

ENDORSED  
FILED  
ALAMEDA COUNTY  
MAR 26 2013  
CLERK OF THE SUPERIOR COURT  
BY Esther Coleman, DEPUTY

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

15 PETER ENGLANDER,

16 Plaintiff,

17 v.

18 EUROMARKET DESIGNS, INC.;  
19 FURNITURE OF AMERICA, INC.;  
20 FURNITURE OF AMERICA  
21 CALIFORNIA, INC.; HOMELEGANCE,  
22 INC.; IMPORT DIRECT, INC.;  
23 SHENANDOAH FURNITURE, INC.;  
24 and DOES 1-150, inclusive,

25 Defendants.

Case No. RG13673023

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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

8 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failures to  
9 warn California citizens about the risks of exposures to TDCPP present in and on padded  
10 upholstered furniture manufactured, distributed, sold, and offered for sale or use to consumers  
11 throughout the State of California.

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

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

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

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

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

9 a. Defendants Euromarket Designs, Inc. and Shenandoah Furniture, Inc.  
10 manufacture, distribute, import, sell and/or offer for sale in California padded upholstered  
11 furniture containing TDCPP without a warning including, but not limited to, ottomans  
12 such as *Merge Side Bolster*, #237399, #694-3000-13

13 b. Defendants Furniture of America, Inc., Furniture of America California,  
14 Inc. and Import Direct, Inc. manufacture, distribute, import, sell and/or offer for sale in  
15 California padded upholstered furniture containing TDCPP without a warning including,  
16 but not limited to chairs such as *Rocking Chair*, CM-AC6408.

17 c. Defendant Homelegance, Inc. manufactures, distributes, imports, sells  
18 and/or offers for sale in California padded upholstered furniture containing TDCPP  
19 without a warning including but not limited to, ottomans such as *Kaitlyn Collection*  
20 *Cocktail Ottoman with 4 Trays/Storage Item No. 468MC*

21 8. All padded upholstered furniture containing TDCPP, as listed in paragraphs 7(a)  
22 through (c) above, shall hereinafter be referred to as the "PRODUCTS." As to each specific  
23 defendant, however, PRODUCTS shall refer only to those specific products listed for each  
24 specific defendant in paragraphs 7(a) through (c) above.

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

5 10. As a result of Defendants’ violations of Proposition 65, plaintiff seeks preliminary  
6 and permanent injunctive relief to compel Defendants to provide purchasers or users of the  
7 PRODUCTS with the required warning regarding the health hazards of TDCPP in the  
8 PRODUCTS. (Health & Safety Code § 25249.7(a).)

9 11. Pursuant to Health and Safety Code Section 25249.7(b), plaintiff also seeks civil  
10 penalties against Defendants for their 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. Defendant Euromarket Designs, Inc. (“EUROMARKET”) is a person in the  
17 course of doing business within the meaning of Health and Safety Code Section 25249.11.

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

22 15. Defendant Furniture of America, Inc. (“FURNITURE OF AMERICA”) is a  
23 person in the course of doing business within the meaning of Health and Safety Code Section  
24 25249.11.

25 16. FURNITURE OF AMERICA manufactures, imports, distributes, sells, and/or  
26 offers the 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 17. Defendant Furniture of America California, Inc. (“FURNITURE OF  
4 CALIFORNIA”) is a person in the course of doing business within the meaning of Health and  
5 Safety Code Section 25249.11.

6 18. FURNITURE OF CALIFORNIA manufactures, imports, distributes, sells, and/or  
7 offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
8 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
9 State of California.

10 19. Defendant Homelegance, Inc. (“HOMELEGANCE”) is a person in the course of  
11 doing business within the meaning of Health and Safety Code Section 25249.11.

12 20. HOMELEGANCE manufactures, imports, distributes, sells, and/or offers the  
13 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
14 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
15 State of California.

16 21. Defendant Import Direct, Inc. (“IMPORT DIRECT”) is a person in the course of  
17 doing business within the meaning of Health and Safety Code Section 25249.11.

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

22 23. Defendant Shenandoah Furniture, Inc. (“SHENANDOAH”) is a person in the  
23 course of doing business within the meaning of Health and Safety Code Section 25249.11.

