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CLERK OF
THE SUPERIOR COURT
By Judith Sallee, Deputy

CASE NUMBER:
RG13683321

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

11 PETER ENGLANDER,

12 Plaintiff,

13 vs.

14 BUY BUY BABY, INC., NATURWOOD
HOME FURNISHINGS INCORPORATED,
15 TARGET CORPORATION,
and DOES 1-150,

16 Defendants.

Case No.

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. 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 in the public interest of the citizens of the State of California, to enforce the People's right to be
4 informed of the presence of Tris(1,3-dichloro-2-propyl) phosphate ("TDCPP") found in and on
5 certain furniture products manufactured, distributed and/or otherwise sold by Defendants in
6 California.

7 2. By this Complaint, Plaintiffs seek to remedy Defendants' continuing failures to warn
8 California citizens about the risks of exposures to TDCPP present in and on the products
9 manufactured, distributed, sold, and offered for sale or use to consumers throughout the State of
10 California.

11 3. TDCPP is a toxic chemical that is used to treat the polyurethane foam used as
12 padding or cushioning in a variety of Defendants' furniture products. Detectable levels of TDCPP
13 have been found and are commonly found in and on the products that Defendants manufacture,
14 distribute, sell, and offer for sale to California consumers, many of whom are infants and children.
15 Individuals in California, including infants and children, are exposed to TDCPP in the products
16 through inhalation, dermal absorption and ingestion. California consumers of Defendants'
17 products inhale airborne TDCPP released from padded upholstered furniture and ingest TDCPP
18 from touching dust or other surfaces to which the chemical released from padded upholstered
19 furniture has adhered or adsorbed and then transferring such dust, either directly or indirectly, to
20 their mouths. California consumers of Defendants' products also absorb TDCPP that comes into
21 contact with exposed skin surfaces.

22 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
23 California Health & Safety Code Section 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the
24 course of doing business shall knowingly and intentionally expose any individual to a chemical
25 known to the state to cause cancer or reproductive toxicity without first giving clear and
26 reasonable warning to such individual. . . ." (*Cal. Health & Safety Code* § 25249.6.)

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

1 effects, the United States Consumer Product Safety Commission banned the use of TDCPP in
2 children's pajamas. Pursuant to Proposition 65, on October 28, 2011, California identified and
3 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the "clear and
4 reasonable warning" requirements of the Act one year later on October 28, 2012. (Cal. Code
5 Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).)

6 6. Defendants cause products containing TDCPP to be sold in California as follows:

7 a. Defendant Buy Buy Baby, Inc. manufactures, causes to be manufactured,
8 distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise
9 offers for sale in California padded, upholstered children's chairs with foam padding or
10 other components containing TDCPP. Defendant Buy Buy Baby, Inc. also manufactures,
11 causes to be manufactured, distributes, causes to be distributed, imports, causes to be
12 imported, sells and/or otherwise offers for sale in California padded, upholstered ottomans
13 with foam padding or other components containing TDCPP. Defendant Buy Buy Baby, Inc.
14 also manufactures, causes to be manufactured, distributes, causes to be distributed, imports,
15 causes to be imported, sells and/or otherwise offers for sale in California the P'Kolino Little
16 Reader Chair (Item # PKFFNLRBR), the Bassett Baby Premier Ottoman (#1062-01) and the
17 Storytime Series Ottoman (#0036), each made with foam padding or other materials
18 containing TDCPP.

19 b. Defendant Naturwood Home Furnishings Incorporated manufactures, causes
20 to be manufactured, distributes, causes to be distributed, imports, causes to be imported,
21 sells and/or otherwise offers for sale in California padded, upholstered ottomans with foam
22 padding or other components containing TDCPP. Defendant Naturwood Home
23 Furnishings Incorporated also manufactures, causes to be manufactured, distributes, causes
24 to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in
25 California the Bunching Cocktail Ottoman, # 0902024, #240683, with foam padding or other
26 components containing TDCPP.

