

1 Christopher C. Moscone, State Bar No. 170250
2 Rachel J. Sater, State Bar No. 147976
3 Jordan M. Otis, State Bar No. 276274
4 MOSCONE EMBLIDGE SATER & OTIS LLP
5 220 Montgomery Street, Suite 2100
6 San Francisco, CA 94104
7 Telephone: (415) 362-3599
8 Facsimile: (415) 362-2006

6 Clifford A. Chanler, State Bar No. 135534
7 THE CHANLER GROUP
8 2560 Ninth Street
9 Parker Plaza, Suite 214
10 Berkeley, CA 94710
11 Telephone: (510) 848-8880
12 Facsimile: (510) 848-8118

11 Attorneys for Plaintiffs
12 ANTHONY E. HELD, PhD., P.E.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

14 ANTHONY E. HELD, PhD., P.E.,

15 Plaintiff,

16 v.

17 KRUEGER INTERNATIONAL, INC.,
18 d.b.a. KI/KRUEGER COMMERCIAL,
19 INC.; and DOES 1 -20, inclusive,

19 Defendants.

Case No. **RG14721395**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

21 **NATURE OF THE ACTION**

22 1. This Complaint is a representative action brought by plaintiff ANTHONY E.
23 HELD., PhD., P.E. ("PLAINTIFF") in the public interest of the citizens of the State of
24 California to enforce the People's right to be informed of the presence of Tris(1,3-dichloro-2-
25 propyl) phosphate ("TDCPP") and Di(2-ethylhexyl)phthalate ("DEHP"), toxic chemicals found
26 in padded upholstered furniture sold in California. TDCPP is a toxic chemical used to treat
27 polyurethane foam, which is used as padding or cushioning in a variety of products. DEHP is a
28 toxic chemical used to treat vinyl/PVC, which is used in a variety of products.

COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF

1

Case No.: _____

**ENDORSED
FILED
ALAMEDA COUNTY**

APR - 9 2014

CLERK OF THE SUPERIOR COURT
By MARGARET J. DOWNL
Deputy

FILED

1 2. By this Complaint, PLAINTIFF seeks to remedy Defendant’s continuing failures
2 to warn California citizens about the risk of exposure to TDCPP and DEHP present in and on
3 chairs with vinyl/PVC upholstery and chairs with foam padding manufactured, distributed, and
4 offered for sale or use to consumers throughout the State of California.

5 3. Detectable levels of TDCPP and DEHP are commonly found in and on chairs
6 with vinyl/PVC upholstery and chairs with foam padding that Defendant manufactures,
7 distributes, and offers for sale to consumers throughout the State of California. Individuals in
8 California, including infants and children, are exposed to TDCPP and/or DEHP in the products
9 through various routes of exposure: (i) through inhalation when TDCPP and DEHP are
10 released from chairs with vinyl/PVC upholstery and chairs with foam padding; (ii) through
11 dermal exposure when TDCPP and DEHP from chairs with vinyl/PVC upholstery and chairs
12 with foam padding accumulate in ambient particles that are subsequently touched by such
13 individuals; and (iii) through ingestion when such particles are brought into contact with the
14 mouth.

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
17 of doing business shall knowingly and intentionally expose any individual to a chemical known
18 to 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. TDCPP has been used in consumer products as an additive flame retardant since
21 the 1960s. In the late 1970s, based on findings that exposure to TDCPP could have mutagenic
22 effects, the United States Consumer Product Safety Commission banned the use of TDCPP in
23 children’s pajamas.

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

1 PLAINTIFF seeks civil penalties against DEFENDANTS, because one or more instances of
2 wrongful conduct occurred, and continue to occur, in the County of Alameda, and/or because
3 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the
4 PRODUCTS.

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

9 20. The California Superior Court has jurisdiction over DEFENDANTS based on
10 PLAINTIFF’S information and good faith belief that each of the DEFENDANTS is a person,
11 firm, corporation, or association that is a citizen of the State of California, has sufficient
12 minimum contacts in the State of California, and/or otherwise purposefully avails itself of the
13 California market. DEFENDANTS’ purposeful availment of California as a marketplace for
14 the PRODUCTS renders the exercise of personal jurisdiction by California courts over
15 DEFENDANTS consistent with traditional notions of fair play and substantial justice.

