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**ENDORSED  
FILED  
ALAMEDA COUNTY**

**MAR 21 2013**

**CLERK OF THE SUPERIOR COURT**  
By K. Ghee Deputy

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

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 ASHLEY FURNITURE INDUSTRIES, INC.;  
18 BEST BUY CO., INC.; BLUMENTHAL  
19 DISTRIBUTING, INC.; THE TJX  
20 COMPANIES, INC; HUMAN TOUCH, LLC;  
21 LIFESTYLE SOLUTIONS, INC.; ROSS  
22 STORES, INC.; and DOES 1-150, inclusive,

23 Defendants.

Case No. RG 13-672407

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

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”) and di(2-ethylhexyl)phthalate (“DEHP”), toxic chemicals found in products sold in  
6 California. TDCPP is a toxic chemical that is used to treat polyurethane foam, which is used as  
7 padding or cushioning in a variety of products, including upholstered furniture. DEHP is used  
8 in the manufacture of vinyl/PVC used in various products, including furniture.

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

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

25 4. The Safe Drinking Water and Toxic Enforcement Act of 1986 codified at Health  
26 and Safety Code Section 25249.5 et seq. (“Proposition 65), states “[n]o person in the course of  
27 doing business shall knowingly and intentionally expose any individual to a chemical known to  
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1 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
2 warning to such individual . . .”

3 5. TDCPP has been used in consumer products as an additive flame retardant since  
4 the 1960s. In the late 1970s, based on findings that exposures to TDCPP could have mutagenic  
5 effects, the United States Consumer Product Safety Commission banned the use of TDCPP in  
6 children’s pajamas. DEHP is used as a plasticizer in the vinyl/PVC manufacturing process,  
7 however, state and federal laws ban DEHP in quantities greater than 1,000 parts per million  
8 (0.1%) in certain children’s and childcare products.

9 6. On October 24, 2003, California identified and listed DEHP pursuant to  
10 Proposition 65 as a chemical known to cause birth defects and other reproductive harm. DEHP  
11 became subject to the “clear and reasonable warning” requirements of the Act one year later on  
12 October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
13 25249.10(b).

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

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

20 a. Defendants Ashley Furniture Industries, Inc., Lifestyle Solutions, Inc., and  
21 Ross Stores, Inc. manufacture, distribute, import, sell, and/or offer for sale without a  
22 warning in California, padded upholstered furniture, including ottomans, that contains  
23 TDCPP. Defendants’ products include, but are not limited to, the *Cubit Ottoman*,  
24 #7490211, #547900323970 (UPC No. 0 24052 07480 2) by Ashley Furniture; the *Sebu*  
25 *Ottoman* by Lifestyle Solutions; and *Ottoman, Zebra*, #400077414715, D1052 C6424 sold  
26 by Ross Stores, Inc.

1           b. Defendant Best Buy Co., Inc. manufactures, distributes, imports, sells,  
2 and/or offers for sale without a warning in California padded upholstered furniture,  
3 including ottomans, that contains TDCPP and DEHP including, but not limited to, the  
4 *Goodies Study Storage Ottoman, LFO17BR (UPC No. 8 51209 00284 9)*.

5           c. Defendant TJX Companies, Inc. manufactures, distributes, imports, sells,  
6 and/or offers for sale without a warning in California, padded upholstered furniture,  
7 including ottomans, that contains TDCPP including, but not limited to, *Storage Ottoman,*  
8 *Style 262576; and Ottoman, Style 042792.*

9           d. Defendants TJX Companies, Inc. and Blumenthal Distributing, Inc.  
10 manufacture, distribute, import, sell, and/or offer for sale without a warning in California  
11 padded upholstered furniture, including chairs, that contains TDCPP including, but not  
12 limited to, the *Slipper Chair, Style 358415, Model: MO0000135262 LAG51AS1-M12.*

13           e. Defendant Human Touch, LLC manufactures, distributes, imports, sells,  
14 and/or offers for sale without a warning in California, upholstered furniture, including  
15 footstools/ottomans that contains TDCPP including, without limitation, the *iJoy*  
16 *Footstool/Storage Ottoman, B32053559.*

17           9. All such padded upholstered furniture including chairs, ottomans and footstools  
18 that contains TDCPP, and all padded upholstered furniture, including ottomans containing  
19 DEHP and TDCPP described in Paragraphs 8(a) through (e) above, shall hereinafter be  
20 collectively be referred to as “PRODUCTS.” As to each specific defendant, however,  
21 PRODUCTS shall refer only to those categories of products listed for the defendant in  
22 Paragraphs 8(a) through (e) above.

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

5 11. 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 TDCPP and/or DEHP in the PRODUCTS.

9 12. 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 13. 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  
15 pursuant to Health and Safety Code section 25249.7(d).