27 c. Defendant Target Corporation manufactures, causes to be manufactured,
28 distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise

1 offers for sale in California padded, upholstered furniture, including ottomans with foam
2 padding or other components containing TDCPP. Defendant Target Corporation also
3 manufactures, causes to be manufactured, distributes, causes to be distributed, imports,
4 causes to be imported, sells and/or otherwise offers for sale in California the Room
5 Essentials Storage Ottoman (Item 0321) with foam padding or other components containing
6 TDCPP.

7 7. All such padded, upholstered children's chairs and padded upholstered ottomans,
8 identified in paragraphs 6(a) through 6(c) above, shall hereinafter be referred to "PRODUCTS."
9 However, as to each defendant, PRODUCTS shall only mean or reference only those specific
10 products or types of products listed for each specific defendant in paragraphs 6(a) through 6(c).

11 8. Although Defendants expose infants, children, and other California consumers to
12 TDCPP through the reasonably foreseeable use of the PRODUCTS, Defendants provide no
13 warnings about the carcinogenic hazards associated with these TDCPP exposures. Defendants'
14 failure to warn consumers and/or other individuals in the State of California about their
15 exposures to TDCPP in conjunction with defendants' sale of the PRODUCTS is a violation of
16 Proposition 65.

17 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
18 permanent injunctive relief to compel defendants to provide purchasers or users of any and all of
19 the PRODUCTS with the required warning regarding the health hazards of TDCPP in the
20 PRODUCTS. (*Cal. Health & Safety Code* § 25249.7(a).)

21 10. Plaintiff also seeks civil penalties against defendants for their violations of
22 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

23 PARTIES

24 11. Plaintiff PETER ENGLANDER is a citizen of the State of California who is
25 experienced in protecting the health of California citizens through the elimination or reduction of
26 toxic exposures from consumer products, and brings this action in the public interest pursuant to
27 California Health & Safety Code Section 25249.7.

1 12. Each defendant Buy Buy Baby, Inc. ("BUY BUY BABY"), Naturwood Home
2 Furnishings Incorporated ("NATURWOOD"), and Target Corporation ("TARGET") is a person
3 doing business within the meaning of California Health & Safety Code Section 25249.11.

4 13. Each defendant BUY BUY BABY, NATURWOOD, and TARGET manufactures,
5 causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported,
6 sells and/or otherwise offers for sale or use in California the PRODUCTS or implies by its conduct
7 that it does so.

8 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons
9 doing business within the meaning of California Health & Safety Code Section 25249.11.
10 MANUFACTURER DEFENDANTS engage in the process of research, testing, designing,
11 assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the
12 process of research, testing, designing, assembling, fabricating, and/or manufacturing, one or
13 more of the PRODUCTS for sale or use in the State of California.

14 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons doing
15 business within the meaning of California Health & Safety Code Section 25249.11. DISTRIBUTOR
16 DEFENDANTS distribute, exchange, transfer, process and/or transport one or more of the
17 PRODUCTS to individuals, businesses or retailers for sale or use in the State of California.

18 16. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing
19 business within the meaning of California Health & Safety Code Section 25249.11. RETAIL
20 DEFENDANTS offer the PRODUCTS for sale to individuals in the State of California.

21 17. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
22 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
23 Code of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges,
24 that each of the fictitiously named defendants is responsible for the acts and occurrences herein
25 alleged. When ascertained, their true names shall be reflected in an amended complaint.

26 18. BUY BUY BABY, NATURWOOD, TARGET, MANUFACTURER DEFENDANTS,
27 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively
28 be referred to hereinafter as "DEFENDANTS".

1 **VENUE AND JURISDICTION**

2 19. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
3 Procedure Sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
4 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
5 wrongful conduct occurred, and continues to occur, in this County and/or because
6 DEFENDANTS conducted, and continue to conduct, business in this County with respect to the
7 PRODUCTS.

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

12 21. The California Superior Court has jurisdiction over DEFENDANTS based on
13 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
14 association that either is a citizen of the State of California and has sufficient minimum contacts in
15 the State of California, or otherwise purposefully avails itself of the California market.
16 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
17 courts consistent with traditional notions of fair play and substantial justice.

18 **FIRST CAUSE OF ACTION**

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

20 22. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
21 Paragraphs 1 through 21, inclusive.

