

ENDORSED
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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By CHERYL CLARK Deputy

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PETER ENGLANDER

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 ALAMEDA COUNTY
11 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.; AMERICAN LEATHER,
23 INC.; AL LEGACY PARTNERS, INC.;
24 ROOM & BOARD, INC.; and DOES 1-150,
25 inclusive,

26 Defendants.

Case No. RG13672407

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

*Assigned for All Purposes to Judge Ronni
MacLaren, Department 25*

(Health & Safety Code § 25249.6 et seq.)

1 NATURE OF THE ACTION

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

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

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

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

3 5. TDCPP has been used in consumer products as an additive flame retardant since the
4 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 (0.1%)
8 in certain children’s and childcare products.

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

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

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

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

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

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

7 d. Defendants TJX Companies, Inc. and Blumenthal Distributing, Inc.
8 manufacture, distribute, import, sell, and/or offer for sale without a warning in
9 California padded upholstered furniture, including chairs, that contains TDCPP
10 including, but not limited to, the *Slipper Chair, Style 358415, Model: MO0000135262*
11 *LAG51ASI-M12*.

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

16 f. Defendants American Leather, Inc., AL Legacy Partners, Inc. and Room
17 & Board, Inc. manufacture, distribute, import, sell, and/or offer for sale without a
18 warning in California padded upholstered furniture, including ottomans, that contains
19 TDCPP including, but not limited to, the *Tyler 36"x20" Storage Ottoman, #047620*.

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

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

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

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

13 PARTIES

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

18 14. Defendants Ashley Furniture Industries, Inc. ("ASHLEY"), Lifestyle Solutions, Inc.
19 ("LIFESTYLE"), Ross Stores, Inc. ("ROSS"), Best Buy Co., Inc. ("BEST BUY"), TJX
20 Companies, Inc. ("TJX"), Blumenthal Distributing, Inc. ("BLUMENTHAL"), Human Touch,
21 LLC ("HUMAN TOUCH"), American Leather, Inc. ("AMERICAN LEATHER"), AL Legacy
22 Partners, Inc. ("AL LEGACY"), and Room & Board, Inc. ("ROOM & BOARD") is each a person
23 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
24 and 25249.11.

25 15. ASHLEY, LIFESTYLE, ROSS, BEST BUY, TJX, BLUMENTHAL, HUMAN
26 TOUCH, AMERICAN LEATHER, AL LEGACY, and ROOM & BOARD each manufacture,
27 import, distribute, sell, and/or offer the PRODUCTS for sale or use in the State of California, or
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1 implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the
2 PRODUCTS for sale or use in the State of California.

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

12 17. ASHLEY, LIFESTYLE, ROSS, BEST BUY, TJX, BLUMENTHAL, HUMAN
13 TOUCH, AMERICAN LEATHER, AL LEGACY, ROOM & BOARD and Defendants DOES 1-
14 150 are collectively referred to hereinafter as “DEFENDANTS.”

15 **VENUE AND JURISDICTION**

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

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

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

4 **FIRST CAUSE OF ACTION**

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

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

8 22. 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 informed
10 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

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

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

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

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

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

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

24 29. On January 28, 2013, PETER ENGLANDER served a sixty-day notice of violation,
25 together with the requisite certificate of merit, to each of AMERICAN LEATHER, AL LEGACY,
26 ROOM & BOARD, and the required public enforcement agencies, stating that as a result of
27 AMERICAN LEATHER’S, AL LEGACY’S, and ROOM & BOARD’S sales of the PRODUCTS,
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1 purchasers and users in California were being exposed to TDCPP resulting from their reasonably
2 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been
3 provided with a “clear and reasonable warning” regarding the health hazards of such toxic
4 exposures, as required by Proposition 65.

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

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

13 32. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell and offer for
14 sale or use in California contain TDCPP and DEHP such that they require a “clear and reasonable”
15 warning under Proposition 65.

16 33. DEFENDANTS knew or should have known that the PRODUCTS they
17 manufacture, import, distribute, sell, and offer for sale or use in California contain TDCPP and
18 DEHP.

19 34. TDCPP and DEHP are present in or on the PRODUCTS in such a way as to expose
20 individuals to TDCPP through dermal contact, ingestion, and/or inhalation during reasonably
21 foreseeable uses of the PRODUCTS.

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

25 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of
26 the PRODUCTS expose individuals to TDCPP and DEHP through dermal contact, ingestion,
27 and/or inhalation.

1 reasonable warning” as defined by California Code of Regulations tit. 27, section 25601 et seq.,
2 as to the harms associated with exposures to TDCPP and DEHP;

3 3. That the Court grant Plaintiff his reasonable attorneys’ fees and costs of suit; and

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

5 Dated: April 18, 2013

THE CHANLER GROUP

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9 By: 
10 Brian Johnson
11 Attorneys for Plaintiff
12 PETER ENGLANDER

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