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ENDORSED
FILED
ALAMEDA COUNTY

JUL 09 2013

CLERK OF THE SUPERIOR COURT
By Angela Yamsuan

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA
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.; AMERICAN LEATHER,
23 INC.; AL LEGACY PARTNERS, INC.;
24 ROOM & BOARD, INC.; THE BEST
25 MASTER ENTERPRISES, INC.; PREMIER
26 FURNITURE GALLERY, INC.; INTERCON,
27 INCORPORATED; and DOES 1-150,
28 inclusive,

Defendants.

Case No. RG13672407

*Assigned for All Purposes to Judge Steven
A. Brick, Department 17*

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

(Health & Safety Code § 25249.6 et seq.)

1 NATURE OF THE ACTION

2 1. This Second Amended Complaint is a representative action brought by Plaintiff
3 PETER 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 tris(2-chloroethyl) phosphate (“TCEP”) and di(2-ethylhexyl)phthalate (“DEHP”), toxic chemicals
6 found in products sold in California. TDCPP and TCEP are toxic chemicals that are used to treat
7 polyurethane foam, which is used as padding or cushioning in a variety of products, including
8 upholstered furniture. DEHP is used in the manufacture of vinyl/PVC used in various products,
9 including furniture.

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

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

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

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

14 6. On April 1, 1992, California identified and listed TCEP pursuant to Proposition
15 65 as a chemical known to cause cancer. TCEP became subject to the "clear and reasonable
16 warning" requirements of the act one year later on April 1, 1993. Cal. Code Regs. tit. 27, §
17 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

18 7. On October 24, 2003, California identified and listed DEHP pursuant to Proposition
19 65 as a chemical known to cause birth defects and other reproductive harm. DEHP became subject
20 to the "clear and reasonable warning" requirements of the act one year later on October 24, 2004.
21 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

22 8. On October 28, 2011, California identified and listed TDCPP, pursuant to
23 Proposition 65, as a chemical known to cause cancer. TDCPP became subject to the "clear and
24 reasonable warning" requirements of the act one year later on October 28, 2012. Cal. Code Regs.
25 tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

26 9. Defendants manufacture, distribute, import, sell, and/or offer for sale in California
27 products containing TDCPP, TCEP and/or DEHP as follows:
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1 a. Defendant Ashley Furniture Industries, Inc. manufactures, distributes,
2 imports, sells, and/or offers for sale without a warning in California, upholstered
3 furniture, including ottomans, with foam padding that contains TDCPP including, but
4 not limited to, the *Cubit Ottoman*, #7490211, #547900323970 (UPC No. 0 24052
5 07480 2). Defendant Ashley Furniture Industries, Inc. manufactures, distributes,
6 imports, sells, and/or offers for sale without a warning in California, the *Cubit Ottoman*,
7 #7490211, #547900323970 (UPC No. 0 24052 07480 2) with foam padding that
8 contains TDCPP.

9 b. Defendant Lifestyle Solutions, Inc. manufactures, distributes, imports,
10 sells, and/or offers for sale without a warning in California, upholstered furniture,
11 including ottomans, with foam padding that contains TDCPP. Defendant Lifestyle
12 Solutions, Inc. manufactures, distributes, imports, sells, and/or offers for sale without a
13 warning in California the *Sebu Ottoman* with foam padding that contains TDCPP.

14 c. Defendant Lifestyle Solutions, Inc. manufactures, distributes, imports,
15 sells, and/or offers for sale without a warning in California, coffee tables with
16 vinyl/PVC components and/or coverings that contain DEHP. Defendant Lifestyle
17 Solutions, Inc. manufactures, distributes, imports, sells, and/or offers for sale without a
18 warning in California the *Sebu Casual Convertibles Coffee Table, Rectangular*, #182-
19 409-158-01, BA-CRM-FA-BK, a coffee table with vinyl coverings and/or other
20 components that contain DEHP.

21 d. Defendant Ross Stores, Inc. manufactures, distributes, imports, sells
22 and/or offers for sale without a warning in California, upholstered furniture, including
23 ottomans, with foam padding that contains TDCPP and TCEP. Defendant Ross Stores,
24 Inc. manufactures, distributes, imports, sells and/or offers for sale without a warning in
25 California the *Ottoman, Zebra*, #400077414715, D1052 C6424 with foam padding that
26 contains TDCPP and TCEP.

