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ENDORSED
FILED
Superior Court of California
County of San Francisco

OCT 17 2013

CLERK OF THE COURT
BY: MARY ANN MORAN
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION

CGC 13-534926

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 HILLSDALE FURNITURE LLC; and DOES
18 1-150, inclusive,

19 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

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 health hazards caused by exposures to di(2-
5 ethylhexyl)phthalate (“DEHP”), a toxic chemical found in vinyl/PVC upholstery and other vinyl
6 components of stools sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn California citizens and other individuals about the risks of exposure to DEHP present in
9 and on the vinyl/PVC upholstery and other vinyl components of the stools manufactured,
10 distributed, and offered for sale or use to consumers and other individuals throughout the State
11 of California.

12 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC
13 upholstery and other vinyl components of the stools that defendants manufacture, distribute, and
14 offer for sale to consumers and other individuals throughout the State of California.

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

20 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
21 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
22 subject to the “clear and reasonable warning” requirements of the act one year later on October
23 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
24 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

25 6. Defendants manufacture, distribute, import, sell, and offer for sale without
26 warning in California, stools with vinyl/PVC upholstery and other vinyl components containing
27 the LISTED CHEMICAL, including, but not limited to, the *Bellewood Barstool, Style*
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1 92455833 (UPC No. 7 96995 98651 0). All such stools with vinyl/PVC upholstery and other
2 vinyl components containing DEHP are referred to collectively hereinafter as "PRODUCTS."

3 7. Defendants' failure to warn consumers and other workers, consumers, and other
4 individuals in the State of California of the health hazards associated with exposures to the
5 LISTED CHEMICAL in conjunction with defendants' sales of the PRODUCTS are violations
6 of Proposition 65, and subject defendants, and each of them, to enjoinder of such conduct as
7 well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

8 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
9 permanent injunctive relief to compel defendants to provide purchasers or users of the
10 PRODUCTS with the required warning regarding the health hazards associated with exposures
11 to the LISTED CHEMICAL. Health & Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
13 penalties against defendants for their violations of Proposition 65.

14 PARTIES

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

19 11. Defendant HILLSDALE FURNITURE LLC ("HILLSDALE") is a person in the
20 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
21 25249.11.

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

1 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
2 person in the course of doing business within the meaning of Health and Safety Code sections
3 25249.6 and 25249.11.

4 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
5 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
6 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
7 California.

8 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
9 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
10 and 25249.11.

11 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
12 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
13 in the State of California.

14 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
15 the course of doing business within the meaning of Health and Safety Code sections 25249.6
16 and 25249.11.

17 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
18 State of California.

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

24 20. HILLSDALE, MANUFACTURER DEFENDANTS, DISTRIBUTOR
25 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
26 referred to as “DEFENDANTS.”
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1 **VENUE AND JURISDICTION**

2 21. Venue is proper in San Francisco 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 continue to occur, in this county, and/or because
6 DEFENDANTS conducted, and continue to conduct, business in San Francisco with respect to
7 the PRODUCTS.

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

12 23. 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 is a citizen of the State of California, has sufficient minimum contacts in the
15 State of California, and/or otherwise purposefully avails itself of the California market.
16 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
17 California 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 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
21 Paragraphs 1 through 23, inclusive.

22 25. 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
24 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
25 harm.”

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

3 27. On March 27, 2013, plaintiff’s served a sixty-day notice of violation, together
4 with the requisite certificate of merit, on HILLSDALE and certain public enforcement agencies
5 alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED
6 CHEMICAL, purchasers and users in the State of California were being exposed to the LISTED
7 CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS, without the
8 individual purchasers and users first having been provided with a “clear and reasonable
9 warning” regarding the harms associated with such exposures, as required by Proposition 65.

10 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
11 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
12 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.
13 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in
14 the future.

15 29. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate
16 public enforcement agencies have commenced and diligently prosecuted a cause of action
17 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
18 subject of plaintiff’s notice of violation.

19 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
20 offer for sale or use in California, cause exposures to the LISTED CHEMICAL as a result of the
21 reasonably foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and
22 endured by consumers and other individuals in California are not exempt from the “clear and
23 reasonable” warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

24 31. DEFENDANTS know or should have known that the PRODUCTS they
25 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
26 CHEMICAL.

1 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
2 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
3 reasonably foreseeable use.

4 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
5 continues to cause, consumer exposures to the LISTED CHEMICAL, as defined by title 27 of
6 the California Code of Regulations, section 25602(b).

7 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
8 the PRODUCTS will expose individuals to the LISTED CHEMICAL through dermal contact
9 and/or ingestion.

10 35. DEFENDANTS intended that exposures to the LISTED CHEMICAL from the
11 reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental
12 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS
13 for sale or use to consumers and other individuals in California.

14 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
15 consumers and other individuals in California who were or who would become exposed to the
16 LISTED CHEMICAL through dermal contact and/or ingestion resulting from their use of the
17 PRODUCTS.

18 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
19 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
20 contact or ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold
21 without a “clear and reasonable” health hazard warning, have suffered, and continue to suffer,
22 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

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39. As a consequence of the above-described acts, Health and 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 as follows:

1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil penalties against DEFENDANTS, and each of them, 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” in accordance with title 27 of the California Code of Regulations, section 25601 *et seq.*, regarding the harms associated with exposures the LISTED CHEMICAL;
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: October 17, 2013

Respectfully Submitted,
THE CHANLER GROUP

By: 
 Brian C. Johnson
 Attorneys for Plaintiff
 PETER ENGLANDER