



1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff, ANTHONY E.  
3 HELD, PH.D., P.E., 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") and Tris(2-chloroethyl) phosphate ("TCEP"), toxic chemicals found in upholstered  
6 ottomans with foam padding sold in the State of California. TDCPP and TCEP are toxic  
7 chemicals that are used to treat polyurethane foam, which is used as padding or cushioning in a  
8 variety of products.

9 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to  
10 warn California citizens about the risks of exposures to TDCPP and TCEP present in and on  
11 upholstered ottomans with foam padding manufactured, imported, distributed, sold, and/or  
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  
14 upholstered ottomans with foam padding that defendants manufacture, import, distribute, sell,  
15 and/or offer for sale or use to consumers throughout the State of California. Individuals in  
16 California, including infants and children, are exposed to TDCPP and TCEP in the products  
17 through various routes of exposure: (i) through inhalation when TDCPP and TCEP are released  
18 from upholstered ottomans with foam padding; (ii) through dermal exposure when TDCPP and  
19 TCEP are released from upholstered ottomans with foam padding 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 California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
23 California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the  
24 course of doing business shall knowingly and intentionally expose any individual to a chemical  
25 known to the State to cause cancer or reproductive toxicity without first giving clear and  
26 reasonable warning to such individual..." (Cal. Health & Safety Code § 25249.6.)  
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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 exposure 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.     Pursuant to Proposition 65, on October 28, 2011, California identified and listed  
6 TDCPP 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).) Pursuant to  
9 Proposition 65, on April 1, 1992, California identified and listed TCEP as a chemical known to  
10 cause cancer. TCEP became subject to the "clear and reasonable warning" requirements of  
11 Proposition 65 one year later on April 1, 1993. Cal. Code Regs., tit. 27, § 27001(c); Health &  
12 Safety Code §§ 25249.8 and 25249.10(b). TDCPP and TCEP are hereinafter referred to as the  
13 "LISTED CHEMICALS."

14           7.     Defendants manufacture, import, distribute, sell, and/or offer for sale upholstered  
15 ottomans with foam padding containing excessive levels of the LISTED CHEMICALS,  
16 including, but not limited to, the *Safavieh Furniture Mercer Modern Collection Ottoman, Item*  
17 *Number: MCR4608A*. All upholstered ottomans with foam padding containing the LISTED  
18 CHEMICALS shall hereinafter be referred to as the "PRODUCTS."

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

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1 County of Alameda, and/or because DEFENDANTS conducted, and continue to conduct,  
2 business in this County with respect to the PRODUCTS.

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

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

13 **FIRST CAUSE OF ACTION**

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

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

17 28. The citizens of the State of California have expressly stated in the Safe Drinking  
18 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*  
19 that they must be informed “about exposures to chemicals that cause cancer, birth defects and  
20 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

21 29. Proposition 65 states, “[n]o person in the course of doing business shall  
22 knowingly and intentionally expose any individual to a chemical known to the state to cause  
23 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
24 individual....” (*Ibid.*)

25 30. On December 13, 2013, a sixty-day notice of violation, together with the requisite  
26 certificate of merit, was provided to SAFAVIEH, YARAGHI, and certain public enforcement  
27 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS, purchasers and  
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1 users in the State of California were being exposed to the LISTED CHEMICALS resulting from  
2 their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and  
3 users first having been provided with a “clear and reasonable warning” regarding such toxic  
4 exposures.

5 31. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
6 and/or offering of the PRODUCTS for sale in violation of California Health and Safety Code §  
7 25249.6, and DEFENDANTS’ manufacture, importation, distribution, sales, and/or offering of  
8 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has  
9 continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation.  
10 As such, DEFENDANTS’ violations are ongoing and continuous in nature, and will continue to  
11 occur in the future.

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

15 33. The PRODUCTS manufactured, imported, distributed, sold, and/or offered for  
16 sale or use in the State of California by DEFENDANTS contain the LISTED CHEMICALS  
17 such that they require a “clear and reasonable” warning under Proposition 65.

18 34. DEFENDANTS knew or should have known that the PRODUCTS they  
19 manufacture, import, distribute, sell, and/or offer for sale or use in the State of California  
20 contain the LISTED CHEMICALS.

21 35. The LISTED CHEMICALS is present in or on the PRODUCTS in such a way as  
22 to expose individuals to the LISTED CHEMICALS through dermal contact, ingestion, and/or  
23 inhalation during reasonably foreseeable uses of the PRODUCTS.

24 36. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
25 continue to cause, consumer exposures and workplace exposures to the LISTED CHEMICALS,  
26 as such exposures are defined by Title 27 CCR § 25602(b).

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1           37. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
2 of the PRODUCTS expose individuals to the LISTED CHEMICALS through dermal contact,  
3 ingestion, and/or inhalation.

4           38. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from  
5 the reasonably foreseeable uses of the PRODUCTS would occur by DEFENDANTS'  
6 deliberate, non-accidental participation in the manufacture, importation, distribution, sale,  
7 and/or offering of the PRODUCTS for sale or use to individuals in the State of California.

8           39. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
9 consumers and/or other individuals in the State of California who were, or who would become  
10 exposed to the LISTED CHEMICALS through dermal contact, ingestion, and/or inhalation  
11 during the reasonably foreseeable uses of the PRODUCTS.

12           40. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
13 directly by California voters, individuals exposed to the LISTED CHEMICALS through dermal  
14 contact, ingestion, and/or inhalation resulting from the reasonably foreseeable uses of the  
15 PRODUCTS sold by DEFENDANTS without a "clear and reasonable warning" have suffered,  
16 and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate  
17 remedy at law.

18           41. Pursuant to California Health and Safety Code § 25249.7(b), as a consequence of  
19 the above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per  
20 day for each violation.

21           42. As a consequence of the above-described acts, California Health and Safety Code  
22 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
23 DEFENDANTS.

**PRAYER FOR RELIEF**

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

2. That the Court, pursuant to California Health and Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, importing, distributing, selling, and/or offering the PRODUCTS for sale or use in the State of California without first providing a "clear and reasonable warning" as defined by Title 27 of the California Code of Regulations, § 25601 et seq., as to the harms associated with exposures the LISTED CHEMICALS;

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

4. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

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

Dated: June 16, 2014

THE CHANLER GROUP

By:   
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