

ENDORSED
FILED
ALAMEDA COUNTY

OCT 18 2013

CLERK OF THE SUPERIOR COURT
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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF ALAMEDA
9 UNLIMITED CIVIL JURISDICTION
10

11 PETER ENGLANDER,

12 Plaintiff,

13 vs.

14 ACME FURNITURE INDUSTRY, INC.,
15 BASSETT FURNITURE INDUSTRIES,
INCORPORATED, BEST CHAIRS
16 INCORPORATED, BUTLER SPECIALTY
COMPANY, COA, INC., FOREMOST
17 GROUPS, INC., IDEA NUOVA INC.,
MINSON CORPORATION, NAJARIAN
18 FURNITURE COMPANY, INC., P'KOLINO,
LLC, THE TJX COMPANIES, INC. and DOES
1-150,

19 Defendants.
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Case No. RG13673678

Assigned for All Purposes to
Judge George C. Hernandez, Jr.,
Department 17

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

(Cal. Health & Safety Code § 25249.6 et seq.)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff PETER ENGLANDER,
3 in the public interest of the citizens of the State of California, to enforce the People’s right to be
4 informed of the presence of Tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) , tris(2-chloroethyl)
5 phosphate (“TCEP”) and di(2-ethylhexyl)phthalate (“DEHP”) found in and on certain furniture
6 products manufactured, distributed and/or otherwise sold by Defendants in California.

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

11 3. TDCPP and TCEP are toxic chemicals that are used to treat the polyurethane foam
12 used as padding or cushioning in a variety of Defendants’ furniture products. DEHP is a toxic
13 chemical often used as an agent in plastic, vinyl and PVC to make the material pliable. Detectable
14 levels of TDCPP, TCEP and DEHP have been found and are commonly found in and on the
15 products that Defendants manufacture, distribute, sell, and offer for sale to California consumers,
16 many of whom are infants and children. Individuals in California, including infants and children,
17 are exposed to TDCPP, TCEP in the products through inhalation, dermal absorption and ingestion.
18 California consumers of Defendants’ products inhale airborne TDCPP and TCEP released from
19 padded upholstered furniture and ingest TDCPP and TCEP from touching dust or other surfaces
20 to which the chemical released from padded upholstered furniture has adhered or adsorbed and
21 then transferring such dust, either directly or indirectly, to their mouths. California consumers of
22 Defendants’ products also absorb TDCPP and TCEP that comes into contact with exposed skin
23 surfaces. Individuals in California, including infants and children, are exposed to DEHP in the
24 products through dermal absorption and ingestion. California consumers of Defendants’ products
25 absorb and/or ingest DEHP from touching the surface of DEHP-containing materials and then
26 transferring such dislodged DEHP, either directly or indirectly, to their mouths.

27 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
28 California Health & Safety Code Section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the

1 course of doing business shall knowingly and intentionally expose any individual to a chemical
2 known to the state to cause cancer or reproductive toxicity without first giving clear and
3 reasonable warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

4 5. Pursuant to Proposition 65, on April 1, 1992, California identified and listed
5 TCEP as a chemical known to cause cancer. TCEP became subject to the “clear and reasonable
6 warning” requirements of the Act one year later on April 1, 1993. (*Cal. Code Regs., Tit. 27, §*
7 *27001(c); Health & Safety Code §§ 25249.8 and 25249.10(b).*) Pursuant to Proposition 65, on
8 October 28, 2011, California identified and listed TDCPP as a chemical known to cause cancer.
9 TDCPP became subject to the “clear and reasonable warning” requirements of the Act one year
10 later on October 28, 2012. (*Cal. Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8*
11 *& 25249.10(b).*) Pursuant to Proposition 65, on October 24, 2003, the State listed Di(2-
12 ethylhexyl)phthalate as a chemical known to cause birth defects and other reproductive harm.
13 DEHP became subject to the warning requirement one year later and was therefore subject to
14 the “clear and reasonable warning” requirements of Proposition 65, beginning on October 24,
15 2004. (*Cal. Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 and 25249.10(b).*)

16 6. Defendants cause products containing TDCPP, TCEP and DEHP to be sold in
17 California as follows:

