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ENDORSED
FILED
ALAMEDA COUNTY

AUG 09 2013

CLERK OF THE SUPERIOR COURT
By R. De Jesus
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,

Plaintiff,

v.

KIDKRAFT, LP; BUY BUY BABY, INC.;
MEI YUAN ADORNMENT OF BEDROOM;
SHAINGHAI TAYRANNE CO. LTD.; and
DOES 1-150, inclusive,

Defendants.

Case No. RG 13691259

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code section 25249.6 *et seq.*)

VIA 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-dichloroisopropyl) phosphate
5 (“TDCPP”) and tris(2-chloroethyl) phosphate (“TCEP”), toxic chemicals found in padded
6 upholstered children’s furniture, or components thereof, sold in California. TDCPP and TCEP
7 are toxic chemicals that are used to treat polyurethane foam, which is used as padding or
8 cushioning in a variety of products.

9 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failures to
10 warn California citizens about the risk of exposure to TDCPP and TCEP present in and on
11 padded upholstered children’s furniture, or components thereof, manufactured, distributed, and
12 offered for sale or use to consumers throughout the State of California.

13 3. Detectable levels of TDCPP and TCEP are commonly found in and on padded
14 upholstered children’s furniture, or components thereof, that Defendants manufacture,
15 distribute, and offer for sale to consumers, many of whom are children, throughout the State of
16 California. Individuals in California, including children, are exposed to TDCPP and TCEP in
17 the products through various routes of exposure: (i) through inhalation when TDCPP and TCEP
18 are released from padded upholstered children’s furniture; (ii) through dermal exposure when
19 TDCPP and TCEP from padded upholstered children’s furniture accumulates in ambient
20 particles that are subsequently touched by such individuals; and (iii) through ingestion when
21 such particles are brought into contact with the mouth.

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

1 5. TDCPP and TCEP are additive flame retardants used in both soft and rigid
2 polyurethane foam, plastics, and fabric backings. TDCPP and TCEP have been used in
3 consumer products as additive flame retardants since the 1960s. In the late 1970s, based on
4 findings that exposure to TDCPP could have mutagenic effects, the United States Consumer
5 Product Safety Commission banned the use of TDCPP in children’s pajamas. TCEP is currently
6 banned in children’s products in certain states, and several other states have proposed a ban on
7 TDCPP in children’s products as well.

8 6. Pursuant to Proposition 65, on April 1, 1992, California identified and listed
9 TCEP as a chemical known to cause cancer. TCEP became subject to the “clear and reasonable
10 warning” requirements of the Act one year later on April 1, 1993. Cal. Code Regs., tit. 27, §
11 27001(b); Health & Safety Code §§ 25249.8, 25249.10(b).

12 7. Pursuant to Proposition 65, on October 28, 2011, California identified and listed
13 TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
14 reasonable warning” requirements of the Act one year later on October 28, 2012. *Id.* TCEP and
15 TDCPP are referred to collectively hereinafter as the “LISTED CHEMICALS.”

16 8. Defendant KidKraft, L.P. (“KIDKRAFT”), manufactures, causes to be
17 manufactured, distributes, causes to be distributed, imports, causes to be imported, sells, and/or
18 otherwise offers for sale in California:

19 a. Padded, upholstered children’s furniture, with foam padding containing
20 the LISTED CHEMICALS;

21 b. Padded, upholstered children’s ottomans, with foam padding containing
22 the LISTED CHEMICALS; and

23 c. The *Bubble Gum Chenille Upholstered Rocker & Ottoman with Slip*
24 *Cover, #103531/18633/39*, with foam padding containing the LISTED CHEMICALS.

25 9. Defendant Buy Buy Baby, Inc. (“BUY BUY BABY”) manufactures, causes to be
26 manufactured, distributes, causes to be distributed, imports, causes to be imported, sells, and/or
27 otherwise offers for sale in California:

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1 a. Padded, upholstered children's furniture, with foam padding containing
2 the LISTED CHEMICALS;

3 b. Padded, upholstered children's ottomans, with foam padding containing
4 the LISTED CHEMICALS; and

5 c. *The Bubble Gum Chenille Upholstered Rocker & Ottoman with Slip*
6 *Cover, #103531/18633/39*, with foam padding containing the LISTED CHEMICALS.