24 24. SHENANDOAH manufactures, imports, distributes, sells, and/or offers the  
25 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
26 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
27 State of California.



1 renders the exercise of personal jurisdiction by California courts over DEFENDANTS  
2 consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

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

5 30. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
6 Paragraphs 1 through 29, inclusive.

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

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

15 33. On January 2, 2013, plaintiff’s sixty-day notice of violation, together with the  
16 requisite certificate of merit, was provided to SHENANDOAH, EUROMARKET and certain  
17 public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the  
18 PRODUCTS containing TDCPP, purchasers and users in the State of California were being  
19 exposed to TDCPP resulting from their reasonably foreseeable uses of the PRODUCTS, without  
20 the individual purchasers and users first having been provided with a “clear and reasonable  
21 warning” regarding such toxic exposures, as required by Proposition 65.

22 34. On January 17, 2013, plaintiff’s sixty-day notices of violation, together with the  
23 requisite certificates of merit, were provided to FURNITURE OF AMERICA, FURNITURE  
24 OF CALIFORNIA, HOMELEGANCE, IMPORT DIRECT and certain public enforcement  
25 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing  
26 TDCPP, purchasers and users in the State of California were being exposed to TDCPP resulting  
27 from their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers  
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1 and users first having been provided with a “clear and reasonable warning” regarding such toxic  
2 exposures, as required by Proposition 65.

3 35. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
4 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code Section  
5 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
6 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and  
7 continuous in nature, and will continue to occur in the future.

8 36. After receiving plaintiff’s sixty-day notices of violation, the appropriate public  
9 enforcement agencies have failed to commence and diligently prosecute a cause of action  
10 against DEFENDANTS under Proposition 65.

11 37. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
12 or use in California by DEFENDANTS contain TDCPP such that they require a “clear and  
13 reasonable” warning under Proposition 65.

14 38. DEFENDANTS knew or should have known that the PRODUCTS they  
15 manufacture, import, distribute, sell, and offer for sale or use in California contain TDCPP.

16 39. TDCPP is present in or on the PRODUCTS in such a way as to expose  
17 individuals to TDCPP through dermal contact, ingestion, and/or inhalation during reasonably  
18 foreseeable uses of the PRODUCTS.

19 40. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
20 continue to cause, consumer exposures and workplace exposures to TDCPP, as such exposures  
21 are defined by Title 27 of the California Code of Regulations, Section 25602(b).

22 41. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
23 of the PRODUCTS expose individuals to TDCPP through dermal contact, ingestion, and/or  
24 inhalation.

25 42. DEFENDANTS intended that such exposures to TDCPP from the reasonably  
26 foreseeable uses of the PRODUCTS would occur by DEFENDANTS’ deliberate, non-  
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1 accidental participation in the manufacture, importation, distribution, sale, and offering of the  
2 PRODUCTS for sale or use to individuals in the State of California.

3 43. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
4 consumers and other individuals in the State of California who were or who would become  
5 exposed to TDCPP through dermal contact, ingestion, and/or inhalation during the reasonably  
6 foreseeable uses of the PRODUCTS.

7 44. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
8 directly by California voters, individuals exposed to TDCPP through dermal contact, ingestion,  
9 and/or inhalation resulting from the reasonably foreseeable uses of the PRODUCTS sold by  
10 DEFENDANTS without a “clear and reasonable warning” have suffered, and continue to suffer,  
11 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

12 45. Pursuant to Health and Safety Code Section 25249.7(b), as a consequence of the  
13 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day  
14 for each violation.

15 46. As a consequence of the above-described acts, Health and Safety Code  
16 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

19 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as  
20 follows:

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


23 2. That the Court, pursuant to Health and Safety Code Section 25249.7(a),  
24 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
25 offering the PRODUCTS for sale or use in California without first providing a “clear and  
26 reasonable warning” as defined by Title 27 of the California Code of Regulations, Section  
27 25601 *et seq.*, as to the harms associated with exposures TDCPP;

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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: March 26, 2013

**THE CHANLER GROUP**

By:   
\_\_\_\_\_  
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Attorneys for Plaintiff  
PETER ENGLANDER