1 e. Defendant Best Buy Co., Inc. manufactures, distributes, imports, sells,
2 and/or offers for sale without a warning in California, upholstered furniture with foam
3 padding that contains TDCPP. Defendant Best Buy Co., Inc. manufactures, distributes,
4 imports, sells, and/or offers for sale without a warning in California the *Goodies Study*
5 *Storage Ottoman, LFO17BR (UPC No. 8 51209 00284 9)* with foam padding that
6 contains TDCPP.

7 f. Defendant Best Buy Co., Inc. manufactures, distributes, imports, sells,
8 and/or offers for sale without a warning in California, upholstered furniture with
9 vinyl/PVC components containing DEHP. Defendant Best Buy Co., Inc. manufactures,
10 distributes, imports, sells, and/or offers for sale without a warning in California the
11 *Goodies Study Storage Ottoman, LFO17BR (UPC No. 8 51209 00284 9)* with a
12 vinyl/PVC covering and/or other components that contain DEHP.

13 g. Defendant The TJX Companies, Inc. manufactures, distributes, imports,
14 sells, and/or offers for sale without a warning in California, upholstered furniture,
15 including ottomans, with foam padding that contains TDCPP and that are manufactured
16 for sale and/or distributed to The TJX Companies, Inc. for sale by Yi Tong Co. Ltd. and
17 Steven Rhoades Ceramic Designs. Defendant The TJX Companies, Inc. manufactures,
18 distributes, imports, sells, and/or offers for sale without a warning in California the
19 *Storage Ottoman, Style 262576* with foam padding that contains TDCPP and that is
20 manufactured for sale and/or distributed for sale to The TJX Companies, Inc. by Steven
21 Rhoades Ceramic Designs, and *Ottoman, Style 042792* with foam padding that contains
22 TDCPP and that is manufactured for sale and/or distributed for sale to The TJX
23 Companies, Inc. by Yi Tong Co. Ltd.

24 h. Defendant Blumenthal Distributing, Inc. manufactures, distributes,
25 imports, sells, and/or offers for sale without a warning in California, upholstered
26 furniture, including chairs, with foam padding that contains TDCPP and TCEP.
27 Defendant Blumenthal Distributing, Inc. and The TJX Companies, Inc. manufacture,
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1 distribute, import, sell, and/or offer for sale without a warning in California upholstered
2 furniture, including chairs, with foam padding that contains TDCPP and TCEP and that
3 is manufactured and/or distributed for sale to The TJX Companies, Inc. by Blumenthal
4 Distributing, Inc. Defendants Blumenthal Distributing, Inc. and The TJX Companies,
5 Inc. manufacture, distribute, import, sell, and/or offer for sale without a warning in
6 California the *Slipper Chair, Style 358415, Model: MO0000135262, LAG51AS1-M12*
7 with foam padding that contains TDCPP and TCEP.

8 i. Defendant Human Touch, LLC manufactures, distributes, imports, sells,
9 and/or offers for sale without a warning in California, upholstered furniture, including
10 foot stools / ottomans, with foam padding that contains TDCPP and TCEP. Defendant
11 Human Touch, LLC manufactures, distributes, imports, sells, and/or offers for sale
12 without a warning in California, the *iJoy Foot Stool / Storage Ottoman, B32053559*
13 with foam padding that contains TDCPP and TCEP.

14 j. Defendants American Leather, Inc., AL Legacy Partners, Inc. and Room
15 & Board, Inc. manufacture, distribute, import, sell, and/or offer for sale without a
16 warning in California upholstered furniture, including ottomans, with foam padding
17 that contains TDCPP. Defendants American Leather, Inc., AL Legacy Partners, Inc.
18 and Room & Board, Inc. manufacture, distribute, import, sell, and/or offer for sale
19 without a warning in California upholstered furniture, including ottomans, with foam
20 padding that contains TDCPP and that are manufactured and/or distributed for sale to
21 Room & Board, Inc. by AL Legacy Partners, Inc. and American Leather, Inc.
22 Defendants American Leather, Inc., AL Legacy Partners, Inc. and Room & Board, Inc.
23 manufacture, distribute, import, sell, and/or offer for sale without a warning in
24 California the *Tyler 36"x20" Storage Ottoman, #047620* with foam padding that
25 contains TDCPP.