7 10. Defendant Mei Yuan Adornment of Bedroom ("MEI YUAN") manufactures,
8 causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported,
9 sells, and/or otherwise offers for sale in California:

10 a. Foam padding containing the LISTED CHEMICALS; and

11 b. *The Bubble Gum Chenille Upholstered Rocker & Ottoman with Slip*
12 *Cover, #103531/18633/39*, with foam padding containing the LISTED CHEMICALS.

13 11. Defendant Shanghai Tayranne Co. Ltd. ("TAYRANNE") manufactures, causes to
14 be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells, and/or
15 otherwise offers for sale in California:

16 a. Foam padding containing the LISTED CHEMICALS; and

17 b. *The Bubble Gum Chenille Upholstered Rocker & Ottoman with Slip*
18 *Cover, #103531/18633/39*, with foam padding containing the LISTED CHEMICALS.

19 The items described in paragraphs 8 through 11 shall hereinafter collectively be referred to as the
20 "PRODUCTS."

21 12. Although Defendants expose infants, children, and other people to the LISTED
22 CHEMICALS in the PRODUCTS, Defendants provide no warnings about the carcinogenic
23 hazards associated with these TDCPP and TCEP exposures. Defendants' failures to warn
24 consumers and other individuals in the State of California not covered by California's
25 Occupational Health Act, Labor Code section 6300 et seq. about their exposures to the LISTED
26 CHEMICAL in conjunction with Defendants' sales of the PRODUCTS, is a violation of

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1 Proposition 65, and subjects Defendants to enjoinder of such conduct as well as civil penalties
2 for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

3 13. As a result of Defendants' violations of Proposition 65, PLAINTIFF seeks
4 preliminary and permanent injunctive relief to compel Defendants to provide purchasers or
5 users of the PRODUCTS with the required warning regarding the health hazards of the LISTED
6 CHEMICALS in the PRODUCTS. Health & Safety Code § 25249.7(a).

7 14. Pursuant to Health and Safety Code section 25249.7(b), PLAINTIFF also seeks
8 civil penalties against Defendants for their violations of Proposition 65.

9 **PARTIES**

10 15. Plaintiff PETER ENGLANDER ("PLAINTIFF") is a citizen of the State of
11 California who is dedicated to protecting the health of California citizens through the
12 elimination or reduction of toxic exposures from consumer products; and he brings this action in
13 the public interest pursuant to Health and Safety Code section 25249.7(d).

14 16. Defendants KIDKRAFT, BUY BUY BABY, MEI YUAN, and TAYRANNE
15 each is a person in the course of doing business within the meaning of Health and Safety Code
16 section 25249.11(b).

17 17. KIDKRAFT manufactures, imports, distributes, sells, and/or offers the
18 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
19 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
20 State of California.

21 18. BUY BUY BABY manufactures, imports, distributes, sells, and/or offers the
22 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
23 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
24 State of California.

25 19. MEI YUAN manufactures, imports, distributes, sells, and/or offers the
26 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
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1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
2 State of California.

3 20. TAYRANNE manufactures, imports, distributes, sells, and/or offers the
4 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
5 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
6 State of California.

7 21. Defendants DOES 1-150 are each persons in the course of doing business within
8 the meaning of Health and Safety Code section 25249.11(b), which manufacture, distribute, sell,
9 and/or offer the PRODUCTS for sale in the State of California. At this time, the true names and
10 capacities of defendants DOES 1 through 150, inclusive, are unknown to PLAINTIFF, who,
11 therefore, sues said defendants by their fictitious names pursuant to Code of Civil Procedure
12 section 474. PLAINTIFF is informed and believes, and on that basis alleges, that each of the
13 fictitiously named defendants is responsible for the acts and occurrences alleged herein. When
14 ascertained, their true names and capacities shall be reflected in an amended complaint.