16 14. Defendants Ashley Furniture Industries, Inc. ("ASHLEY"), Lifestyle Solutions,  
17 Inc. ("LIFESTYLE"), Ross Stores, Inc. ("ROSS"), Best Buy Co., Inc. ("BEST BUY"), TJX  
18 Companies, Inc. ("TJX"), Blumenthal Distributing, Inc. ("BLUMENTHAL"), and Human  
19 Touch, LLC ("HUMAN TOUCH") is each a person in the course of doing business within the  
20 meaning of Health and Safety Code sections 25249.6 and 25249.11.

21 15. ASHLEY, LIFESTYLE, ROSS, BEST BUY, TJX, BLUMENTHAL, and  
22 HUMAN TOUCH each manufacture, import, distribute, sell, and/or offer the PRODUCTS for  
23 sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
24 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

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

7 17. ASHLEY, LIFESTYLE, ROSS, BEST BUY, TJX, BLUMENTHAL, HUMAN  
8 TOUCH, and Defendants DOES 1-150 are collectively referred to hereinafter as  
9 “DEFENDANTS.”

10 **VENUE AND JURISDICTION**

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

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

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

1 **FIRST CAUSE OF ACTION**

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

3 21. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
4 Paragraphs 1 through 20, inclusive.

5 22. 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 23. 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 24. On January 2, 2013, PETER ENGLANDER provided a sixty-day notice of  
14 violation of Proposition 65, together with the requisite certificate of merit, to ROSS and certain  
15 required public enforcement agencies, stating that as a result of ROSS’S sales of the  
16 PRODUCTS, purchasers and users in California were being exposed to TDCPP resulting from  
17 their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and  
18 users first having been provided with a “clear and reasonable warning” regarding the health  
19 hazards of such toxic exposures, as required by Proposition 65.

20 25. On January 2, 2013, PETER ENGLANDER provided a sixty-day notice of  
21 violation of Proposition 65, together with the requisite certificate of merit, to BEST BUY and  
22 the required public enforcement agencies, stating that as a result of BEST BUY’S sales of the  
23 PRODUCTS, purchasers and users in California were being exposed to TDCPP and DEHP  
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           26.    On January 4, 2013, PETER ENGLANDER served a sixty-day notice of violation  
2 of Proposition 65, together with the requisite certificate of merit, to ASHLEY and the required  
3 public enforcement agencies, stating that as a result of ASHLEY’S sales of the PRODUCTS,  
4 purchasers and users in California were being exposed to TDCPP resulting from reasonably  
5 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having  
6 been provided with a “clear and reasonable warning” regarding the health hazards of such toxic  
7 exposures, as required by Proposition 65.

8           27.    On January 8, 2013, PETER ENGLANDER served a sixty-day notice of  
9 violation, together with the requisite certificate of merit, to BLUMENTHAL, TJX, and the  
10 required public enforcement agencies, stating that as a result of BLUMENTHAL’S and TJX’S  
11 sales of the PRODUCTS, purchasers and users in California were being exposed to TDCPP as a  
12 result of their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers  
13 and 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           28.    On January 10, 2013, PETER ENGLANDER served a sixty-day notice of  
16 violation, together with the requisite certificate of merit, to each of TJX, LIFESTYLE, HUMAN  
17 TOUCH, and the required public enforcement agencies, stating that as a result of TJX’S,  
18 LIFESTYLE’S, and HUMAN TOUCH’S sales of the PRODUCTS, purchasers and users in  
19 California were being exposed to TDCPP resulting from their reasonably foreseeable uses of the  
20 PRODUCTS, without the individual purchasers and users first having been provided with a  
21 “clear and reasonable warning” regarding the health hazards of such toxic exposures, as  
22 required by Proposition 65.

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

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

4           31. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell and offer  
5 for sale or use in California contain TDCPP and DEHP such that they require a "clear and  
6 reasonable" warning under Proposition 65.

7           32. DEFENDANTS knew or should have known that the PRODUCTS they  
8 manufacture, import, distribute, sell, and offer for sale or use in California contain TDCPP and  
9 DEHP.

10          33. TDCPP and DEHP are present in or on the PRODUCTS in such a way as to  
11 expose individuals to TDCPP through dermal contact, ingestion, and/or inhalation during  
12 reasonably foreseeable uses of the PRODUCTS.

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

16          35. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
17 of the PRODUCTS expose individuals to TDCPP and DEHP through dermal contact, ingestion,  
18 and/or inhalation.

19          36. DEFENDANTS intended that such exposures to TDCPP and DEHP from the  
20 reasonably foreseeable uses of the PRODUCTS would occur by DEFENDANTS' deliberate,  
21 non-accidental participation in the manufacture, importation, distribution, sale, and offering of  
22 the PRODUCTS for sale or use to individuals in the State of California.

23          37. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
24 consumers and other individuals in the State of California who were or who would become  
25 exposed to TDCPP and DEHP through dermal contact, ingestion, and/or inhalation during the  
26 reasonably foreseeable uses of the PRODUCTS.