18 a. Defendant Acme Furniture Industry, Inc. manufactures, causes to be
19 manufactured, distributes, causes to be distributed, imports, causes to be imported, sells
20 and/or otherwise offers for sale in California padded, upholstered furniture, including
21 chairs, with foam padding containing TDCPP. Defendant Acme Furniture Industry, Inc.
22 also manufactures, causes to be manufactured, distributes, causes to be distributed, imports,
23 causes to be imported, sells and/or otherwise offers for sale in California the Chair #10033
24 with foam padding containing TDCPP. Defendant Acme Furniture Industry, Inc. also
25 manufactures, causes to be manufactured, distributes, causes to be distributed, imports,
26 causes to be imported, sells and/or otherwise offers for sale in California chairs with
27 vinyl/PVC upholstery containing DEHP. Defendant Acme Furniture Industry, Inc. also
28 manufactures, causes to be manufactured, distributes, causes to be distributed, imports,

1 causes to be imported, sells and/or otherwise offers for sale in California the Chair #10033
2 with vinyl/PVC upholstery containing DEHP.

3 b. Defendant Bassett Furniture Industries, Incorporated manufactures, causes to
4 be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells
5 and/or otherwise offers for sale in California padded, upholstered ottomans with foam
6 padding containing TDCPP. Defendant Bassett Furniture Industries, Incorporated also
7 manufactures, causes to be manufactured, distributes, causes to be distributed, imports,
8 causes to be imported, sells and/or otherwise offers for sale in California the Bassett Baby
9 Premier Ottoman, Item #1062-01, with foam padding containing TDCPP.

10 c. Defendant Best Chairs Incorporated manufactures, causes to be
11 manufactured, distributes, causes to be distributed, imports, causes to be imported, sells
12 and/or otherwise offers for sale in California padded, upholstered furniture, including
13 ottomans, with foam padding containing TDCPP. Defendant Best Chairs Incorporated also
14 manufactures, causes to be manufactured, distributes, causes to be distributed, imports,
15 causes to be imported, sells and/or otherwise offers for sale in California the Storytime
16 Series Ottoman, Item #0036, with foam padding containing TDCPP.

17 d. Defendant Butler Specialty Company manufactures, causes to be
18 manufactured, distributes, causes to be distributed, imports, causes to be imported, sells
19 and/or otherwise offers for sale in California padded, upholstered furniture, including
20 ottomans, with foam padding containing TDCPP. Defendant Butler Specialty Company
21 also manufactures, causes to be manufactured, distributes, causes to be distributed, imports,
22 causes to be imported, sells and/or otherwise offers for sale in California the Bunching
23 Cocktail Ottoman, Item #240683, with foam padding containing TDCPP.

24 e. Defendant COA, Inc. manufactures, causes to be manufactured, distributes,
25 causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for
26 sale in California padded, upholstered furniture, including stools, with foam padding
27 containing TDCPP. Defendant COA, Inc. manufactures, causes to be manufactured,
28 distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise

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offers for sale in California padded, upholstered furniture, including ottomans, with foam padding containing TDCPP and TCEP. Defendant COA, Inc. manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California stools with vinyl/PVC upholstery containing DEHP. Defendant COA, Inc. also manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California the Coaster Bar Stool with foam padding containing TDCPP. Defendant COA, Inc. also manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California the Coaster Ottoman with foam padding containing TDCPP and TCEP. Defendant COA, Inc. also manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California the Coaster Bar Stool with vinyl/PVC upholstery containing DEHP.

f. Defendant Foremost Groups, Inc. manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California padded, upholstered furniture, including ottomans, with foam padding containing TDCPP. Defendant Foremost Groups, Inc. also manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California the Room Essentials Storage Ottoman, Item #0321, with foam padding containing TDCPP.

g. Defendants Idea Nuova Inc. and The TJX Companies, Inc. manufacture, cause to be manufactured, distribute, cause to be distributed, import, cause to be imported, sell and/or otherwise offer for sale in California padded, upholstered furniture, including ottomans, with foam padding containing TDCPP. Defendants Idea Nuova Inc. and The TJX Companies, Inc. manufacture, cause to be manufactured, distribute, cause to be distributed, import, cause to be imported, sell and/or otherwise offer for sale in California the Storehouse Eyelet Ottoman (05121474769) with foam padding containing TDCPP.

