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20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 COUNTY OF ALAMEDA  
22 UNLIMITED CIVIL JURISDICTION

23 LAURENCE VINOCUR and PETER  
24 ENGLANDER

25 Plaintiffs,

26 v.

27 CHEYENNE INDUSTRIES, LLC;  
28 FURNITURE BRANDS  
INTERNATIONAL, INC.; GLOBAL  
INDUSTRIES, INC.; HELEN OF TROY  
TEXAS CORPORATION; HELEN OF  
TROY L.P.; RITE AID CORPORATION;  
STEIN WORLD OPERATING  
COMPANY; SUMMER INFANT (USA),  
INC.; THOMASVILLE FURNITURE  
INDUSTRIES, INC.; THE UTTERMOST  
CO.; and DOES 1-150, inclusive,

Defendants.

ENDORSED  
FILED  
ALAMEDA COUNTY

APR - 2 2013

CLERK OF THE SUPERIOR COURT  
By K. Ghee Deputy

Case No. RG 13-673710

**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 LAURENCE  
3 VINOCUR and PETER ENGLANDER (collectively referred to herein as “PLAINTIFFS”) in  
4 the 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 padded upholstered furniture, cushion massagers, and infant travel beds with padding  
7 sold in California. TDCPP is a toxic chemical that is used to treat polyurethane foam, which is  
8 used as padding or cushioning in a variety of products.

9 2. By this Complaint, PLAINTIFFS seek to remedy Defendants’ continuing failures  
10 to warn California citizens about the risk of exposure to TDCPP present in and on the padded  
11 upholstered furniture, cushion massagers, and infant travel beds with padding manufactured,  
12 distributed, and offered for sale or use to consumers throughout the State of California.

13 3. Detectable levels of TDCPP are commonly found in and on the padded  
14 upholstered furniture, cushion massagers, and infant travel beds with padding that Defendants  
15 manufacture, distribute, and offer for sale to consumers throughout the State of California.  
16 Individuals in California, including infants and children, are exposed to TDCPP in the products  
17 through various routes of exposure: (i) through inhalation when TDCPP is released from padded  
18 upholstered furniture, cushion massagers, and infant travel beds with padding; (ii) through  
19 dermal exposure when TDCPP from padded upholstered furniture, cushion massagers, and  
20 infant travel beds with padding accumulates in ambient particles that are subsequently touched  
21 by such individuals; and (iii) through ingestion when such particles are brought into contact  
22 with the mouth.

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

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

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

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

11           a.     Defendant CHEYENNE INDUSTRIES, LLC manufactures, distributes,  
12 imports, sells and/or offer for sale in California padded upholstered furniture containing  
13 TDCPP without a warning including, but not limited to, ottomans such as *Target Home*  
14 *29-Inch Bar-Height Stool, Item 0143, #249 01 0143, ID102424-0046 (#0 50276 98698*  
15 *0)*;

16           b.     Defendant GLOBAL INDUSTRIES, INC. manufactures, distributes,  
17 imports, sells and/or offer for sale in California padded upholstered furniture containing  
18 TDCPP without a warning including, but not limited to, office/stacking chairs such as  
19 *Sonic Armless Stacking Chair, SKU 6509-1*;

20           c.     Defendants HELEN OF TROY TEXAS CORPORATION, HELEN OF  
21 TROY L.P., and RITE AID CORPORATION manufacture, distribute, import, sell and/or  
22 offer for sale in California cushion massagers containing TDCPP without a warning  
23 including, but not limited to, *Dr. Scholl’s Soothing 5-Motor Full Cushion Massager,*  
24 *Model DR8573 (#6 30623 08573 5)*;

25           d.     Defendant STEIN WORLD OPERATING COMPANY manufactures,  
26 distributes, imports, sells and/or offer for sale in California padded upholstered furniture  
27  
28

1 containing TDCPP without a warning including, but not limited to, benches such as *Stein*  
2 *World Bench With Handles, Item# 57216*;

3 e. Defendants SUMMER INFANT (USA), INC. manufactures, distributes,  
4 imports, sells and/or offer for sale in California infant travel beds with padding  
5 containing TDCPP without a warning including, but not limited to, *Summer Infant Travel*  
6 *Bed On-The-Go Bed by Kiddopotamus, #70790 (#0 12914 70790 6)*;

7 f. Defendants THE UTTERMOST CO., FURNITURE BRANDS  
8 INTERNATIONAL, INC., and THOMASVILLE FURNITURE INDUSTRIES, INC.  
9 manufacture, distribute, import, sell and/or offer for sale in California padded upholstered  
10 furniture containing TDCPP without a warning including, but not limited to,  
11 ottomans/benches such as *Karline, Small Bench, Item #23052*.

