

ENDORSED
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By J. DE JESUS Deputy

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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 PETER ENGLANDER,)
16)
17 Plaintiff,)
18)
19 v.)
20)
21 HOME MERIDIAN HOLDINGS, INC.;)
22 L. POWELL ACQUISITION CORP.;)
23 MATHIS BROS. OKLAHOMA CITY)
24 LLC; SCHNADIG INTERNATIONAL)
25 CORPORATION; STANLEY)
26 FURNITURE COMPANY, INC.; STEVE)
27 SILVER COMPANY; and DOES 1-150,)
28 inclusive,)
Defendants.)

Case No. RG13685328
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(Health & Safety Code § 25249.6 *et seq.*)

BY FAX

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 presence of tris(1,3-dichloro-2-propyl) phosphate
5 ("TDCPP") and tris(2-chloroethyl) phosphate ("TCEP"), toxic chemicals found in padded
6 upholstered furniture sold in California. TDCPP and TCEP are toxic chemicals used to treat
7 polyurethane foam, which is used as padding or cushioning in a variety of products.

8 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
9 warn California citizens about the risks of exposures to TDCPP and TCEP present in and on the
10 padded upholstered furniture manufactured, distributed, sold, and offered for sale or use to
11 consumers throughout the State of California.

12 3. Detectable levels of TDCPP and TCEP are commonly found in and on the padded
13 upholstered furniture that defendants manufacture, distribute, sell, and offer for sale to
14 consumers throughout the State of California. Individuals in California, including infants and
15 children, are exposed to TDCPP and TCEP in the following ways: (i) by inhalation when they
16 inhale TDCPP and TCEP present in ambient particles released from upholstered furniture and
17 other products containing foam treated with TDCPP and TCEP; (ii) by dermal exposure when
18 they touch foam treated with TDCPP and TCEP directly or contact ambient particles containing
19 TDCPP and TCEP that are released from upholstered furniture and other products that use foam
20 treated with TDCPP and TCEP; and (iii) by route of ingestion as a result of hand-to-mouth
21 contact with foam that has been treated with TDCPP and TCEP or with ambient particles
22 released from upholstered furniture and other products that use foam treated with TDCPP and
23 TCEP.

24 4. The Safe Drinking Water and Toxic Enforcement Act of 1986 codified at Health
25 and Safety Code Section 25249.5 et seq. ("Proposition 65") states "[n]o person in the course of
26 doing business shall knowingly and intentionally expose any individual to a chemical known to
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1 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
2 warning to such individual”

3 5. TDCPP and TCEP have been used in consumer products as additive flame
4 retardants since the 1960s. In 1977, based on findings that exposure to TDCPP could have
5 mutagenic effects, the United States Consumer Product Safety Commission banned the use of
6 TDCPP in children’s pajamas.

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

11 7. On April 1, 1992, California identified and listed TCEP pursuant to Proposition
12 65 as a chemical known to cause cancer. TCEP became subject to the “clear and reasonable
13 warning” requirements of the Act one year later on April 1, 1993. Cal. Code Regs., Tit. 27, §
14 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

15 8. TDCPP and TCEP are hereinafter collectively referred to as the “LISTED
16 CHEMICALS.” As to each specific defendant, however, LISTED CHEMICALS shall refer
17 only to the specific chemical(s) listed for that defendant in paragraphs 9(a) through (e) below.

18 9. Defendants manufacture, distribute, import, sell, and/or offer for sale products
19 containing the LISTED CHEMICALS as follows:

20 a. Defendants Home Meridian Holdings, Inc. and Mathis Bros. Oklahoma
21 City LLC manufacture, distribute, import, sell and/or offer for sale in California, padded
22 upholstered chairs containing TDCPP. Defendants Home Meridian Holdings, Inc. and
23 Mathis Bros. Oklahoma City LLC also manufacture, distribute, import, sell and/or offer
24 for sale in California the *Arm Chair, Saddle Ridge, Item 508261 (#7 15709 36651 6)* with
25 foam padding containing TDCPP.

26 b. Defendant L. Powell Acquisition Corp. manufactures, distributes,
27 imports, sells and/or otherwise offers for sale in California padded upholstered furniture
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1 including chairs containing TDCPP and TCEP. Defendant L. Powell Acquisition Corp.
2 also manufactures, distributes, imports, sells and/or offers for sale in California, the
3 *Chair, Product Code JV* with foam padding containing TDCPP and TCEP.

