 2013, Englander served ZG, others, and certain requisite public  
27 enforcement agencies with a 60-Day Notice of Violation (“Englander Notice”), that provided  
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1 notice to the recipients that as a result of Defendants' sales of the Tris Products containing  
2 TDCPP, purchasers and users in the State of California were being exposed to TDCPP resulting  
3 from their reasonably foreseeable uses of the Tris Products, without the individual purchasers  
4 and users first having been provided with a "clear and reasonable warning" regarding such toxic  
5 exposures, as required by Proposition 65.

6 31. On December 13, 2013, Held served ZG, others, and certain requisite public  
7 enforcement agencies with a "60-Day Notice of Violation" ("Held Notice") that provided the  
8 recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn  
9 customers, consumers, and workers in California that the Phthalate Products expose users to  
10 DEHP resulting from their reasonably foreseeable uses of Phthalate Products. The Englander  
11 Notice and the Held Notice shall hereinafter collectively be referred to as the "Notices."

12 32. Defendants have engaged in the manufacture, importation, distribution, sale, and  
13 offering of the Products for sale or use in violation of Health and Safety Code Section 25249.6,  
14 and Defendants' violations have continued to occur beyond their receipt of Plaintiffs' Notices.  
15 As such, Defendants' violations are ongoing and continuous in nature, and will continue to  
16 occur in the future.

17 33. After receiving Plaintiffs' Notices, the appropriate public enforcement agencies  
18 have failed to commence and diligently prosecute a cause of action against Defendants under  
19 Proposition 65.

20 34. The Products manufactured, imported, distributed, sold, and offered for sale or  
21 use in California by Defendants contain TDCPP and/or DEHP such that they require a "clear  
22 and reasonable" warning under Proposition 65.

23 35. Defendants knew or should have known that the Products they manufacture,  
24 import, distribute, sell, and offer for sale or use in California contain TDCPP and/or DEHP.

25 36. TDCPP and/or DEHP are present in or on the Products in such a way as to expose  
26 individuals to TDCPP and/or DEHP through dermal contact, ingestion, and/or inhalation during  
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1 reasonably foreseeable uses of the Products including through workplace exposure to the  
2 Products.

3 37. The normal and reasonably foreseeable uses of the Products have caused, and  
4 continue to cause, consumer products exposures and workplace exposures to TDCPP and/or  
5 DEHP, as such exposures are defined by Title 27 of the California Code of Regulations, section  
6 25602(b).

7 38. Defendants had knowledge that the normal and reasonably foreseeable uses of the  
8 Products expose individuals to TDCPP and/or DEHP through dermal contact, ingestion, and/or  
9 inhalation.

10 39. Defendants intended that such exposures to TDCPP and/or DEHP from the  
11 reasonably foreseeable uses of the Products would occur by Defendants' deliberate, non-  
12 accidental participation in the manufacture, importation, distribution, sale, and offering of the  
13 Products for sale or use to individuals in the State of California.

14 40. Defendants failed to provide a "clear and reasonable warning" to those consumers  
15 and other individuals in the State of California who were or who would become exposed to  
16 TDCPP and/or DEHP through dermal contact, ingestion, and/or inhalation during the  
17 reasonably foreseeable uses of the Products.

18 41. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
19 directly by California voters, individuals exposed to TDCPP and/or DEHP through dermal  
20 contact, ingestion, and/or inhalation resulting from the reasonably foreseeable uses of the  
21 Products including through workplace exposure to the Products sold by Defendants without a  
22 "clear and reasonable warning," have suffered, and continue to suffer, irreparable harm for  
23 which they have no plain, speedy, or adequate remedy at law.

24 42. Pursuant to Health and Safety Code Section 25249.7(b), as a consequence of the  
25 above-described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day for  
26 each violation.



1 43. As a consequence of the above-described acts, Health and Safety Code  
2 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
3 Defendants.

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiffs pray for judgment against Defendants, and each of them, as  
6 follows:

7 1. That the Court, pursuant to Health and Safety Code Section 25249.7(b), assess  
8 civil penalties against Defendants in the amount of \$2,500 per day for each violation;

9 2. That the Court, pursuant to Health and Safety Code Section 25249.7(a),  
10 preliminarily and permanently enjoin Defendants from manufacturing, distributing, or offering  
11 the Products for sale or use in California without first providing a “clear and reasonable  
12 warning” as defined by Title 27 of the California Code of Regulations, Section 25601 *et seq.*, as  
13 to the harms associated with exposures to TDCPP and/or DEHP;

14 3. That the Court, pursuant to Health and Safety Code section 25249.7(a), issue  
15 preliminary and permanent injunctions mandating that Defendants recall all Products currently  
16 in the chain of commerce in California without a “clear and reasonable warning” as defined by  
17 California Code of Regulations title 27, section 25601 *et seq.*;

18 4. That the Court grant Plaintiffs their reasonable attorneys’ fees and costs of suit;  
19 and

20 5. That the Court grant such other and further relief as may be just and proper.  
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22 Dated: March 11, 2014

THE CHANLER GROUP

By: \_\_\_\_\_

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