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h. Defendant Minson Corporation manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California padded, upholstered furniture, including chairs, with foam padding containing TDCPP. Defendant Minson Corporation manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California padded, upholstered furniture, including stools, with foam padding containing TDCPP and TCEP. Defendant Minson Corporation also manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California the Pastel Furniture Classics Chair (MR110), with foam padding containing TDCPP. Defendant Minson Corporation also manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California the Pastel Furniture Stool with foam padding containing TDCPP and TCEP.

i. Defendant Najarian Furniture Company, Inc. manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California padded, upholstered furniture, including chairs, with foam padding containing TDCPP. Defendant Najarian Furniture Company, Inc. also manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California the Malibu 2 Arm Chairs + Table set, with foam padding containing TDCPP.

j. Defendant P'Kolino, LLC manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California padded, upholstered furniture, including children's chairs, with foam padding containing TDCPP. Defendant P'Kolino, LLC also manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California the P'Kolino Little Reader Chair, Item PKFFNLRBR, with foam padding containing TDCPP.

1 7. All such padded, upholstered furniture, including ottomans, stool and chairs, made
2 with foam padding, cushion materials or vinyl/PVC upholstery containing TDCPP, TCEP and/or
3 DEHP and identified in paragraphs 6(a) through 6(g) above, shall hereinafter be referred to as
4 "PRODUCTS." However, as to each defendant, PRODUCTS shall only mean or reference only
5 those specific products or types of products and the specific chemicals listed for each specific
6 defendant in paragraphs 6(a) through 6(g).

7 8. Although Defendants expose infants, children, and other California consumers to
8 TDCPP, TCEP and DEHP through the reasonably foreseeable use of the PRODUCTS, Defendants
9 provide no warnings about the carcinogenic hazards associated with these exposures. Defendants'
10 failure to warn consumers and/or other individuals in the State of California about their
11 exposures to TDCPP, TCEP or DEHP in conjunction with defendants' sale of the PRODUCTS is a
12 violation of Proposition 65.

13 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
14 permanent injunctive relief to compel defendants to provide purchasers or users of any and all of
15 the PRODUCTS with the required warning regarding the health hazards of TDCPP, TCEP and
16 DEHP in the PRODUCTS. (*Cal. Health & Safety Code* § 25249.7(a).)

17 10. Plaintiff also seeks civil penalties against defendants for their violations of
18 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

19 PARTIES

20 11. Plaintiff PETER ENGLANDER is a citizen of the State of California who is
21 experienced in protecting the health of California citizens through the elimination or reduction of
22 toxic exposures from consumer products, and brings this action in the public interest pursuant to
23 California Health & Safety Code Section 25249.7.

24 12. Each defendant Acme Furniture Industry, Inc. ("ACME"), Bassett Furniture
25 Industries, Incorporated ("BASSETT"), Best Chairs Incorporated ("BEST CHAIRS"), Butler
26 Specialty Company ("BUTLER"), COA, Inc. ("COA"), Foremost Groups, Inc. ("FOREMOST"), Idea
27 Nuova Inc. ("NUOVA"), Minson Corporation ("MINSON"), Najarian Furniture Company, Inc.
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1 (“NAJARIAN”), P’Kolino, LLC (“P’KOLINO”) and The TJX Companies, Inc. (“TJX”) is a person
2 doing business within the meaning of California Health & Safety Code Section 25249.11.

3 13. Each defendant ACME, BASSETT, BEST CHAIRS, BUTLER, COA, FOREMOST,
4 NUOVA, MINSON, NAJARIAN, P’KOLINO and TJX manufactures, causes to be manufactured,
5 distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers
6 for sale or use in California the PRODUCTS or implies by its conduct that it does so.

7 14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons
8 doing business within the meaning of California Health & Safety Code Section 25249.11.
9 MANUFACTURER DEFENDANTS engage in the process of research, testing, designing,
10 assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the
11 process of research, testing, designing, assembling, fabricating, and/or manufacturing, one or
12 more of the PRODUCTS for sale or use in the State of California.

13 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons doing
14 business within the meaning of California Health & Safety Code Section 25249.11. DISTRIBUTOR
15 DEFENDANTS distribute, exchange, transfer, process and/or transport one or more of the
16 PRODUCTS to individuals, businesses or retailers for sale or use in the State of California.

