

ENDORSED  
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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT

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CENTER FOR ENVIRONMENTAL HEALTH

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF ALAMEDA

RG13673582

16 CENTER FOR ENVIRONMENTAL HEALTH, )  
17 a non-profit corporation, )

18 Plaintiff, )

19 v. )

20 AMERIWOOD INDUSTRIES, INC.; DOREL )  
21 ASIA INC.; and DOES 1 through 300, inclusive, )

22 Defendants. )

Case No. \_\_\_\_\_

COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES

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

(Other)

1 Plaintiff Center for Environmental Health, in the public interest, based on  
2 information and belief and investigation of counsel, except for information based on knowledge,  
3 hereby makes the following allegations:

4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn  
6 individuals in California that they are being exposed to several toxic chemicals –  
7 tris(1,3-dichloro-2-propyl) phosphate ("TDCPP") and/or lead and lead compounds (collectively,  
8 "Lead") – in upholstered furniture products, such as chairs, ottomans, sofas, and futons  
9 (collectively, "Products"). TDCPP is a chemical known to the State of California to cause  
10 cancer. Lead is a chemical known to the State of California to cause cancer and birth defects or  
11 other reproductive harm. TDCPP is used to treat polyurethane foam, which is used as padding or  
12 cushioning in a variety of products, including foam-cushioned upholstered furniture  
13 ("Foam-Cushioned Furniture"). Lead is used as an additive in the production of faux leather  
14 products, including faux leather furniture ("Faux Leather Furniture"). Individuals in California,  
15 including infants and children, are exposed to TDCPP when they inhale TDCPP released from  
16 Foam-Cushioned Furniture, and also when TDCPP from Foam-Cushioned Furniture accumulates  
17 in ambient particles that are subsequently touched by such individuals and brought into contact  
18 with the mouth. Individuals in California, including infants, children, and pregnant women, are  
19 exposed to Lead after touching Faux Leather Furniture, either by hand-to-mouth ingestion or by  
20 dermal absorption directly through the skin.

21 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et*  
22 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California  
23 to chemicals known to the State to cause cancer, birth defects, or other reproductive harm  
24 without providing clear and reasonable warnings to individuals prior to their exposure.  
25 Defendants introduce Products contaminated with significant quantities of TDCPP and Lead into  
26 the California marketplace, exposing users of their Products to TDCPP and Lead.

27 3. Despite the fact that Defendants expose infants, children, and other people  
28 to TDCPP and Lead, Defendants provide no warnings whatsoever about the carcinogenic or

1 reproductive hazards associated with these TDCPP and Lead exposures. Defendants' conduct  
2 thus violates the warning provision of Proposition 65. Health & Safety Code § 25249.6.

3 PARTIES

4 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a  
5 non-profit corporation dedicated to protecting the public from environmental health hazards and  
6 toxic exposures. CEH is based in Oakland, California and is incorporated under the laws of the  
7 State of California. CEH is a "person" within the meaning of Health & Safety Code §  
8 25249.11(a) and brings this enforcement action in the public interest pursuant to Health & Safety  
9 Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group  
10 that has prosecuted a large number of Proposition 65 cases in the public interest. These cases  
11 have resulted in significant public benefit, including the reformulation of thousands of products  
12 to remove toxic chemicals to make them safer. CEH also provides information to Californians  
13 about the health risks associated with exposure to hazardous substances, where manufacturers  
14 and other responsible parties fail to do so.

15 5. Defendant AMERIWOOD INDUSTRIES, INC. is a person in the course  
16 of doing business within the meaning of Health & Safety Code § 25249.11. Ameriwood  
17 Industries, Inc. manufactures, distributes, and/or sells Foam-Cushioned Furniture for sale or use  
18 in California.

19 6. Defendant DOREL ASIA INC. is a person in the course of doing business  
20 within the meaning of Health & Safety Code § 25249.11. Dorel Asia Inc. manufactures,  
21 distributes, and/or sells Foam-Cushioned Furniture and Faux Leather Furniture for sale or use in  
22 California.

