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FILED

JUL 30 2018

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais. Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

JOHN MOORE
Plaintiff,
v.
POPPIN, INC.; and DOES 1-150, inclusive,
Defendants.

Case No. CIV 1802667

**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 JOHN MOORE in the
3 public interest of the citizens of the State of California to enforce the People’s right to be informed
4 of the health hazards caused by exposures to Tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) and
5 Tris(2-chloroethyl) phosphate (“TCEP”), toxic chemicals found in and on ottomans with foam
6 padding sold by defendants in California.

7 2. By this Complaint, Plaintiff seeks to remedy defendants’ continuing failure to warn
8 individuals not covered by California’s Occupational Safety Health Act, Labor Code section 6300 et
9 seq., who purchase, use or handle defendants’ products, about the risks of exposure to TDCPP and
10 TCEP present in and on the ottomans with foam padding manufactured, distributed, and offered for
11 sale or use throughout the State of California. Individuals not covered by California’s Occupational
12 Safety Health Act, Labor Code § 6300 et seq., who purchase, use or handle defendants’ products, are
13 referred to hereinafter as “consumers.”

14 3. Detectable levels of TDCPP are found in and on the ottomans with foam padding that
15 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of
16 California.

17 4. Detectable levels of TCEP are found in and on the ottomans with foam padding that
18 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of
19 California.

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

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

1 occurred, and continue to occur, in this county, and/or because DEFENDANTS conducted, and
2 continue to conduct, business in Marin with respect to the PRODUCTS.

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

7 25. The California Superior Court has jurisdiction over DEFENDANTS’ based on
8 plaintiff’s information and good faith belief that DEFENDANTS are each a person, firm, corporation
9 or association that is a citizen of the State of California, has sufficient minimum contacts in the State
10 of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS’
11 purposeful availment renders the exercise of personal jurisdiction by California courts consistent
12 with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

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

15 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs
16 1 through 25, inclusive.

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

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

24 29. On March 21, 2018, plaintiff served a sixty-day notice of violation, together with the
25 accompanying certificate of merit on POPPIN, the California Attorney General’s Office, and the
26 requisite public enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the
27 PRODUCTS, consumers in the State of California are being exposed to TDCPP and TCEP from
28 their reasonably foreseeable use of the PRODUCTS, without the consumers first receiving a “clear

1 and reasonable warning” regarding the harms associated with exposures to TDCPP and TCEP, as
2 required by Proposition 65.

3 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
4 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have
5 continued beyond its receipt of plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’
6 violations are ongoing and continuous in nature and, unless enjoined will continue in the future.

7 31. After receiving plaintiff’s sixty-day notice of violation, no public enforcement agency
8 has commenced and diligently prosecuted a cause of action against DEFENDANTS under
9 Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of violation.

10 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and/or
11 offer for sale or use in California cause exposures to TDCPP and TCEP as a result of the reasonably
12 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
13 consumers in California are not exempt from the “clear and reasonable” warning requirements of
14 Proposition 65, yet DEFENDANTS provide no warning.

15 33. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,
16 import, distribute, sell and/or offer for sale in California contain TDCPP and TCEP.

17 34. TDCPP and TCEP are present in or on the PRODUCTS in such a way as to expose
18 consumers through dermal contact, ingestion and/or inhalation during reasonably foreseeable use.

19 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
20 continues to cause consumer exposures to TDCPP and TCEP, as defined by title 27 of the California
21 Code of Regulations, section 25602(b).

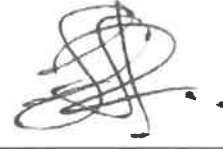
22 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
23 PRODUCTS exposes individuals to TDCPP and TCEP through dermal contact, ingestion and/or
24 inhalation.

25 37. DEFENDANTS intend that consumers and other individuals in California will be
26 exposed to TDCPP and TCEP from the reasonably foreseeable use of the PRODUCTS by their
27 deliberate, non-accidental participation in the manufacture, importation, distribution, sale, and
28 offering of the PRODUCTS for sale or use to consumers in California.

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Dated: July 30, 2018

Respectfully submitted,
THE CHANLER GROUP



By: _____
Laralei S. Paras
Attorneys for Plaintiff
JOHN MOORE