17 16. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing
18 business within the meaning of California Health & Safety Code Section 25249.11. RETAIL
19 DEFENDANTS offer the PRODUCTS for sale to individuals in the State of California.

20 17. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
21 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
22 Code of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges,
23 that each of the fictitiously named defendants is responsible for the acts and occurrences herein
24 alleged. When ascertained, their true names shall be reflected in an amended complaint.

25 18. ACME, BASSETT, BEST CHAIRS, BUTLER, COA, FOREMOST, NUOVA, MINSON,
26 NAJARIAN, P’KOLINO, TJX, MANUFACTURER DEFENDANTS, DISTRIBUTOR
27 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to
28 hereinafter as “DEFENDANTS”.

1 VENUE AND JURISDICTION

2 19. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
3 Procedure Sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
4 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
5 wrongful conduct occurred, and continues to occur, in this County and/or because
6 DEFENDANTS conducted, and continue to conduct, business in this County with respect to the
7 PRODUCTS.

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

12 21. The California Superior Court has jurisdiction over DEFENDANTS based on
13 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
14 association that either is a citizen of the State of California and has sufficient minimum contacts in
15 the State of California, or otherwise purposefully avails them self of the California market.
16 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
17 courts consistent with traditional notions of fair play and substantial justice.

18 FIRST CAUSE OF ACTION

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

20 22. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
21 Paragraphs 1 through 21, inclusive.

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

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

1 25. On January 4, 2013, ENGLANDER served a sixty-day notice of violation (“60-Day
2 Notice”), supported by the requisite Certificate of Merit, upon COA, FOREMOST, P’KOLINO and
3 various public enforcement agencies stating that as a result of the such defendants’ sales of the
4 PRODUCTS, purchasers and users in the State of California are being exposed to TDCPP resulting
5 from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
6 users first having been provided with a “clear and reasonable warning” regarding such toxic
7 exposures.

8 26. On January 10, 2013, ENGLANDER served a 60-Day Notice, supported by the
9 requisite Certificate of Merit, upon BASSETT, BUTLER, NUOVA, TJX and various public
10 enforcement agencies stating that as a result of the such defendants’ sales of the PRODUCTS,
11 purchasers and users in the State of California are being exposed to TDCPP resulting from the
12 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
13 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

14 27. On January 17, 2013, ENGLANDER served a 60-Day Notice, supported by the
15 requisite Certificate of Merit, upon NAJARIAN and various public enforcement agencies stating
16 that as a result of the such defendant’s sales of the PRODUCTS, purchasers and users in the State
17 of California are being exposed to TDCPP resulting from the reasonably foreseeable uses of the
18 PRODUCTS, without the individual purchasers and users first having been provided with a “clear
19 and reasonable warning” regarding such toxic exposures.

20 28. On January 24, 2013, ENGLANDER served a 60-Day Notice, supported by the
21 requisite Certificate of Merit, upon BEST CHAIRS, MINSON and various public enforcement
22 agencies stating that as a result of the such defendants’ sales of the PRODUCTS, purchasers and
23 users in the State of California are being exposed to TDCPP resulting from the reasonably
24 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been
25 provided with a “clear and reasonable warning” regarding such toxic exposures.

26 29. On January 30, 2013, ENGLANDER served a 60-Day Notice, supported by the
27 requisite Certificate of Merit, upon ACME and various public enforcement agencies stating that as
28 a result of the such defendants’ sales of the PRODUCTS, purchasers and users in the State of

1 California are being exposed to TDCPP resulting from the reasonably foreseeable uses of the
2 PRODUCTS, without the individual purchasers and users first having been provided with a “clear
3 and reasonable warning” regarding such toxic exposures.

4 30. On March 18, 2013, ENGLANDER served a compliant Supplemental 60-Day Notice,
5 supported by the requisite Certificate of Merit, upon BUTLER and various public enforcement
6 agencies stating that as a result of the such defendant’s sales of the PRODUCTS, purchasers and
7 users in the State of California are being exposed to TDCPP resulting from the reasonably
8 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been
9 provided with a “clear and reasonable warning” regarding such toxic exposures.