16 **FIRST CAUSE OF ACTION**

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

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

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

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

1 24. On October 25, 2013, PLAINTIFF’S sixty-day notice of violation, together with
2 the requisite certificate of merit, was provided to KRUEGER and certain public enforcement
3 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing
4 TDCPP, purchasers and users in the State of California were being exposed to TDCPP
5 resulting from their reasonably foreseeable use of the PRODUCTS, without the individual
6 purchasers and users first having been provided with a “clear and reasonable warning”
7 regarding such toxic exposures, as required by Proposition 65.

8 25. On October 25, 2013, PLAINTIFF’S sixty-day notice of violation, together with
9 the requisite certificate of merit, was provided to KRUEGER and certain public enforcement
10 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing
11 DEHP, purchasers and users in the State of California were being exposed to DEHP resulting
12 from their reasonably foreseeable use of the PRODUCTS, without the individual purchasers
13 and users first having been provided with a “clear and reasonable warning” regarding such
14 toxic exposures, as required by Proposition 65.

15 26. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
16 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
17 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
18 PLAINTIFF’S sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing
19 and continuous in nature, and will continue to occur in the future.

20 27. After receiving PLAINTIFF’S sixty-day notice of violation, the appropriate
21 public enforcement agencies have failed to commence and diligently prosecute a cause of
22 action against DEFENDANTS under Proposition 65.

23 28. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
24 or use in California by DEFENDANTS contain LISTED CHEMICALS such that they require
25 a “clear and reasonable” warning under Proposition 65.

26 29. DEFENDANTS knew or should have known that the PRODUCTS they
27 manufacture, import, distribute, sell, and offer for sale or use in California contain LISTED
28 CHEMICALS.

1 30. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way
2 as to expose individuals to the LISTED CHEMICALS through dermal contact, ingestion,
3 and/or inhalation during reasonably foreseeable use of the PRODUCTS including through
4 workplace exposure to the PRODUCTS.

5 31. The normal and reasonably foreseeable uses of the PRODUCTS have caused,
6 and continue to cause, consumer products exposures to LISTED CHEMICALS, as such
7 exposures are defined by the California Code of Regulations Title 27, section 25602(b).

8 32. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
9 of the PRODUCTS expose individuals to LISTED CHEMICALS through dermal contact,
10 ingestion, and/or inhalation.

11 33. DEFENDANTS intended that such exposures to LISTED CHEMICALS from
12 the reasonably foreseeable uses of the PRODUCTS would occur by DEFENDANTS’
13 deliberate, non-accidental participation in the manufacture, importation, distribution, sale, and
14 offering of the PRODUCTS for sale or use to individuals in the State of California.

15 34. DEFENDANTS failed to provide a “clear and reasonable warning” to those
16 consumers and other individuals in the State of California who were or who would become
17 exposed to the LISTED CHEMICALS through dermal contact, ingestion, and/or inhalation
18 during the reasonably foreseeable uses of the PRODUCTS including through workplace
19 exposure to the PRODUCTS.

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

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

1 37. As a consequence of the above-described acts, Health and Safety Code
2 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
3 DEFENDANTS.

4 **PRAYER FOR RELIEF**

5 Wherefore, PLAINTIFF pray for judgment against DEFENDANTS, and each of them,
6 as follows:

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

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

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

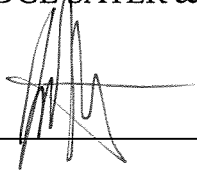
18 4. That the Court grant PLAINTIFF his reasonable attorneys’ fees and costs of suit;
19 and

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

21
22 Dated: April 9, 2014

Respectfully Submitted,

23 MOSCONE EMBLIDGE SATER & OTIS LLP

24
25 By: 
26 Jordan M. Otis
27 Attorneys for Plaintiff
28 ANTHONY E. HELD., PhD., P.E.