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

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

1 25. On March 20, 2013, ENGLANDER served three compliant Supplemental 60-Day
2 Notices of Violation (“Supplemental Notice” or “Supplemental 60-Day Notice”), each supported
3 by the requisite Certificate of Merit, upon BUY BUY BABY and various public enforcement
4 agencies stating that as a result of the defendants’ sales of each of the noticed PRODUCTS,
5 purchasers and users in the State of California are being exposed to TDCPP resulting from the
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. One
8 of these Supplemental Notices was also served upon an entity known as Bassett Furniture
9 Industries Incorporated, another one to an entity known as Best Chairs Incorporated and the other
10 one to an entity known as P’Kolino LLC.

11 26. On March 18, 2013, ENGLANDER served a compliant Supplemental 60-Day Notice
12 of Violation (“Supplemental Notice” or “Supplemental 60-Day Notice”), supported by the
13 requisite Certificate of Merit, upon NATURWOOD, an entity known as Butler Specialty Company,
14 and various public enforcement agencies stating that as a result of the defendants’ sales of the
15 PRODUCTS, purchasers and users in the State of California are being exposed to TDCPP resulting
16 from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
17 users first having been provided with a “clear and reasonable warning” regarding such toxic
18 exposures.

19 27. On March 20, 2013, ENGLANDER served a compliant Supplemental 60-Day Notice
20 of Violation (“Supplemental Notice” or “Supplemental 60-Day Notice”), supported by the
21 requisite Certificate of Merit, upon TARGET, an entity known as Foremost Group, Inc., and
22 various public enforcement agencies stating that as a result of the defendants’ sales of the
23 PRODUCTS, purchasers and users in the State of California are being exposed to TDCPP resulting
24 from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
25 users first having been provided with a “clear and reasonable warning” regarding such toxic
26 exposures.

27 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
28 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and

1 plaintiff is informed and believes that DEFENDANTS' manufacture, distribution, and/or offering
2 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
3 has continued to occur beyond DEFENDANTS' receipt of plaintiff's Supplemental Notice.
4 Plaintiff further alleges and believes that such violations are reasonably likely to occur into the
5 future absent express injunctive relief.

6 29. After receipt of the claims asserted in the Supplemental 60-Day Notice, the
7 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause
8 of action against DEFENDANTS under Proposition 65.

9 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
10 California by DEFENDANTS contain TDCPP.

11 31. DEFENDANTS knew or should have known that the PRODUCTS contain TDCPP.

12 32. TDCPP is present in or on each of the PRODUCTS in such a way as to expose (as
13 such exposure is defined by 27 CCR Section 25602(b)) individuals to TDCPP through dermal
14 contact, inhalation and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

15 33. DEFENDANTS knew or should have known that the reasonably foreseeable use of
16 the PRODUCTS exposes individuals to TDCPP through dermal contact, inhalation and/or
17 ingestion.

18 34. DEFENDANTS' participation in the manufacture, distribution and/or offer for sale
19 or use of PRODUCTS to individuals in the State of California was deliberate and non-accidental.

20 35. DEFENDANTS failed to provide a "clear and reasonable warning" to those
21 consumers and/or other individuals in the State of California who were or who could become
22 exposed to TDCPP during the reasonably foreseeable use of the PRODUCTS.

23 36. Contrary to the express policy and statutory prohibition of Proposition 65,
24 individuals exposed to the TDCPP through dermal contact, inhalation and/or ingestion resulting
25 from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS without a "clear
26 and reasonable warning", have suffered, and continue to suffer, irreparable harm, for which harm
27 they have no other plain, speedy or adequate remedy at law.
28

37. As a consequence of the above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to California Health & Safety Code Section 25249.7(b).

38. As a consequence of the above-described acts, California Health & Safety Code Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

PRAYER FOR RELIEF

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

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

2. That the Court, pursuant to California Health & 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 providing "clear and reasonable warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to the 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: June 11, 2013

Respectfully submitted,

THE CHANLER GROUP

By: 

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Attorneys for Plaintiff
PETER ENGLANDER