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ENDORSED
FILED
ALAMEDA COUNTY

JUN 21 2013

CLERK OF THE SUPERIOR COURT
By MICHELLE BANKS Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 ALAMEDA COUNTY
13 UNLIMITED CIVIL JURISDICTION

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 CORINTHIAN, INC.; OFS BRANDS
18 HOLDINGS, INC.; SERRANO'S
19 FURNITURE; CREST OFFICE FURNITURE
20 CO., INC.; and DOES 1-150, inclusive,

21 Defendants.

22 Case No. RG 13684712

23 **COMPLAINT FOR CIVIL PENALTIES
24 AND INJUNCTIVE RELIEF**

25 (Health & Safety Code § 25249.6 et seq.)

26 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 products sold in California. TDCPP is a toxic chemical
6 that is used to treat polyurethane foam, which is used as padding or cushioning in a variety of
7 products, including upholstered furniture.

8 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failure to
9 warn citizens, consumers, and other individuals throughout California about the health hazard
10 risks associated with exposures to TDCPP present in and on the products manufactured,
11 distributed, sold, and offered for sale by Defendants.

12 3. Detectable levels of TDCPP are commonly found in and on the products
13 Defendants manufacture, distribute, sell, and offer for sale or use without warning in California.
14 Citizens, consumers, and other individuals in California, including infants and children, are
15 exposed to TDCPP in the following ways: (i) by inhalation when they inhale TDCPP present in
16 ambient particles released from upholstered furniture and other products containing TDCPP-
17 treated foam; (ii) by dermal exposure when they touch TDCPP-treated foam directly or contact
18 ambient particles containing TDCPP that are released from upholstered furniture and other
19 products that use TDCPP-treated foam; and (iii) by route of ingestion as a result of hand-to-
20 mouth contact with TDCPP-treated foam or with ambient particles released from upholstered
21 furniture and other products that use TDCPP-treated foam.

22 4. The Safe Drinking Water and Toxic Enforcement Act of 1986 codified at Health
23 and Safety Code Section 25249.5 et seq. (“Proposition 65), states “[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 . . .”

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

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

9 7. Defendants manufacture, distribute, import, sell, and/or offer for sale in California
10 products containing TDCPP as follows:

11 a. Defendant Corinthian, Inc. manufactures, distributes, imports, sells, and/or
12 offers for sale, without a warning in California, padded upholstered chairs containing
13 TDCPP including, but not limited to, the *Marquis Chair, Denim*, sold by, inter alia,
14 Serrano's Furniture;

15 b. Defendant OFS Brands Holdings, Inc. manufactures, distributes, imports,
16 sells, and/or offers for sale, without a warning in California, padded upholstered sofas
17 containing TDCPP including, but not limited to, the *G3 Loveseat, F44042*, sold by, inter
18 alia, Crest Office Furniture Co. Inc.

19 8. All such padded upholstered chairs and sofas that contain TDCPP described in
20 Paragraphs 7(a) through (b) above, shall hereinafter be collectively be referred to as
21 "PRODUCTS." As to each specific defendant, however, PRODUCTS shall refer only to those
22 categories of products listed for the defendant in Paragraphs 7(a) through (b) above.

23 9. Although Defendants expose infants, children, and other people to TDCPP in
24 their PRODUCTS, Defendants provide no warnings about the carcinogenic or teratogenic health
25 hazards associated with exposures to these Proposition 65-listed chemicals. Defendants' failure
26 to warn consumers and other individuals in the State of California not covered by California's
27 Occupational Safety Health Act, Labor Code section 6300 et seq. about their the health hazards
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1 associated with exposures to TDCPP in conjunction with Defendants' distribution, importation,
2 manufacture, and/or sales of the PRODUCTS, are violations of Proposition 65, and subject
3 Defendants to enjoinder of such conduct as well as civil penalties for each violation. Health &
4 Safety Code § 25249.7(a) & (b)(1).

5 10. Pursuant to Health and Safety Code section 25249.7(a), Plaintiff seeks
6 preliminary and permanent injunctive relief to compel each of the Defendants to provide
7 purchasers or users of the PRODUCTS with the required health hazard warning regarding the
8 risks of exposures to TDCPP in the PRODUCTS.

9 11. Pursuant to Health and Safety Code Section 25249.7(b), Plaintiff also seeks civil
10 penalties against each Defendant for its violations of Proposition 65.

11 PARTIES

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

16 13. Defendants Corinthian, Inc. ("CORINTHIAN"), OFS Brands Holdings, Inc.
17 ("OFS BRANDS"), Serrano's Furniture ("SERRANO"), and Crest Office Furniture Co., Inc.
18 ("CREST") is each a person in the course of doing business within the meaning of Health and
19 Safety Code sections 25249.6 and 25249.11.

20 14. CORINTHIAN, OFS BRANDS, SERRANO, and CREST each manufacture,
21 import, distribute, sell, and/or offer the PRODUCTS for sale or use in the State of California, or
22 implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the
23 PRODUCTS for sale or use in the State of California.