10 31. On March 20, 2013, ENGLANDER served a compliant Supplemental 60-Day Notice,
11 supported by the requisite Certificate of Merit, upon BASSETT, BEST CHAIRS, FOREMOST,
12 P’KOLINO and various public enforcement agencies stating that as a result of the such defendant’s
13 sales of the PRODUCTS, purchasers and users in the State of California are being exposed to
14 TDCPP resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
15 purchasers and users first having been provided with a “clear and reasonable warning” regarding
16 such toxic exposures.

17 32. On April 19, 2013, ENGLANDER served a compliant Supplemental 60-Day Notice,
18 supported by the requisite Certificate of Merit, upon COA and MINSON and various public
19 enforcement agencies stating that as a result of the such defendant’s sales of the PRODUCTS,
20 purchasers and users in the State of California are being exposed to TDCPP and TCEP resulting
21 from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
22 users first having been provided with a “clear and reasonable warning” regarding such toxic
23 exposures.

24 33. On May 24, 2013, ENGLANDER served a compliant Supplemental 60-Day Notice,
25 supported by the requisite Certificate of Merit, upon ACME and various public enforcement
26 agencies stating that as a result of the such defendant’s sales of the PRODUCTS, purchasers and
27 users in the State of California are being exposed to TDCPP and DEHP resulting from the
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1 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
2 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

3 34. On July 12, 2013, ENGLANDER served a compliant Supplemental 60-Day Notice,
4 supported by the requisite Certificate of Merit, upon COA and various public enforcement
5 agencies stating that as a result of the such defendant’s sales of the PRODUCTS, purchasers and
6 users in the State of California are being exposed to TDCPP, TCEP and DEHP resulting from the
7 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
8 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

9 35. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
10 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
11 plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or offering
12 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
13 has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notices and
14 Supplemental 60-Day Notices. Plaintiff further alleges and believes that such violations are
15 reasonably likely to occur into the future absent express injunctive relief.

16 36. After receipt of the claims asserted in the 60-Day Notices and Supplemental 60-Day
17 Notices, the appropriate public enforcement agencies have failed to commence and diligently
18 prosecute a cause of action against DEFENDANTS under Proposition 65.

19 37. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
20 California by DEFENDANTS contain TDCPP, TCEP and DEHP.

21 38. DEFENDANTS knew or should have known that the PRODUCTS contain TDCPP,
22 TCEP and DEHP.

23 39. TDCPP, TCEP and DEHP is present in or on each of the PRODUCTS in such a way
24 as to expose (as such exposure is defined by 27 CCR Section 25602(b)) individuals to TDCPP, TCEP
25 and DEHP through dermal contact, inhalation and/or ingestion during the reasonably foreseeable
26 use of the PRODUCTS.

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1 40. DEFENDANTS knew or should have known that the reasonably foreseeable use of
2 the PRODUCTS exposes individuals to TDCPP, TCEP and DEHP through dermal contact,
3 inhalation and/or ingestion.

4 41. DEFENDANTS' participation in the manufacture, distribution and/or offer for sale
5 or use of PRODUCTS to individuals in the State of California was deliberate and non-accidental.

6 42. DEFENDANTS failed to provide a "clear and reasonable warning" to those
7 consumers and/or other individuals in the State of California who were or who could become
8 exposed to TDCPP, TCEP and DEHP during the reasonably foreseeable use of the PRODUCTS.

9 43. Contrary to the express policy and statutory prohibition of Proposition 65,
10 individuals exposed to the TDCPP, TCEP and DEHP through dermal contact, inhalation and/or
11 ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS
12 without a "clear and reasonable warning", have suffered, and continue to suffer, irreparable harm,
13 for which harm they have no other plain, speedy or adequate remedy at law.

14 44. As a consequence of the above-described acts, DEFENDANTS are liable for a
15 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to
16 California Health & Safety Code Section 25249.7(b).

17 45. As a consequence of the above-described acts, California Health & Safety Code
18 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
19 DEFENDANTS.

20 **PRAYER FOR RELIEF**

21 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
22 follows:

23 1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b),
24 assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
25 alleged herein;

26 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
27 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
28 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable

1 warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to the
2 TDCPP;

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: October 16, 2013

Respectfully submitted,

6 THE CHANLER GROUP

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8 By: 

Gregory M. Sheffer
Attorneys for Plaintiff
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