23 7. DOES 1 through 100 are each a person in the course of doing business  
24 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 100 manufacture,  
25 distribute, and/or sell Foam-Cushioned Furniture for sale or use in California. Defendants  
26 AMERIWOOD INDUSTRIES, INC.; DOREL ASIA INC.; and DOES 1 through 100 are  
27 collectively referred to herein as "Foam-Cushioned Furniture Defendants."

28 8. DOES 101 through 200 are each a person in the course of doing business

1 within the meaning of Health & Safety Code § 25249.11. DOES 101 through 200 manufacture,  
2 distribute, and/or sell Faux Leather Furniture for sale or use in California. Defendants DOREL  
3 ASIA INC. and DOES 101 through 200 are collectively referred to herein as “Faux Leather  
4 Furniture Defendants.”

5 9. DOES 201 through 300 are each a person in the course of doing business  
6 within the meaning of Health & Safety Code § 25249.11. DOES 201 through 300 manufacture,  
7 distribute, and/or sell Foam-Cushioned Furniture and Faux Leather Furniture for sale or use in  
8 California.

9 10. The true names of DOES 1 through 300 are unknown to CEH at this time.  
10 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

11 11. The defendants identified in paragraphs 5 and 6 and DOES 1 through 300  
12 are collectively referred to herein as “Defendants.”

### 13 JURISDICTION AND VENUE

14 12. The Court has jurisdiction over this action pursuant to Health & Safety  
15 Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant  
16 to California Constitution Article VI, Section 10, because this case is a cause not given by statute  
17 to other trial courts.

18 13. This Court has jurisdiction over Defendants because each is a business  
19 entity that does sufficient business, has sufficient minimum contacts in California or otherwise  
20 intentionally avails itself of the California market through the sale, marketing, or use of Products  
21 in California and/or by having such other contacts with California so as to render the exercise of  
22 jurisdiction over it by the California courts consistent with traditional notions of fair play and  
23 substantial justice.

24 14. Venue is proper in the Alameda Superior Court because one or more of the  
25 violations arise in the County of Alameda.

### 26 BACKGROUND FACTS

27 15. The People of the State of California have declared by initiative under  
28 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth



1 properties in test subjects.

2           20. On October 28, 2012, one year after it was listed as a chemical known to  
3 cause cancer, TDCPP became subject to the clear and reasonable warning requirement regarding  
4 carcinogens under Proposition 65. 27 C.C.R. § 27001(b); Health & Safety Code § 25249.10(b).  
5 The chief purpose of the one-year grace period between the listing date of a chemical under  
6 Proposition 65 and the effective date of the warning requirement is to give potentially liable  
7 parties sufficient time to come into complete compliance with this requirement, such that all  
8 illegal exposures can be averted.

9           21. TDCPP is used in Foam-Cushioned Furniture primarily as an additive  
10 flame retardant in the foam padding portion. However, the use of chemical flame retardants,  
11 such as TDCPP, in foam provides no appreciably greater protection from fires. Non-chemical  
12 methods, such as the use of fire barriers, are far more effective at achieving fire safety benefits.

13           22. TDCPP in the foam portion of Foam-Cushioned Furniture is known to  
14 migrate from such Products into indoor household environments. Defendants' Foam-Cushioned  
15 Furniture contains sufficient quantities of TDCPP such that individuals, including infants and  
16 children, are exposed to TDCPP through the average use of such Products. The routes of  
17 exposure include inhalation, ingestion, and/or dermal absorption by individuals. Inhalation  
18 occurs when TDCPP is released from Foam-Cushioned Furniture into the ambient environment.  
19 Ingestion and dermal absorption occur when TDCPP from Foam-Cushioned Furniture  
20 accumulates in ambient particles (*e.g.*, dust) that are subsequently touched by individuals and  
21 brought into contact with the mouth.

22           23. Infants and children may be especially prone to ingesting ambient particles  
23 containing TDCPP from Foam-Cushioned Furniture, given the greater amount of time they spend  
24 crawling on floors and their greater tendency to put their hands in their mouths. Studies show  
25 that concentrations of TDCPP in dust are higher in child care facilities that use foam-cushioned  
26 napping pads than in facilities that do not. Once exposed to TDCPP, infants and children may be  
27 more susceptible to its carcinogenic properties because they are smaller than adults and because  
28 their bodies are still developing.

