

1 Josh Voorhees, State Bar No. 241436  
2 Troy C. Bailey, State Bar No. 277424  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiffs  
10 PETER ENGLANDER  
11 JOHN MOORE and  
12 LAURENCE VINOCUR

ENDORSED  
FILED  
ALAMEDA COUNTY

APR 12 2013

CLERK OF THE SUPERIOR COURT  
By M Hayes Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA  
11 UNLIMITED CIVIL JURISDICTION

13 PETER ENGLANDER; JOHN MOORE; and )  
14 LAURENCE VINOCUR, )

15 Plaintiffs, )

16 v. )

17 COSTCO WHOLESALE CORPORATION; )  
18 CRAFTMASTER FURNITURE, INC.; )  
19 EMERALD HOME FURNISHINGS, LLC; )  
20 FOUR HANDS, LLC; GRACO CHILDREN'S )  
21 PRODUCTS, INC.; HOMELEGANCE, INC.; )  
22 KINWAI USA INC.; LEGACY CLASSIC )  
23 FURNITURE, INC.; LINON HOME DECOR )  
24 PRODUCTS, INC.; NEWELL )  
25 RUBBERMAID INC.; PIER 1 IMPORTS, )  
26 INC.; PIER 1 IMPORTS (U.S.), INC.; )  
27 TUESDAY MORNING CORPORATION; and )  
28 DOES 1-150, inclusive, )

Defendants. )

Case No. RG13672233

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

(Health & Safety Code § 25249.6, *et seq.*)

BY FAX

1 **NATURE OF THE ACTION**

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

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

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

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

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

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

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

9 a. Defendants Costco Wholesale Corporation, Graco Children's Products  
10 Inc. and Newell Rubbermaid Inc. manufacture, distribute, import, sell, and/or offer for  
11 sale in California playards/bassinets with padding containing TDCPP including, but not  
12 limited to, *Graco Pack 'n Play Portable Playard, Item #1804109, #100611 (#0 47406*  
13 *11471 9)*.

14 b. Defendant Craftmaster Furniture, Inc. manufactures, distributes, imports,  
15 sells, and/or offers for sale in California padded upholstered furniture including ottomans  
16 containing TDCPP including, but not limited to, *Craftmaster Furniture Ottoman, Style*  
17 *098800*.

18 c. Defendant Emerald Home Furnishings, LLC manufactures, distributes,  
19 imports, sells, and/or offers for sale in California padded upholstered furniture including  
20 accent chairs containing TDCPP including, but not limited to, *Lucinda Accent Chair,*  
21 *U300KD-05-09*.

22 d. Defendant Four Hands, LLC manufactures, distributes, imports, sells,  
23 and/or offers for sale in California padded upholstered furniture including stools  
24 containing TDCPP including, but not limited to, *Eli Round Stool-White Canvas, CIRD-*  
25 *06C7-A9, #11458, #120092 (#8 01542 07021 2)*.

26 e. Defendant Homelegance, Inc. manufactures, distributes, imports, sells,  
27 and/or offers for sale in California padded upholstered furniture including ottomans  
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1 containing TDCPP including, but not limited to, *Kaitlyn Collection Cocktail Ottoman*  
2 *with 4 Trays/Storage Item No. 468MC.*

3 *f.* Defendant Kinwai USA Inc. manufactures, distributes, imports, sells,  
4 and/or offers for sale in California padded upholstered furniture including ottomans  
5 containing TDCPP including, but not limited to, *Ottoman, CU9-090-W9-21-LP1114-CA.*

6 *g.* Defendant Legacy Classic Furniture, Inc. manufactures, distributes,  
7 imports, sells, and/or offers for sale in California padded upholstered furniture including  
8 kid & teen chairs containing TDCPP including, but not limited to, *American Spirit*  
9 *Upholstered Chairs, #490-640.*

10 *h.* Defendants Tuesday Morning Corporation and Linon Home Decor  
11 Products, Inc. manufacture, distribute, import, sell, and/or offer for sale in California  
12 padded upholstered furniture including stools containing TDCPP including, but not  
13 limited to, the *Zebra Vanity Stool, #1273119.*

14 *i.* Defendants Pier 1 Imports, Inc. and Pier 1 Imports (U.S.), Inc.  
15 manufacture, distribute, import, sell, and/or offer for sale in California chair cushions  
16 containing TDCPP including, but not limited to, the *Indoor/Outdoor Weather & Fade*  
17 *Resistant Chair Cushion, SKU 2510225* and padded upholstered furniture including  
18 ottomans including, but not limited to, *Tufted Ottoman, SKU 2600570.*

19 8. All playards/bassinets with padding, padded upholstered furniture including  
20 accent chairs, kid & teen chairs, ottomans, stools, and chair cushions containing TDCPP, as  
21 listed in paragraphs 7(a) through (i) above, shall hereinafter be referred to as the  
22 “PRODUCTS.” As to each specific defendant, however, PRODUCTS shall refer only to those  
23 specific products listed for each specific defendant in paragraphs 7(a) through (i) above.

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

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

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

11 **PARTIES**

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

17 13. Defendants Costco Wholesale Corporation (“COSTCO”), Craftmaster Furniture,  
18 Inc. (“CRAFTMASTER”), Emerald Home Furnishings, LLC (“EMERALD”), Four Hands,  
19 LLC (“FOUR HANDS”), Graco Children’s Products, Inc. (“GRACO”), Homelegance, Inc.  
20 (“HOMELEGANCE”), Kinwai USA Inc. (“KINWAI”), Legacy Classic Furniture, Inc.  
21 (“LEGACY”), Linon Home Decor Products, Inc. (“LINON”), Newell Rubbermaid Inc.  
22 (“NEWELL”), Pier 1 Imports, Inc. (“PIER 1”), Pier 1 Imports (U.S.), Inc. (“PIER 1 US”), and  
23 Tuesday Morning Corporation (“TUESDAY MORNING”) are each a person in the course of  
24 doing business within the meaning of Health and Safety Code section 25249.11.

