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**ENDORSED  
FILED  
ALAMEDA COUNTY**

**MAR 20 2013**

CLERK OF THE SUPERIOR COURT  
By K. Ghee Deputy

Attorneys for Plaintiffs  
PETER ENGLANDER  
JOHN MOORE and  
LAURENCE VINOUCUR

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

13 PETER ENGLANDER; JOHN MOORE; and )  
14 LAURENCE VINOUCUR, )  
15 Plaintiffs, )  
16 v. )  
17 COSTCO WHOLESALE CORPORATION; )  
18 EMERALD HOME FURNISHINGS, LLC; )  
19 GRACO CHILDREN'S PRODUCTS, INC.; )  
20 KINWAI USA INC.; LINON HOME DECOR )  
21 PRODUCTS, INC.; NEWELL )  
22 RUBBERMAID INC.; PIER 1 IMPORTS, )  
INC.; PIER 1 IMPORTS (U.S.), INC.; )  
TUESDAY MORNING CORPORATION; and )  
DOES 1-150, inclusive, )  
Defendants. )

Case No. <sup>RG</sup> 13-672233

**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 plaintiffs PETER  
3 ENGLANDER, JOHN MOORE, and LAURENCE VINOCCUR (collectively “Plaintiffs”) in the  
4 public interest of the citizens of the State of California to enforce the People’s right to be  
5 informed of the presence of Tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”), a toxic chemical  
6 found in products sold in California. TDCPP is a toxic chemical that is used to treat  
7 polyurethane foam, which is used as padding or cushioning in a variety of products.

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

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

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

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

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

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

7           a. Defendants Costco Wholesale Corporation, Graco Children’s Products  
8 Inc. and Newell Rubbermaid Inc. manufacture, distribute, import, sell, and/or offer for  
9 sale in California playards/bassinets with padding containing TDCPP without a warning  
10 including, but not limited to, *Graco Pack 'n Play Portable Playard, Item #1804109,*  
11 *#100611 (#0 47406 11471 9).*

12           b. Defendant Emerald Home Furnishings, LLC manufactures, distributes,  
13 imports, sells, and/or offers for sale in California padded upholstered furniture including  
14 accent chairs containing TDCPP without a warning including, but not limited to, *Lucinda*  
15 *Accent Chair, U300KD-05-09.*

16           c. Defendant Kinwai USA Inc. manufactures, distributes, imports, sells,  
17 and/or offers for sale in California padded upholstered furniture including ottomans  
18 containing TDCPP without a warning including but not limited to, *Ottoman, CU9-090-*  
19 *W9-21-LP1114-CA.*

20           d. Defendants Tuesday Morning Corporation and Linon Home Decor  
21 Products, Inc. manufacture, distribute, import, sell, and/or offer for sale in California  
22 padded upholstered furniture including stools containing TDCPP without a warning  
23 including, but not limited to, the *Zebra Vanity Stool, #1273119.*

24           e. Defendants Pier 1 Imports, Inc. and Pier 1 Imports (U.S.), Inc.  
25 manufacture, distribute, import, sell, and/or offer for sale in California chair cushions  
26 containing TDCPP without a warning including, but not limited to, the *Indoor/Outdoor*  
27 *Weather & Fade Resistant Chair Cushion, SKU 2510225* and padded upholstered  
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1 furniture including ottomans including, but not limited to, *Tufted Ottoman, SKU*  
2 *2600570*.

3 8. All playards/bassinets with padding, padded upholstered furniture including  
4 accent chairs, ottomans and stools, and chair cushions containing TDCPP, as listed in  
5 paragraphs 7(a) through (e) above, shall hereinafter be referred to as the “PRODUCTS.” As to  
6 each specific defendant, however, PRODUCTS shall refer only to those specific products listed  
7 for each specific defendant in paragraphs 7(a) through (e) above.

8 9. Although Defendants expose infants, children, and other people to TDCPP in the  
9 PRODUCTS, Defendants provide no warnings about the carcinogenic hazards associated with  
10 these TDCPP exposures. Defendants’ failures to warn consumers and other individuals in the  
11 State of California not covered by California’s Occupational Safety Health Act, Labor Code §  
12 6300 *et seq.* about their exposures to TDCPP in conjunction with Defendants’ distribution,  
13 importation, manufacture, and/or sales of the PRODUCTS, is a violation of Proposition 65, and  
14 subjects Defendants to enjoinder of such conduct as well as civil penalties for each violation.  
15 (Health & Safety Code § 25249.7(a) & (b)(1).)