1 LEAD

2 24. On February 27, 1987, the State of California officially listed lead as a  
3 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive  
4 toxicant under three subcategories: "developmental reproductive toxicity," which means harm to  
5 the developing fetus, "female reproductive toxicity," which means harm to the female  
6 reproductive system, and "male reproductive toxicity," which means harm to the male  
7 reproductive system. 27 C.C.R. § 27001(c). On February 27, 1988, one year after it was listed as  
8 a chemical known to cause reproductive toxicity, lead became subject to the clear and reasonable  
9 warning requirement regarding reproductive toxicants under Proposition 65. 27 C.C.R. §  
10 27001(c); Health & Safety Code § 25249.10(b).

11 25. On October 1, 1992, the State of California officially listed lead and lead  
12 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
13 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear  
14 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R. §  
15 27001(c); Health & Safety Code § 25249.10(b).

16 26. Lead is often used as a stabilizing additive and/or as a coloring agent in  
17 polyvinyl chloride ("PVC"), which is often used in the production of faux leather such as vinyl or  
18 other imitation leather materials. Faux leather is used in the covering of Faux Leather Furniture.

19 27. Defendants' Faux Leather Furniture contains sufficient quantities of Lead  
20 such that consumers, including children, who touch or handle these Products are exposed to Lead  
21 through the average use of these Products. The routes of exposure for the violation include  
22 ingestion via hand to mouth contact after consumers, including children, touch or handle the  
23 Products and dermal absorption directly through the skin when consumers, including children,  
24 touch or handle the Products.

25 28. Young children are especially susceptible to the toxic effects of Lead.  
26 Children show a greater sensitivity to Lead's effects than do adults. Adverse health impacts from  
27 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children  
28 absorb and retain more Lead in proportion to their weight than do adults. Young children also

1 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal  
2 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even  
3 small doses received in childhood, over time, can cause adverse health impacts, including but not  
4 limited to reproductive toxicity, later in life.

5           29. There is no safe level of exposure to Lead and even minute amounts of  
6 Lead exposure have been shown to permanently reduce mental capacity. Studies have shown  
7 that even the smallest detectable amount of blood Lead levels in children can mean the difference  
8 between an A or B grade in school, that children exposed to sufficient levels of Lead as toddlers  
9 have a sevenfold increase in the risk for developing a reading disability as adults, and that adult  
10 IQ levels are inversely associated with blood Lead concentrations from childhood.

11           30. Lead in products used by pregnant women is also of particular concern in  
12 light of evidence that even short term Lead exposures *in utero* can have long-term harmful  
13 effects. In times of physiological stress, such as pregnancy, the body can mobilize accumulated  
14 stores of Lead in tissue and bone, thereby increasing the level of Lead in the blood and increasing  
15 the risk of harm to the fetus.

16                           **PROPOSITION 65 NOTICE AND ENFORCEMENT**

17           31. Any person acting in the public interest has standing to enforce violations  
18 of Proposition 65 provided that such person has supplied the requisite public enforcers with a  
19 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the  
20 action within such time. Health & Safety Code § 25249.7(d).

21           32. More than sixty days prior to naming each Defendant in this lawsuit, CEH  
22 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,  
23 the District Attorneys of every county in California, the City Attorneys of every California city  
24 with a population greater than 750,000, and to each of the named Defendants. In compliance  
25 with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the  
26 following information: (1) the name and address of each violator; (2) the statute violated; (3) the  
27 time period during which violations occurred; (4) specific descriptions of the violations,  
28 including (a) the routes of exposure to TDCPP and/or Lead from Products, and (b) the specific

1 type of Products sold and used in violation of Proposition 65; and (5) the name of the specific  
2 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

