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ENDORSED
 FILED
 ALAMEDA COUNTY
 APR 10 2013
 CLERK OF THE SUPERIOR COURT
 By LYNN WILEY
 Deputy

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 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF ALAMEDA
 10 UNLIMITED CIVIL JURISDICTION
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12 PETER ENGLANDER,) Case No. RG13673023
 13 Plaintiff,)
 14 v.) **FIRST AMENDED COMPLAINT FOR**
) **CIVIL PENALTIES AND INJUNCTIVE**
) **RELIEF**
 15 EUROMARKET DESIGNS, INC.;)
 FURNITURE OF AMERICA, INC.;) (Health & Safety Code. § 25249.6, *et seq.*)
 16 FURNITURE OF AMERICA CALIFORNIA,)
 INC.; IMPORT DIRECT, INC.; JONATHAN)
 17 LOUIS INTERNATIONAL LTD.; LIVING)
 SPACES FURNITURE, LLC; PALECEK)
 18 IMPORTS, INC.; SHENANDOAH)
 FURNITURE, INC.; URBAN HOME; and)
 19 DOES 1-150, inclusive,)
 20 Defendants.)
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 24 BY FAX
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NATURE OF THE ACTION

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1. This *First Amended* Complaint is a representative action brought by plaintiff PETER ENGLANDER in the public interest of the citizens of the State of California to enforce the People’s right to be informed of the presence of Tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”), a toxic chemical found in padded upholstered furniture sold in California. TDCPP is a toxic chemical that is used to treat polyurethane foam, which is used as padding or cushioning in a variety of products.

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

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

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

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).)

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

11 a. Defendants Euromarket Designs, Inc. and Shenandoah Furniture, Inc.
12 manufacture, distribute, import, sell and/or offer for sale in California padded upholstered
13 furniture containing TDCPP including, but not limited to, ottomans such as *Merge Side*
14 *Bolster*, #237399, #694-3000-13.

15 b. Defendants Furniture of America, Inc., Furniture of America California,
16 Inc. and Import Direct, Inc. manufacture, distribute, import, sell and/or offer for sale in
17 California padded upholstered furniture containing TDCPP including, but not limited to,
18 chairs such as *Rocking Chair*, CM-AC6408.

19 c. Defendants Jonathan Louis International Ltd. and Living Spaces Furniture,
20 LLC manufacture, distribute, import, sell and/or offer for sale in California padded
21 upholstered furniture containing TDCPP including, but not limited to, ottomans such as
22 *Tulare Accent Ottoman*, #12076-106, #62654.

23 d. Defendant Palecek Imports, Inc. manufactures, distributes, imports, sells
24 and/or offers for sale in California padded upholstered furniture containing TDCPP
25 including, but not limited to, chairs such as *The Bennett Chair*.

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1 14. **EUROMARKET** manufactures, imports, distributes, sells, and/or offers the
2 **PRODUCTS** for sale or use in the State of California, or implies by its conduct that it
3 manufactures, imports, distributes, sells, and/or offers the **PRODUCTS** for sale or use in the
4 State of California.

5 15. **Defendant Furniture of America, Inc. ("FURNITURE OF AMERICA")** is a
6 person in the course of doing business within the meaning of Health and Safety Code Section
7 25249.11.

8 16. **FURNITURE OF AMERICA** manufactures, imports, distributes, sells, and/or
9 offers the **PRODUCTS** for sale or use in the State of California, or implies by its conduct that it
10 manufactures, imports, distributes, sells, and/or offers the **PRODUCTS** for sale or use in the
11 State of California.

12 17. **Defendant Furniture of America California, Inc. ("FURNITURE OF**
13 **CALIFORNIA")** is a person in the course of doing business within the meaning of Health and
14 Safety Code Section 25249.11.

15 18. **FURNITURE OF CALIFORNIA** manufactures, imports, distributes, sells, and/or
16 offers the **PRODUCTS** for sale or use in the State of California, or implies by its conduct that it
17 manufactures, imports, distributes, sells, and/or offers the **PRODUCTS** for sale or use in the
18 State of California.

19 19. **Defendant Import Direct, Inc. ("IMPORT DIRECT")** is a person in the course of
20 doing business within the meaning of Health and Safety Code Section 25249.11.

21 20. **IMPORT DIRECT** 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 21. **Defendant Jonathan Louis International Ltd. ("JONATHAN LOUIS")** is a person
26 in the course of doing business within the meaning of Health and Safety Code Section
27 25249.11.

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1 22. **JONATHAN LOUIS** manufactures, imports, distributes, sells, and/or offers the
2 **PRODUCTS** for sale or use in the State of California, or implies by its conduct that it
3 manufactures, imports, distributes, sells, and/or offers the **PRODUCTS** for sale or use in the
4 State of California.

5 23. Defendant **Living Spaces Furniture, LLC** (“**LIVING SPACES**”) is a person in the
6 course of doing business within the meaning of Health and Safety Code Section 25249.11.

7 24. **LIVING SPACES** manufactures, imports, distributes, sells, and/or offers the
8 **PRODUCTS** for sale or use in the State of California, or implies by its conduct that it
9 manufactures, imports, distributes, sells, and/or offers the **PRODUCTS** for sale or use in the
10 State of California.

11 25. Defendant **Palecek Imports, Inc.** (“**PALECEK**”) is a person in the course of doing
12 business within the meaning of Health and Safety Code Section 25249.11.

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

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

18 28. **SHENANDOAH** 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 29. Defendant **Urban Home** (“**URBAN HOME**”) is a person in the course of doing
23 business within the meaning of Health and Safety Code Section 25249.11.

24 30. **URBAN HOME** 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.

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1 DEFENDANTS' purposeful availment of California as a marketplace for the PRODUCTS
2 renders the exercise of personal jurisdiction by California courts over DEFENDANTS
3 consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

6 36. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 35, inclusive.

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

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

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

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

4 41. On January 24, 2013, plaintiff’s sixty-day notice of violation, together with the
5 requisite certificate of merit, was provided to URBAN HOME and certain public enforcement
6 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing
7 TDCPP, purchasers and users in the State of California were being exposed to TDCPP resulting
8 from their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers
9 and users first having been provided with a “clear and reasonable warning” regarding such toxic
10 exposures, as required by Proposition 65.

11 42. On January 28, 2013, plaintiff’s sixty-day notices of violation, together with the
12 requisite certificates of merit, were provided to JONATHAN LOUIS, LIVING SPACES,
13 PALECEK and certain public enforcement agencies stating that, as a result of DEFENDANTS’
14 sales of the PRODUCTS containing TDCPP, purchasers and users in the State of California
15 were being exposed to TDCPP resulting from their reasonably foreseeable uses of the
16 PRODUCTS, without the individual purchasers and users first having been provided with a
17 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

18 43. 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. As such, DEFENDANTS’ violations are ongoing and
22 continuous in nature, and will continue to occur in the future.

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

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

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

6 47. TDCPP is present in or on the PRODUCTS in such a way as to expose
7 individuals to TDCPP through dermal contact, ingestion, and/or inhalation during reasonably
8 foreseeable uses of the PRODUCTS.

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

12 49. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
13 of the PRODUCTS expose individuals to TDCPP through dermal contact, ingestion, and/or
14 inhalation.

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

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

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