4 c. Defendant Schnadig International Corporation manufactures, distributes,
5 imports, sells and/or offers for sale in California padded upholstered furniture including
6 chairs containing TDCPP and TCEP. Defendant Schnadig International Corporation also
7 manufactures, distributes, imports, sells and/or offers for sale in California the *Schnadig*
8 *Chair, SKU#8040-004-A* with foam padding containing TDCPP and TCEP.

9 d. Defendant Stanley Furniture Company, Inc. manufactures, distributes,
10 imports, sells and/or offers for sale in California padded upholstered furniture including
11 chairs containing TDCPP. Defendant Stanley Furniture Company, Inc. also
12 manufactures, distributes, imports, sells and/or offers for sale in California the
13 *Upholstered Arm Chair, #461-11-75 (#7 02404 25385 2)* with foam padding containing
14 TDCPP.

15 e. Defendants Steve Silver Company and Mathis Bros. Oklahoma City LLC
16 manufacture, distribute, import, sell and/or otherwise offer for sale in California padded
17 upholstered chairs containing TDCPP. Defendants Steve Silver Company and Mathis
18 Bros. Oklahoma City LLC also manufacture, distribute, import, sell and/or offer for sale
19 in California the *Geneva Ladderback Side Chair, GV500S* with foam padding containing
20 TDCPP.

21 10. All padded upholstered furniture, including chairs, containing the LISTED
22 CHEMICALS, as listed in paragraphs 9(a) through (e) above, shall hereinafter be referred to as
23 the "PRODUCTS." As to each specific defendant, however, PRODUCTS shall refer only to
24 those specific products listed for that defendant in paragraphs 9(a) through (e) above.

25 11. Although defendants expose infants, children, and other people to the LISTED
26 CHEMICALS in the PRODUCTS, defendants provide no warnings about the carcinogenic
27 hazards associated with exposures to the LISTED CHEMICALS. Defendants' failure to warn
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1 consumers and other individuals and workers (specifically those not subject to California's
2 Occupational Health Act, Labor Code section 6300 et seq. or exempted under the out-of-state
3 manufacturer rule) in the State of California prior to exposing such individuals to the LISTED
4 CHEMICALS, in conjunction with each sale of the PRODUCTS by a defendant, is a violation
5 of Proposition 65, and subjects defendants to enjoinder of such conduct as well as civil
6 penalties for each violation. (Health & Safety Code § 25249.7(a) & (b)(1).)

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

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

13 **PARTIES**

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

18 15. Defendants Home Meridian Holdings, Inc. ("HOME MERIDIAN"), L. Powell
19 Acquisition Corp. ("L. POWELL"), Mathis Bros. Oklahoma City LLC ("MATHIS"), Schnadig
20 International Corporation ("SCHNADIG"), Stanley Furniture Company, Inc. ("STANLEY")
21 and Steve Silver Company ("STEVE SILVER") are each a person in the course of doing
22 business within the meaning of Health and Safety Code Section 25249.11.

23 16. HOME MERIDIAN, L. POWELL, MATHIS, SCHNADIG, STANLEY and
24 STEVE SILVER each manufacture, import, distribute, sell, and/or offer the PRODUCTS for sale
25 or use in the State of California, or each implies by its conduct that it manufactures, imports,
26 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

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1 consistent with traditional notions of fair play and substantial justice.

2 **FIRST CAUSE OF ACTION**

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

4 22. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
5 Paragraphs 1 through 21, inclusive.

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

10 24. Health and Safety Code section 25249.6 states, “[n]o person in the course of
11 doing business shall knowingly and intentionally expose any individual to a chemical known to
12 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
13 warning to such individual”

14 25. On January 28, 2013, plaintiff’s sixty-day notice of violation, together with the
15 requisite certificate of merit, was provided to SCHNADIG, and certain public enforcement
16 agencies stating that, as a result of SCHNADIG’s sales of the PRODUCTS containing TDCPP,
17 purchasers and users in the State of California were being exposed to TDCPP resulting from
18 their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and
19 users first having been provided with a “clear and reasonable warning” regarding such toxic
20 exposures, as required by Proposition 65.

21 26. On January 30, 2013, plaintiff’s sixty-day notice of violation, together with the
22 requisite certificate of merit, was provided to L. POWELL, and certain public enforcement
23 agencies stating that, as a result of L. POWELL’s sales of the PRODUCTS containing TDCPP,
24 purchasers and users in the State of California were being exposed to TDCPP resulting from
25 their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and
26 users first having been provided with a “clear and reasonable warning” regarding such toxic
27 exposures, as required by Proposition 65.