25 14. COSTCO, CRAFTMASTER, EMERALD, FOUR HANDS, GRACO,  
26 HOMELEGANCE, KINWAI, LEGACY, LINON, NEWELL, PIER 1, PIER 1 US, and  
27 TUESDAY MORNING manufacture, import, distribute, sell, and/or offer the PRODUCTS for  
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1 sale or use in the State of California, or imply by their conduct that they manufacture, import,  
2 distribute, sell, and/or offer the PRODUCTS for sale or use in the State of California.

3 15. Defendants DOES 1-150 are each persons in the course of doing business within  
4 the meaning of Health and Safety Code section 25249.11(b), that manufacture, distribute, sell,  
5 and/or offer the PRODUCTS for sale or use in the State of California. At this time, the true  
6 names and capacities of Defendants DOES 1 through 150, inclusive, are unknown to Plaintiffs,  
7 who, therefore, sue said defendants by their fictitious names pursuant to Code of Civil  
8 Procedure section 474. Plaintiffs are informed and believe, and on that basis allege, that each of  
9 the fictitiously named Defendants is responsible for the acts and occurrences alleged herein.  
10 When ascertained, their true names and capacities shall be reflected in an amended complaint.

11 16. COSTCO, CRAFTMASTER, EMERALD, FOUR HANDS, GRACO,  
12 HOMELEGANCE, KINWAI, LEGACY, LINON, NEWELL, PIER 1, PIER 1 US, TUESDAY  
13 MORNING, and Defendants DOES 1-150 are collectively referred to herein as  
14 “DEFENDANTS.”

#### 15 VENUE AND JURISDICTION

16 17. 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 Plaintiffs seek civil penalties against DEFENDANTS, because one or more instances of  
19 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because  
20 Defendants conducted, and continue to conduct, business in this county with respect to the  
21 PRODUCTS.

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

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

6 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

5 25. On January 4, 2013, PETER ENGLANDER provided sixty-day notices of  
6 violation, together with the requisite certificates of merit, to EMERALD, LINON, TUESDAY  
7 MORNING, and certain public enforcement agencies stating that, as a result of EMERALD’s,  
8 LINON’s and TUESDAY MORNING’s sales of the PRODUCTS, purchasers and users in the  
9 State of California were being exposed to TDCPP resulting from their reasonably foreseeable  
10 uses of the PRODUCTS, without the individual purchasers and users first having been provided  
11 with a “clear and reasonable warning” regarding such toxic exposures, as required by  
12 Proposition 65.

13 26. On January 4, 2013, LAURENCE VINOCUR’s sixty-day notice of violation,  
14 together with the requisite certificate of merit, was provided to COSTCO, GRACO, NEWELL,  
15 and certain public enforcement agencies stating that, as a result of COSTCO’s, GRACO’s, and  
16 NEWELL’s sales of the PRODUCTS, purchasers and users in the State of 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 such toxic exposures, as required by Proposition 65.

20 27. On January 10, 2013, PETER ENGLANDER’s sixty-day notice of violation,  
21 together with the requisite certificate of merit, was provided to FOUR HANDS, and certain  
22 public enforcement agencies stating that, as a result of FOUR HANDS’ sales of the  
23 PRODUCTS, purchasers and users in the State of California were being exposed to TDCPP  
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 such toxic exposures, as required by Proposition 65.

1           28.    On January 17, 2013, PETER ENGLANDER’s sixty-day notice of violation,  
2 together with the requisite certificate of merit, was provided to HOMELEGANCE and certain  
3 public enforcement agencies stating that, as a result of HOMELEGANCE’s sales of the  
4 PRODUCTS, purchasers and users in the State of California were being exposed to TDCPP  
5 resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual  
6 purchasers and users first having been provided with a “clear and reasonable warning”  
7 regarding such toxic exposures, as required by Proposition 65.

8           29.    On January 28, 2013, PETER ENGLANDER’s sixty-day notice of violation,  
9 together with the requisite certificate of merit, was provided to CRAFTMASTER and certain  
10 public enforcement agencies stating that, as a result of CRAFTMASTER’s sales of the  
11 PRODUCTS, purchasers and users in the State of California were being exposed to TDCPP  
12 resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual  
13 purchasers and users first having been provided with a “clear and reasonable warning”  
14 regarding such toxic exposures, as required by Proposition 65.

15           30.    On January 30, 2013, PETER ENGLANDER’s sixty-day notice of violation,  
16 together with the requisite certificate of merit, was provided to LEGACY and certain public  
17 enforcement agencies stating that, as a result of LEGACY’s sales of the PRODUCTS,  
18 purchasers and users in the State of California were being exposed to TDCPP resulting from  
19 their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and  
20 users first having been provided with a “clear and reasonable warning” regarding such toxic  
21 exposures, as required by Proposition 65.

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

1           32. After receiving Plaintiffs’ 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           33. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
5 or use in California by DEFENDANTS contain TDCPP such that they require a “clear and  
6 reasonable” warning under Proposition 65.

7           34. 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.

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

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

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

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

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

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

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

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

