

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(2-chloroethyl) phosphate ("TCEP"), a toxic chemical found in
5 padded upholstered chairs sold in California. TCEP is a toxic chemical that is used to treat
6 polyurethane foam, which is used as padding or cushioning in a variety of products.

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

11 3. Detectable levels of TCEP are commonly found in and on padded upholstered chairs
12 that defendants manufacture, distribute, sell, and offer for sale to consumers throughout the State of
13 California. Individuals in California, including infants and children, are exposed to TCEP in the
14 products through various routes of exposure: (i) through inhalation when TCEP is released from
15 padded upholstered furniture; (ii) through dermal exposure when TCEP from padded upholstered
16 furniture accumulates in ambient particles that are subsequently touched by such individuals; and
17 (iii) through ingestion when such particles are brought into contact with the mouth.

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

23 5. Pursuant to Proposition 65, on April 1, 1992, California identified and listed TCEP as
24 a chemical known to cause cancer. TCEP became subject to the "clear and reasonable warning"
25 requirements of the Act one year later on April 1, 1993. (Cal. Code Regs., Tit. 27, § 27001(c);
26 Health & Safety Code §§ 25249.8 & 25249.10(b).)

1 having been provided with a “clear and reasonable warning” regarding such toxic exposures, as
2 required by Proposition 65.

3 23. DEFENDANTS have engaged in the manufacture, importation, distribution, sale, and
4 offering of the PRODUCTS for sale or use in violation of Health and Safety Code Section 25249.6,
5 and DEFENDANTS’ violations have continued to occur beyond their receipt of plaintiff’s sixty-day
6 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature, and
7 will continue to occur in the future.

8 24. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
9 enforcement agencies have failed to commence and diligently prosecute a cause of action against
10 DEFENDANTS under Proposition 65.

11 25. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or
12 use in California by DEFENDANTS contain TCEP such that they require a “clear and reasonable”
13 warning under Proposition 65.

14 26. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,
15 import, distribute, sell, and offer for sale or use in California contain TCEP.

16 27. TCEP is present in or on the PRODUCTS in such a way as to expose individuals to
17 TCEP through dermal contact, ingestion, and/or inhalation during reasonably foreseeable uses of
18 the PRODUCTS including through workplace exposure to the PRODUCTS.

19 28. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
20 continue to cause, consumer exposures and workplace exposures to TCEP, as such exposures are
21 defined by Title 27 of the California Code of Regulations, Section 25602(b).

22 29. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of
23 the PRODUCTS expose individuals to TCEP through dermal contact, ingestion, and/or inhalation.

24 30. DEFENDANTS intended that such exposures to TCEP from the reasonably
25 foreseeable uses of the PRODUCTS would occur by DEFENDANTS’ deliberate, non-accidental
26 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for
27 sale or use to individuals in the State of California.

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

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

6 5. That the Court grant such other and further relief as may be just and proper.
7

8 Dated: August 20, 2013

THE CHANLER GROUP

9
10 By: 

Troy C. Bailey
Attorneys for Plaintiff
PETER ENGLANDER