3           33. More than sixty days prior to naming each Defendant in this lawsuit,  
4 concurrent with sending the Notices described in the preceding paragraph, CEH also sent a  
5 Certificate of Merit for each Notice to the California Attorney General, the District Attorneys of  
6 every county in California, the City Attorneys of every California city with a population greater  
7 than 750,000, and to the named Defendants. In compliance with Health & Safety Code §  
8 25249.7(d) and 11 C.C.R. § 3101, each of the Certificates certified that CEH's counsel: (1) has  
9 consulted with one or more persons with relevant and appropriate experience or expertise who  
10 reviewed facts, studies, or other data regarding the exposures to TDCPP and/or Lead alleged in  
11 each of the Notices; and (2) based on the information obtained through such consultations,  
12 believes that there is a reasonable and meritorious case for a citizen enforcement action based on  
13 the facts alleged in each of the Notices. In compliance with Health & Safety Code § 25249.7(d)  
14 and 11 C.C.R. § 3102, each of the Certificates served on the Attorney General included factual  
15 information – provided on a confidential basis – sufficient to establish the basis for the  
16 Certificate, including the identity of the person(s) consulted by CEH's counsel and the facts,  
17 studies, or other data reviewed by such persons.

18           34. None of the public prosecutors with the authority to prosecute violations  
19 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against  
20 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in the  
21 Notices.

22           35. Defendants both know and intend that consumers in California, including  
23 infants, children, and pregnant women, will use or touch Products, or will come into close  
24 proximity to Products, thus exposing them to TDCPP and/or Lead.

25           36. Under Proposition 65, an exposure is “knowing” where the party  
26 responsible for such exposure has:

27                   knowledge of the fact that a[n] ... exposure to a chemical listed  
28                   pursuant to [Health and Safety Code § 25249.8(a)] is occurring.

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No knowledge that the ... exposure is unlawful is required.

27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, § 12201).

37. No clear and reasonable warning is provided with Products regarding the carcinogenic or reproductive hazards of TDCPP or Lead.

38. Defendants have been informed of the TDCPP and/or Lead in their Products by the 60-Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

39. Defendants also have constructive knowledge that their Products contain TDCPP and/or Lead due to the widespread media coverage concerning the problem of TDCPP and Lead in consumer products in general and in upholstered furniture in particular. The problem of TDCPP in Foam-Cushioned Furniture has been the subject of articles in national newspapers, industry trade papers, and scholarly journals, as well as numerous Internet weblog postings. Likewise, the association between PVC, such as that found in Faux Leather Furniture, and Lead exposure has been widely discussed in the media in recent years.

40. As companies that manufacture, import, distribute, and/or sell Products for use in the California marketplace, Defendants know or should know that Foam-Cushioned Furniture contains TDCPP and that Faux Leather Furniture contains Lead, and that individuals who use these Products will be exposed to TDCPP and Lead. These TDCPP and Lead exposures are a natural and foreseeable consequence of Defendants' placing Products into the stream of commerce.

41. Nevertheless, Defendants continue to expose consumers in California, including infants, children, and pregnant women, to TDCPP and Lead without prior clear and reasonable warnings regarding the carcinogenic or reproductive hazards of TDCPP and Lead.

42. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to filing this Complaint.





1           1.       That the Court, pursuant to Health & Safety Code § 25249.7(b), assess  
2 civil penalties against each Defendant in the amount of \$2,500 per day for each violation of  
3 Proposition 65 according to proof;

4           2.       That the Court, pursuant to Health & Safety Code § 25249.7(a),  
5 preliminarily and permanently enjoin Defendants from offering Products for sale in California  
6 without providing prior clear and reasonable warnings, as CEH shall specify in further  
7 application to the Court;

8           3.       That the Court, pursuant to Health & Safety Code § 25249.7(a), order  
9 Defendants to take action to stop ongoing unwarned exposures to TDCPP and Lead resulting  
10 from use of Products sold by Defendants, as CEH shall specify in further application to the  
11 Court;

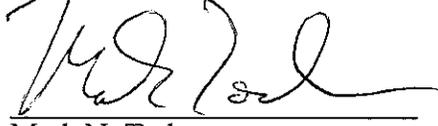
12           4.       That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other  
13 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

14           5.       That the Court grant such other and further relief as may be just and  
15 proper.

16  
17 Dated: March 29, 2013

Respectfully submitted,

LEXINGTON LAW GROUP



Mark N. Todzo  
Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH

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