15 22. KIDKRAFT, BUY BUY BABY, MEI YUAN, TAYRANNE, and Defendants
16 DOES 1-150 are collectively referred to herein as “DEFENDANTS.”

17 **VENUE AND JURISDICTION**

18 23. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
19 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
20 because PLAINTIFF seeks civil penalties against DEFENDANTS, because one or more
21 instances of wrongful conduct occurred, and continue to occur, in Alameda County, and/or
22 because DEFENDANTS conducted, and continue to conduct, business in this county with
23 respect to the PRODUCTS.

24 24. The California Superior Court has jurisdiction over this action pursuant to
25 California Constitution, article VI, section 10, which grants the Superior Court “original
26 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
27 which this action is brought does not specify any other basis of subject matter jurisdiction.
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1 30. On April 19, 2013, PLAINTIFF's supplemental sixty-day notice of violation,
2 together with the requisite certificate of merit, was provided to KIDKRAFT, BUY BUY BABY,
3 and certain public enforcement agencies stating that, as a result of KIDKRAFT's and BUY
4 BUY BABY's sales of the PRODUCTS containing the LISTED CHEMICALS, purchasers and
5 users in the State of California were being exposed to the LISTED CHEMICALS resulting from
6 their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and
7 users first having been provided with a "clear and reasonable warning" regarding such toxic
8 exposures, as required by Proposition 65.

9 31. On May 3, 2013, PLAINTIFF's supplemental sixty-day notice of violation,
10 together with the requisite certificate of merit, was provided to KIDKRAFT, BUY BUY BABY,
11 MEI YUAN, TAYRANNE and certain public enforcement agencies stating that, as a result of
12 KIDKRAFT's, BUY BUY BABY's, MEY YUAN's, and TAYRANNE's sales of the
13 PRODUCTS containing the LISTED CHEMICALS, purchasers and users in the State of
14 California were being exposed to the LISTED CHEMICALS resulting from their reasonably
15 foreseeable use of the PRODUCTS, without the individual purchasers and users first having
16 been provided with a "clear and reasonable warning" regarding such toxic exposures, as
17 required by Proposition 65.

18 32. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
19 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
20 25249.6, and DEFENDANTS' violations have continued to occur beyond their receipt of
21 PLAINTIFF's sixty-day notice of violation and supplemental sixty-day notices of violation
22 described in paragraphs 29 through 31 ("NOTICES"). As such, DEFENDANTS' violations are
23 ongoing and continuous in nature, and will continue to occur in the future.

24 33. After receiving PLAINTIFF's NOTICES, the appropriate public enforcement
25 agencies have failed to commence and diligently prosecute a cause of action against
26 DEFENDANTS under Proposition 65.

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1 34. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
2 or use in California by DEFENDANTS contain the LISTED CHEMICALS such that they
3 require a “clear and reasonable” warning under Proposition 65.

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

7 36. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
8 to expose individuals to the LISTED CHEMICALS through dermal contact, ingestion, and/or
9 inhalation during reasonably foreseeable use of the PRODUCTS.

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

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

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

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

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

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

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

9 **PRAYER FOR RELIEF**

10 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS, and each of them,
11 as follows:

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

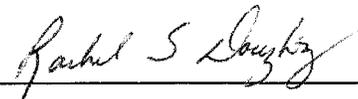
14 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
16 offering the PRODUCTS for sale or use in California without first providing a "clear and
17 reasonable warning" as defined by California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

19 3. That the Court grant PLAINTIFF his reasonable attorneys' fees and costs of suit;
20 and

21 4. That the Court grant such other and further relief as may be just and proper.

22 Dated: August 9, 2013

THE CHANLER GROUP

23
24 By: 
25 Rachel S. Doughty
26 Attorneys for Plaintiff
27 PETER ENGLANDER
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