16 10. As a result of Defendants’ violations of Proposition 65, Plaintiffs seek preliminary  
17 and permanent injunctive relief to compel Defendants to provide purchasers or users of the  
18 PRODUCTS with the required warning regarding the health hazards of the TDCPP in the  
19 PRODUCTS. (Health & Safety Code § 25249.7(a).)

20 11. Pursuant to Health and Safety Code Section 25249.7(b), Plaintiffs also seek civil  
21 penalties against Defendants for their violations of Proposition 65.

## 22 PARTIES

23 12. Plaintiffs PETER ENGLANDER, JOHN MOORE, and LAURENCE VINOCUR  
24 are each citizens of the State of California who are dedicated to protecting the health of  
25 California citizens through the elimination or reduction of toxic exposures from consumer  
26 products; and they bring this action in the public interest pursuant to Health and Safety Code  
27 section 25249.7(d).



1 Defendants conducted, and continue to conduct, business in this county with respect to the  
2 PRODUCTS.

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

7 19. The California Superior Court has jurisdiction over DEFENDANTS based on  
8 Plaintiffs’ information and good faith belief that each defendant is a person, firm, corporation,  
9 or association that is a citizen of the State of California, has sufficient minimum contacts in the  
10 State of California, and/or otherwise purposefully avails itself of the California market.  
11 DEFENDANTS’ purposeful availment of California as a marketplace for the PRODUCTS  
12 renders the exercise of personal jurisdiction by California courts over DEFENDANTS  
13 consistent with traditional notions of fair play and substantial justice.

14 **FIRST CAUSE OF ACTION**

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

16 20. Plaintiffs reallege and incorporate by reference, as if fully set forth herein,  
17 Paragraphs 1 through 19, inclusive.

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

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

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

6 24. On January 2, 2013, JOHN MOORE's sixty-day notice of violation, together with  
7 the requisite certificate of merit, was provided to PIER 1, PIER 1 US, and certain public  
8 enforcement agencies stating that, as a result of PIER 1's and PIER 1 US's sales of the  
9 PRODUCTS, purchasers and users in the State of California were being exposed to TDCPP  
10 resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual  
11 purchasers and users first having been provided with a "clear and reasonable warning"  
12 regarding such toxic exposures, as required by Proposition 65.

13 25. On January 4, 2013, PETER ENGLANDER provided sixty-day notices of  
14 violation, together with the requisite certificates of merit, to EMERALD, LINON, TUESDAY  
15 MORNING, and certain public enforcement agencies stating that, as a result of EMERALD's,  
16 LINON's and TUESDAY MORNING's sales of the PRODUCTS, purchasers and users in the  
17 State of California were being exposed to TDCPP resulting from their reasonably foreseeable  
18 uses of the PRODUCTS, without the individual purchasers and users first having been provided  
19 with a "clear and reasonable warning" regarding such toxic exposures, as required by  
20 Proposition 65.

21 26. On January 4, 2013, LAURENCE VINOUCUR's sixty-day notice of violation,  
22 together with the requisite certificate of merit, was provided to COSTCO, GRACO, NEWELL,  
23 and certain public enforcement agencies stating that, as a result of COSTCO's, GRACO's, and  
24 NEWELL's sales of the PRODUCTS, purchasers and users in the State of California were being  
25 exposed to TDCPP resulting from their reasonably foreseeable uses of the PRODUCTS, without  
26 the individual purchasers and users first having been provided with a "clear and reasonable  
27 warning" regarding such toxic exposures, as required by Proposition 65.

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1           27. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
2 and offering of the PRODUCTS for sale or use in California in violation of Health and Safety  
3 Code section 25249.6, and DEFENDANTS' violations have continued to occur beyond their  
4 receipt of Plaintiffs' sixty-day notices of violation. As such, DEFENDANTS' violations are  
5 ongoing and continuous in nature, and will continue to occur in the future.

6           28. After receiving Plaintiffs' sixty-day notices of violation, the appropriate public  
7 enforcement agencies have failed to commence and diligently prosecute a cause of action  
8 against DEFENDANTS under Proposition 65.

9           29. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
10 or use in California by DEFENDANTS contain TDCPP such that they require a "clear and  
11 reasonable" warning under Proposition 65.

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

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

17           32. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
18 continue to cause, consumer products exposures and occupational exposures to TDCPP, as such  
19 exposures are defined by Title 27 of the California Code of Regulations, section 25602(b).

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

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



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- 3. That the Court grant Plaintiffs their 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 20, 2013

THE CHANLER GROUP

By:   
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