26 k. Defendants The Best Master Enterprises, Inc. and Premier Furniture
27 Gallery, Inc. manufacture, distribute, import, sell, and/or offer for sale without a
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1 warning in California upholstered furniture, including chairs, with foam padding that
2 contains TCEP and TDCPP and that are manufactured and/or distributed for sale to
3 Premier Furniture Gallery, Inc. by The Best Master Enterprises, Inc. Defendants The
4 Best Master Enterprises, Inc. and Premier Furniture Gallery, Inc. manufacture,
5 distribute, import, sell, and/or offer for sale without a warning in California the *Chair,*
6 *Item #KF97046* with foam padding that contains TCEP and TDCPP.

7 1. Defendant Intercon, Incorporated manufactures, distributes, imports,
8 sells, and/or offers for sale without a warning in California, upholstered furniture,
9 including stools, with foam padding that contains TDCPP. Defendant Intercon,
10 Incorporated manufactures, distributes, imports, sells, and/or offers for sale without a
11 warning in California the *Verona 24" X-Back Barstool, VC-BS-725C-ITR-K24* with
12 foam padding that contains TDCPP.

13 10. All such padded upholstered furniture including chairs, ottomans, footstools and
14 stools that contains TDCPP and/or TCEP, and all padded upholstered furniture, including
15 ottomans containing DEHP and TDCPP described in Paragraphs 9(a) through 9(l) above, shall
16 hereinafter be collectively be referred to as "PRODUCTS." As to each specific defendant,
17 however, PRODUCTS shall refer only to those categories of products listed for the defendant in
18 Paragraphs 9(a) through 9(l) above.

19 11. Although Defendants expose infants, children, and other people to DEHP, TCEP
20 and TDCPP in their PRODUCTS, Defendants provide no warnings about the carcinogenic or
21 teratogenic health hazards associated with exposures to these Proposition 65-listed chemicals.
22 Defendants' failure to warn consumers and other individuals in the State of California not covered
23 by California's Occupational Safety Health Act, Labor Code section 6300 et seq. about the health
24 hazards associated with exposures to DEHP, TCEP and TDCPP in conjunction with Defendants'
25 distribution, importation, manufacture, and/or sales of the PRODUCTS, are violations of
26 Proposition 65, and subject Defendants to enjoinder of such conduct as well as civil penalties
27 for each violation. Health & Safety Code § 25249.7(a) & (b)(1).
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1 through 150 import, manufacture, distribute, sell, and/or offer the PRODUCTS for sale or use in the State of California. At this time, the true names and capacities of defendants DOES 1 through 150, inclusive, are unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences alleged herein. When ascertained, the true name and capacity of each such Defendant shall be reflected in an amended complaint.

18. ASHLEY, LIFESTYLE, ROSS, BEST BUY, TJX, BLUMENTHAL, HUMAN TOUCH, AMERICAN LEATHER, AL LEGACY, ROOM & BOARD, BEST MASTER, PREMIER, INTERCON and Defendants DOES 1-150 are collectively referred to hereinafter as "DEFENDANTS."

VENUE AND JURISDICTION

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

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

21. The California Superior Court has jurisdiction over DEFENDANTS based on Plaintiff's information and good faith belief that each defendant is a person, firm, corporation, or association that is a citizen of the State of California, has sufficient minimum contacts in the State of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by 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 22. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 21, inclusive.

5 23. 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 informed
7 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

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

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

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

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

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

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

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

1 31. On February 25, 2013, PETER ENGLANDER served a sixty-day notice of violation,
2 together with the requisite certificate of merit, to BLUMENTHAL, TJX, and the required public
3 enforcement agencies, stating that as a result of BLUMENTHAL'S and TJX'S sales of the
4 PRODUCTS, purchasers and users in California were being exposed to TCEP as a result of their
5 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
6 having been provided with a "clear and reasonable warning" regarding the health hazards of such
7 toxic exposures, as required by Proposition 65.

