

1 Josh Voorhees, State Bar No. 241436
Troy C. Bailey, State Bar No. 277424
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 PETER ENGLANDER

ENDORSED
FILED
ALAMEDA COUNTY
MAY 31 2013

CLERK OF THE SUPERIOR COURT
MARGARET L. DOWN
Deputy

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

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12 PETER ENGLANDER,
13 Plaintiff,
14 v.

15 HOOT JUDKINS, INC.; WESLEY HALL,
16 INC.; WHITEWOOD INDUSTRIES, INC.;
and DOES 1-150, inclusive,
17 Defendants.

Case No. **RG13681899**
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) **COMPLAINT FOR CIVIL PENALTIES**
) **AND INJUNCTIVE RELIEF**
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) (Health & Safety Code. § 25249.6, *et seq.*)
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NATURE OF THE ACTION

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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 sold in California. TDCPP
6 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 padded
10 upholstered furniture 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 furniture 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 in the products through various routes of exposure: (i) through inhalation
16 when TDCPP is released from padded upholstered furniture; (ii) through dermal exposure when
17 TDCPP from padded upholstered furniture accumulates in ambient particles that are
18 subsequently touched by such individuals; and (iii) through ingestion when such particles are
19 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.)
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1 5. TDCPP has been used in consumer products as an additive flame retardant since
2 the 1960s. In the late 1970s, based on findings that exposure to TDCPP could have mutagenic
3 effects, the United States Consumer Product Safety Commission banned the use of TDCPP in
4 children's pajamas.

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

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

11 a. Defendants Hoot Judkins, Inc. and Whitewood Industries, Inc.
12 manufacture, cause to be manufactured, distribute, cause to be distributed, import, cause
13 to be imported, sell and/or otherwise offer for sale in California padded upholstered
14 chairs, with foam padding containing TDCPP. Defendants Hoot Judkins, Inc. and
15 Whitewood Industries, Inc. also manufacture, cause to be manufactured, distribute, cause
16 to be distributed, import, cause to be imported, sell and/or otherwise offer for sale in
17 California the *Slatback Chair, C35-18-F12*, with foam padding containing TDCPP.

18 b. Defendant Wesley Hall, Inc. manufactures, causes to be manufactured,
19 distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise
20 offers for sale in California padded upholstered furniture including chairs, with foam
21 padding containing TDCPP. Defendant Wesley Hall, Inc. also manufactures, causes to
22 be manufactured, distributes, causes to be distributed, imports, causes to be imported,
23 sells and/or otherwise offers for sale in California the *Wesley Hall Chair, #788*, with
24 foam padding containing TDCPP.

25 8. All padded upholstered furniture containing TDCPP, as listed in paragraphs 7(a)
26 and (b) above, shall hereinafter be referred to as the "PRODUCTS." As to each specific
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1 defendant, however, PRODUCTS shall refer only to those products listed for each specific
2 defendant in paragraphs 7(a) and (b) above.

3 9. Although Defendants expose infants, children, and other people to TDCPP in the
4 PRODUCTS, Defendants provide no warnings about the carcinogenic hazards associated with
5 these TDCPP exposures. Defendants' failures to warn consumers and other individuals in the
6 State of California not covered by California's Occupational Health Act, Labor Code § 6300 et
7 seq. about their exposures to TDCPP in conjunction with Defendants' sales of the PRODUCTS,
8 is a violation of Proposition 65, and subjects Defendants to enjoinder of such conduct as well
9 as civil penalties for each violation. (Health & Safety Code § 25249.7(a) & (b)(1).)

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

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

16 PARTIES

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

21 13. Defendant Hoot Judkins, Inc. ("HOOT JUDKINS") is a person in the course of
22 doing business within the meaning of Health and Safety Code Section 25249.11.

23 14. HOOT JUDKINS manufactures, imports, distributes, sells, and/or offers the
24 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
25 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
26 State of California.

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1 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the
2 PRODUCTS.

3 22. 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 23. The California Superior Court has jurisdiction over DEFENDANTS based on
8 plaintiff's information and good faith belief that each Defendant is a person, firm, corporation or
9 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
12 renders the exercise of personal jurisdiction by California courts over DEFENDANTS
13 consistent with traditional notions of fair play and substantial justice.

14 **FIRST CAUSE OF ACTION**

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

16 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
17 Paragraphs 1 through 23, inclusive.

18 25. 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 26. 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.)
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1 27. On March 18, 2013, plaintiff's sixty-day notices of violation, together with the
2 requisite certificates of merit, were provided to HOOT JUDKINS, WESLEY HALL,
3 WHITEWOOD and certain public enforcement agencies stating that, as a result of
4 DEFENDANTS' sales of the PRODUCTS containing TDCPP, purchasers and users in the State
5 of California were being exposed to TDCPP resulting from their reasonably foreseeable uses of
6 the PRODUCTS, without the individual purchasers and users first having been provided with a
7 "clear and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

8 28. 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 notices of violation. As such, DEFENDANTS' violations are ongoing and
12 continuous in nature, and will continue to occur in the future.

13 29. After receiving plaintiff's sixty-day notices 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 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
17 or use in California by DEFENDANTS contain TDCPP such that they require a "clear and
18 reasonable" warning under Proposition 65.

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

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

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

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1 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
2 of the PRODUCTS expose individuals to TDCPP through dermal contact, ingestion, and/or
3 inhalation.

4 35. DEFENDANTS intended that such exposures to TDCPP from the reasonably
5 foreseeable uses of the PRODUCTS would occur by DEFENDANTS' deliberate, non-
6 accidental participation in the manufacture, importation, distribution, sale, and offering of the
7 PRODUCTS for sale or use to individuals in the State of California.

8 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
9 consumers and other individuals in the State of California who were or who would become
10 exposed to TDCPP through dermal contact, ingestion, and/or inhalation during the reasonably
11 foreseeable uses of the PRODUCTS.

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

17 38. Pursuant to Health and Safety Code Section 25249.7(b), as a consequence of the
18 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
19 for each violation.

20 39. As a consequence of the above-described acts, Health and Safety Code
21 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
22 DEFENDANTS.

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PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as follows:

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

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

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: May 30, 2013

THE CHANLER GROUP

By: 

Troy C. Bailey
Attorneys for Plaintiff
PETER ENGLANDER