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1 27. On February 5, 2013, plaintiff's sixty-day notice of violation, together with the
2 requisite certificate of merit, was provided to STANLEY, and certain public enforcement
3 agencies stating that, as a result of STANLEY's sales of the PRODUCTS containing TDCPP,
4 purchasers and users in the State of California were being exposed to TDCPP resulting from
5 their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and
6 users first having been provided with a "clear and reasonable warning" regarding such toxic
7 exposures, as required by Proposition 65.

8 28. On February 26, 2013, plaintiff's sixty-day notice of violation, together with the
9 requisite certificate of merit, was provided to L. POWELL and certain public enforcement
10 agencies stating that, as a result of L. POWELL's sales of the PRODUCTS containing TCEP,
11 purchasers and users in the State of California were being exposed to TCEP resulting from their
12 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
13 having been provided with a "clear and reasonable warning" regarding such toxic exposures, as
14 required by Proposition 65.

15 29. On March 13, 2013, plaintiff's sixty-day notice of violation, together with the
16 requisite certificate of merit, was provided to SCHNADIG and certain public enforcement
17 agencies stating that, as a result of SCHNADIG'S sales of the PRODUCTS containing TCEP,
18 purchasers and users in the State of California were being exposed to TCEP resulting from their
19 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
20 having been provided with a "clear and reasonable warning" regarding such toxic exposures, as
21 required by Proposition 65.

22 30. On March 18, 2013, plaintiff's sixty-day notice of violation, together with the
23 requisite certificate of merit, was provided to STEVE SILVER, MATHIS, and certain public
24 enforcement agencies stating that, as a result of STEVE SILVER and MATHIS' sales of the
25 PRODUCTS containing TDCPP, purchasers and users in the State of California were being
26 exposed to TDCPP resulting from their reasonably foreseeable use of the PRODUCTS, without
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1 the individual purchasers and users first having been provided with a “clear and reasonable
2 warning” regarding such toxic exposures, as required by Proposition 65.

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

10 32. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
11 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code Section
12 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
13 plaintiff’s sixty-day notices of violation. As such, DEFENDANTS’ violations are ongoing and
14 continuous in nature, and will continue to occur in the future.

15 33. After receiving plaintiff’s sixty-day notices of violation, the appropriate public
16 enforcement agencies have failed to commence and diligently prosecute a cause of action
17 against DEFENDANTS under Proposition 65.

18 34. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
19 or use in California by DEFENDANTS contain the LISTED CHEMICALS in amounts that
20 require a “clear and reasonable” warning under Proposition 65.

21 35. DEFENDANTS knew or should have known that the PRODUCTS they
22 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
23 CHEMICALS.

24 36. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
25 to expose individuals through dermal contact, ingestion, and/or inhalation during reasonably
26 foreseeable uses of the PRODUCTS, including through workplace exposures to the
27 PRODUCTS.

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1 37. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
2 continue to cause, consumer exposures and workplace exposures to the LISTED CHEMICALS,
3 as such exposures are defined by California Code of Regulations title 27, section 25602(b).

4 38. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
5 of the PRODUCTS expose individuals to the LISTED CHEMICALS through dermal contact,
6 ingestion, and/or inhalation.

7 39. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from
8 the reasonably foreseeable uses of the PRODUCTS would occur by DEFENDANTS'
9 deliberate, non-accidental participation in the manufacture, importation, distribution, sale, and
10 offering of the PRODUCTS for sale or use to individuals in the State of California.

11 40. DEFENDANTS failed to provide a "clear and reasonable warning" to those
12 consumers and other individuals in the State of California who were or who would become
13 exposed to the LISTED CHEMICALS through dermal contact, ingestion, and/or inhalation
14 during the reasonably foreseeable uses of the PRODUCTS including through workplace
15 exposures to the PRODUCTS.

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

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

25 43. As a consequence of the above-described acts, Health and Safety Code
26 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
27 DEFENDANTS.

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1 **PRAYER FOR RELIEF**

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

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

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
8 offering the PRODUCTS for sale or use in California without first providing a "clear and
9 reasonable warning" as defined by Title 27 of the California Code of Regulations, Section
10 25601 *et seq.*, as to the harms associated with exposures to the LISTED CHEMICALS;

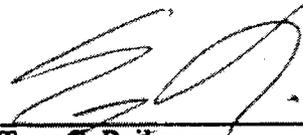
11 3. That the Court, pursuant to Health and Safety Code section 25249.7(a), issue
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
13 currently in the chain of commerce in California without a "clear and reasonable warning" as
14 defined by California Code of Regulations title 27, section 25601 *et seq.*;

15 4. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

16 5. That the Court grant such other and further relief as may be just and proper.
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18 Dated: June 26, 2013

THE CHANLER GROUP

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21 By: 

Troy C. Bailey
Attorneys for Plaintiff
PETER ENGLANDER