8 32. On February 25, 2013, PETER ENGLANDER served a sixty-day notice of violation,
9 together with the requisite certificate of merit, to ROSS and the required public enforcement
10 agencies, stating that as a result of ROSS'S sales of the PRODUCTS, purchasers and users in
11 California were being exposed to TCEP as a result of their reasonably foreseeable uses of the
12 PRODUCTS, without the individual purchasers and users first having been provided with a "clear
13 and reasonable warning" regarding the health hazards of such toxic exposures, as required by
14 Proposition 65.

15 33. On February 26, 2013, PETER ENGLANDER served a sixty-day notice of violation,
16 together with the requisite certificate of merit, to HUMAN TOUCH, LLC, and the required public
17 enforcement agencies, stating that, as a result of HUMAN TOUCH, LLC'S sales of the
18 PRODUCTS, purchasers and users in California were being exposed to TCEP resulting from their
19 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
20 having been provided with a "clear and reasonable warning" regarding the health hazards of such
21 toxic exposures, as required by Proposition 65.

22 34. On March 27, 2013, PETER ENGLANDER served a sixty-day notice of violation,
23 together with the requisite certificate of merit, to BEST MASTER, PREMIER, and the required
24 public enforcement agencies, stating that as a result of BEST MASTER'S and PREMIER'S sales
25 of the PRODUCTS, purchasers and users in California were being exposed to TDCPP and TCEP
26 resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual
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1 purchasers and users first having been provided with a “clear and reasonable warning” regarding
2 the health hazards of such toxic exposures, as required by Proposition 65.

3 35. On March 27, 2013, PETER ENGLANDER served a sixty-day notice of violation,
4 together with the requisite certificate of merit, to INTERCON, and the required public enforcement
5 agencies, stating that as a result of INTERCON’S sales of the PRODUCTS, purchasers and users
6 in California were being exposed to TDCPP resulting from their reasonably foreseeable uses of the
7 PRODUCTS, without the individual purchasers and users first having been provided with a “clear
8 and reasonable warning” regarding the health hazards of such toxic exposures, as required by
9 Proposition 65.

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

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

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

25 39. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell and offer for
26 sale or use in California contain TDCPP, TCEP and DEHP such that they require a “clear and
27 reasonable” warning under Proposition 65.

1 40. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufacture, import, distribute, sell, and offer for sale or use in California contain TDCPP, TCEP
3 and DEHP.

4 41. TDCPP, TCEP and DEHP are present in or on the PRODUCTS in such a way as to
5 expose individuals to TDCPP, TCEP and DEHP through dermal contact, ingestion, and/or
6 inhalation during reasonably foreseeable uses of the PRODUCTS.

7 42. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
8 continue to cause, consumer products exposures and occupational exposures to TDCPP, TCEP and
9 DEHP, as such exposures are defined by California Code of Regulations title 27, section 25602(b).

10 43. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of
11 the PRODUCTS expose individuals to TDCPP, TCEP and DEHP through dermal contact,
12 ingestion, and/or inhalation.

13 44. DEFENDANTS intended that such exposures to TDCPP, TCEP and DEHP from the
14 reasonably foreseeable uses of the PRODUCTS would occur by DEFENDANTS' deliberate, non-
15 accidental participation in the manufacture, importation, distribution, sale, and offering of the
16 PRODUCTS for sale or use to individuals in the State of California.

17 45. DEFENDANTS failed to provide a "clear and reasonable warning" to those
18 consumers and other individuals in the State of California who were or who would become
19 exposed to TDCPP, TCEP and DEHP through dermal contact, ingestion, and/or inhalation during
20 the reasonably foreseeable uses of the PRODUCTS.

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

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

4 48. As a consequence of the above-described acts, Health and Safety Code
5 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
6 DEFENDANTS.

7 **PRAYER FOR RELIEF**

8 Wherefore, Plaintiff prays for judgment against each of the DEFENDANTS as follows:

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

12 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
13 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
14 distributing, or offering the PRODUCTS for sale or use in California without first providing a
15 "clear and reasonable warning" as defined by California Code of Regulations tit. 27, section
16 25601 et seq., as to the harms associated with exposures to TDCPP, TCEP and DEHP;

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

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

19 Dated: June 6, 2013
20 July

THE CHANLER GROUP

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23 By: 
24 Brian Johnson
25 Attorneys for Plaintiff
26 PETER ENGLANDER
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