24 15. Defendants DOES 1-150 are each a person in the course of doing business within
25 the meaning of Health and Safety Code sections 25249.6 and 25249.11. DOES 1 – 150 import,
26 manufacture, distribute, sell, and/or offer the PRODUCTS for sale or use in the State of
27 California. At this time, the true names and capacities of defendants DOES 1 – 150, inclusive,
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1 are unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant
2 to Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
3 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
4 alleged herein. When ascertained, the true name and capacity of each such Defendant shall be
5 reflected in an amended complaint.

6 16. CORINTHIAN, OFS BRANDS, SERRANO, CREST, and Defendants DOES 1-
7 150 are collectively referred to hereinafter as "Defendants" or "DEFENDANTS."

8 **VENUE AND JURISDICTION**

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

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

19 19. The California Superior Court has jurisdiction over DEFENDANTS based on
20 Plaintiff's information and good faith belief that each defendant is a person, firm, corporation,
21 or association that is a citizen of the State of California, has sufficient minimum contacts in the
22 State of California, and/or otherwise purposefully avails itself of the California market.
23 DEFENDANTS' purposeful availing renders the exercise of personal jurisdiction by California
24 courts consistent with traditional notions of fair play and substantial justice.

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1 **FIRST CAUSE OF ACTION**

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

3 20. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 19, inclusive.

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

9 22. Health and Safety Code section 25249.6 states, “[n]o person in the course of
10 doing business shall knowingly and intentionally expose any individual to a chemical known to
11 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
12 warning to such individual . . .”

13 23. On March 4, 2013, PETER ENGLANDER provided a sixty-day notice of
14 violation of Proposition 65, together with the requisite certificate of merit, to CORINTHIAN
15 and certain required public enforcement agencies, stating that as a result of CORINTHIAN’s
16 sales of the PRODUCTS, purchasers and users in California were being exposed to TDCPP
17 resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual
18 purchasers and users first having been provided with a “clear and reasonable warning”
19 regarding the health hazards of such toxic exposures, as required by Proposition 65.

20 24. On March 4, 2013, PETER ENGLANDER provided a sixty-day notice of
21 violation of Proposition 65, together with the requisite certificate of merit, to OFS BRANDS
22 and certain required public enforcement agencies, stating that as a result of OFS BRANDS’s
23 sales of the PRODUCTS, purchasers and users in California were being exposed to TDCPP
24 resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual
25 purchasers and users first having been provided with a “clear and reasonable warning”
26 regarding the health hazards of such toxic exposures, as required by Proposition 65.

1 25. On March 4, 2013, PETER ENGLANDER provided a sixty-day notice of
2 violation of Proposition 65, together with the requisite certificate of merit, to SERRANO and
3 certain required public enforcement agencies, stating that as a result of SERRANO's sales of the
4 PRODUCTS, purchasers and users in California were being exposed to TDCPP resulting from
5 their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
6 users first having been provided with a "clear and reasonable warning" regarding the health
7 hazards of such toxic exposures, as required by Proposition 65.

8 26. On March 4, 2013, PETER ENGLANDER provided a sixty-day notice of
9 violation of Proposition 65, together with the requisite certificate of merit, to CREST and
10 certain required public enforcement agencies, stating that as a result of CREST's sales of the
11 PRODUCTS, purchasers and users in California were being exposed to TDCPP resulting from
12 their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
13 users first having been provided with a "clear and reasonable warning" regarding the health
14 hazards of such toxic exposures, as required by Proposition 65.

15 27. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
16 and offering of the PRODUCTS for sale or use in California in violation of Health and Safety
17 Code section 25249.6, and DEFENDANTS' violations have continued to occur beyond their
18 receipt of Plaintiff's sixty-day notices of violation. As such, DEFENDANTS' violations are
19 ongoing and continuous in nature, such that they will continue to occur in the future.

20 28. After receiving Plaintiff's sixty-day notices of violation, the appropriate public
21 enforcement agencies have failed to commence and diligently prosecute a cause of action
22 against DEFENDANTS under Proposition 65.

23 29. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell and offer
24 for sale or use in California contain TDCPP such that they require a "clear and reasonable"
25 warning under Proposition 65.

26 30. DEFENDANTS knew or should have known that the PRODUCTS they
27 manufacture, import, distribute, sell, and offer for sale or use in California contain TDCPP.
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1 31. TDCPP is present in or on the PRODUCTS in such a way as to expose
2 individuals to TDCPP through dermal contact, ingestion, and/or inhalation during reasonably
3 foreseeable uses of the PRODUCTS.

4 32. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
5 continue to cause, consumer products exposures and occupational exposures to TDCPP as such
6 exposures are defined by California Code of Regulations title 27, section 25602(b).

7 33. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
8 of the PRODUCTS expose individuals to TDCPP through dermal contact, ingestion, and/or
9 inhalation.

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

14 35. DEFENDANTS failed to provide a "clear and reasonable warning" to those
15 consumers and other individuals in the State of California who were, or who would become,
16 exposed to TDCPP through dermal contact, ingestion, and/or inhalation during the reasonably
17 foreseeable uses of the PRODUCTS.

18 36. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
19 directly by California voters, individuals exposed to TDCPP through dermal contact, ingestion,
20 and/or inhalation, resulting from the reasonably foreseeable uses of the PRODUCTS sold by
21 DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to
22 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

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