

ENDORSED
FILED
ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 **RG13700782**

15 PETER ENGLANDER,

16 Plaintiff,

17 v.

18 ANTHONY CALIFORNIA, INC.; and
19 DOES 1-150, inclusive,

20 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code. § 25249.6, *et seq.*)

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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”), 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 the 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 the padded
13 upholstered furniture that defendants manufacture, distribute, sell, and offer for sale to
14 consumers, many of whom are infants and children, throughout the State of California.
15 Individuals in California, including infants and children, are exposed to TDCPP in the
16 PRODUCTS through various routes of exposure: (i) through inhalation when they inhale
17 TDCPP released from padded upholstered furniture; (ii) through dermal exposure when TDCPP
18 from padded upholstered furniture accumulates in ambient particles that are subsequently
19 touched by such individuals; and (iii) through ingestion when such particles are brought into
20 contact with the mouth.

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

26 5. TDCPP has been used in consumer products as an additive flame retardant since
27 the 1960s. In the late 1970s, based on findings that exposure to TDCPP could have mutagenic
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1 effects, the United States Consumer Product Safety Commission banned the use of TDCPP in
2 children's pajamas.

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

7 7. Defendant Anthony California, Inc. manufactures, distributes, imports, sells,
8 and/or offers for sale in California Upholstered Stools with Foam Padding containing TDCPP.
9 Defendants also manufacture, cause to be manufactured, import, cause to be imported, sell
10 and/or otherwise offer for sale in California stools such as the *Anthony California Barstool*,
11 *Item# CR6770/T (#7 08265 88646 8)*.

12 8. All such padded upholstered furniture, including stools, containing TDCPP, as
13 listed in paragraph 6 above, are hereinafter collectively referred to as "PRODUCTS."

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

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

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

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1 **PARTIES**

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

6 13. Defendant ANTHONY CALIFORNIA, INC. (“ANTHONY”) is a person in the
7 course of doing business within the meaning of Health and Safety Code Section 25249.11.

8 14. ANTHONY manufactures, imports, distributes, sells, and/or offers the
9 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
10 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
11 State of California.

12 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
13 person in the course of doing business within the meaning of Health and Safety Code sections
14 25249.6 and 25249.11.

15 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
16 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
17 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
18 California.

19 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
20 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
21 and 25249.11.

22 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
23 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
24 in the State of California.

25 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
26 the course of doing business within the meaning of Health and Safety Code sections 25249.6
27 and 25249.11.

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1 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
2 State of California.

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

9 22. ANTHONY and defendants DOES 1-150 are collectively referred to herein as
10 "DEFENDANTS."

11 VENUE AND JURISDICTION

12 23. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil
13 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
14 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
15 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because
16 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the
17 PRODUCTS.

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

22 25. The California Superior Court has jurisdiction over DEFENDANTS based on
23 plaintiff's information and good faith belief that each Defendant is a person, firm, corporation or
24 association that is a citizen of the State of California, has sufficient minimum contacts in the
25 State of California, and/or otherwise purposefully avails itself of the California market.
26 DEFENDANTS' purposeful availment of California as a marketplace for the PRODUCTS

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1 renders the exercise of personal jurisdiction by California courts over DEFENDANTS
2 consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Proposition 65 - Against All DEFENDANTS)**

5 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
6 Paragraphs 1 through 25, inclusive.

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

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

15 29. On June 10, 2013, plaintiff’s sixty-day notice of violation, together with the
16 requisite certificate of merit, was provided to ANTHONY and certain public enforcement
17 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing
18 TDCPP, purchasers and users in the State of California were being exposed to TDCPP resulting
19 from their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers
20 and users first having been provided with a “clear and reasonable warning” regarding such toxic
21 exposures, as required by Proposition 65.

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

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

3 32. The PRODUCTS manufactured, imported, distributed, sold, and/or offered for
4 sale or use in California by DEFENDANTS contain TDCPP such that they require a “clear and
5 reasonable” warning under Proposition 65.

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

8 34. TDCPP is present in or on the PRODUCTS in such a way as to expose
9 individuals to TDCPP through dermal contact, ingestion, and/or inhalation during reasonably
10 foreseeable uses of the PRODUCTS including through workplace exposure to the PRODUCTS.

11 35. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
12 continue to cause, consumer products exposures and occupational exposures to TDCPP, as such
13 exposures are defined by Title 27 of the California Code of Regulations, section 25602(b).

14 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
15 of the PRODUCTS expose individuals to TDCPP through dermal contact, ingestion, and/or
16 inhalation.

17 37. DEFENDANTS intended that such exposures to TDCPP from the reasonably
18 foreseeable uses of the PRODUCTS would occur by DEFENDANTS’ deliberate, non-
19 accidental participation in the manufacture, importation, distribution, sale, and offering of the
20 PRODUCTS for sale or use to individuals in the State of California.

21 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
22 consumers and other individuals in the State of California who were or who would become
23 exposed to TDCPP through dermal contact, ingestion, and/or inhalation during the reasonably
24 foreseeable uses of the PRODUCTS.

25 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
26 directly by California voters, individuals exposed to TDCPP through dermal contact, ingestion,
27 and/or inhalation resulting from the reasonably foreseeable uses of the PRODUCTS including
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1 through workplace exposure to the PRODUCTS sold by DEFENDANTS without a “clear and
2 reasonable warning,” have suffered, and continue to suffer, irreparable harm for which they
3 have no plain, speedy, or adequate remedy at law.

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

7 41. As a consequence of the above-described acts, Health and Safety Code
8 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
9 DEFENDANTS.

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11 **PRAYER FOR RELIEF**

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

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

16 2. That the Court, pursuant to Health and Safety Code Section 25249.7(a),
17 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
18 offering the PRODUCTS for sale or use in California without first providing a “clear and
19 reasonable warning” as defined by Title 27 of the California Code of Regulations, Section
20 25601 *et seq.*, as to the harms associated with exposures to TDCPP;

21 3. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue
22 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
23 currently in the chain of commerce in California without a “clear and reasonable warning” as
24 defined by California Code of Regulations title 27, § 25601 *et seq.*

25 4. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
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5. That the Court grant such other and further relief as may be just and proper.

Dated: October 25, 2013

THE CHANLER GROUP

By: 

Troy C. Bailey
Attorneys for Plaintiff
PETER ENGLANDER