12 8. All padded upholstered furniture containing TDCPP, as listed in paragraphs 7(a)  
13 through 7(f) above, shall hereinafter be referred to as the "PRODUCTS." As to each specific  
14 defendant, however, PRODUCTS shall refer only to those specific products listed for each  
15 specific defendant in paragraphs 7(a) through 7(f) above.

16 9. Although Defendants expose infants, children, and other people to TDCPP in the  
17 PRODUCTS, Defendants provide no warnings about the carcinogenic hazards associated with  
18 TDCPP exposures. Defendants' failures to warn consumers and other individuals in the State of  
19 California not covered by California's Occupational Health Act, Labor Code section 6300 et  
20 seq. about their exposures to TDCPP in conjunction with Defendants' sales of the PRODUCTS,  
21 is a violation of Proposition 65, and subjects Defendants to enjoinder of such conduct as well  
22 as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

23 10. As a result of Defendants' violations of Proposition 65, PLAINTIFFS seek  
24 preliminary and permanent injunctive relief to compel Defendants to provide purchasers or  
25 users of the PRODUCTS with the required warning regarding the health hazards of TDCPP in  
26 the PRODUCTS. Health & Safety Code § 25249.7(a).



1 section 474. PLAINTIFFS are informed and believe, and on that basis allege, that each of the  
2 fictitiously named defendants is responsible for the acts and occurrences alleged herein. When  
3 ascertained, their true names and capacities shall be reflected in an amended complaint.

4 16. CHEYENNE, FURNITURE BRANDS, GLOBAL, HELEN TEXAS, HELEN,  
5 RIGHT AID, STEIN WORLD, SUMMER INFANT, THOMASVILLE, UTTERMOST, and  
6 Defendants DOES 1-150 are collectively referred to herein as “DEFENDANTS.”

7 **VENUE AND JURISDICTION**

8 17. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
9 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
10 because Plaintiffs seek civil penalties against DEFENDANTS, because one or more instances of  
11 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because  
12 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the  
13 PRODUCTS.

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

18 19. The California Superior Court has jurisdiction over DEFENDANTS based on  
19 PLAINTIFFS’ information and good faith belief that each DEFENDANT is a person, firm,  
20 corporation, or association that is a citizen of the State of California, has sufficient minimum  
21 contacts in the State of California, and/or otherwise purposefully avails itself of the California  
22 market. DEFENDANTS’ purposeful availment of California as a marketplace for the  
23 PRODUCTS renders the exercise of personal jurisdiction by California courts over  
24 DEFENDANTS consistent with traditional notions of fair play and substantial justice.

1 **FIRST CAUSE OF ACTION**

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

3 20. PLAINTIFFS reallege and incorporate by reference, as if fully set forth herein,  
4 Paragraphs 1 through 19, inclusive.

5 21. 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  
7 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
8 harm.”

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

13 23. On January 8, 2013, VINOCUR’s sixty-day notice of violation, together with the  
14 requisite certificate of merit, was provided to SUMMER INFANT and certain public  
15 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS  
16 containing TDCPP, purchasers and users in the State of California were being exposed to  
17 TDCPP resulting from their reasonably foreseeable use of the PRODUCTS, without the  
18 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 24. On January 8, 2013, ENGLANDER’s sixty-day notice of violation, together with  
21 the requisite certificate of merit, was provided to CHEYENNE, FURNITURE BRANDS,  
22 HELEN TEXAS, HELEN, RITE AID, THOMASVILLE, UTTERMOST, and certain public  
23 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS  
24 containing TDCPP, purchasers and users in the State of California were being exposed to  
25 TDCPP resulting from their reasonably foreseeable use of the PRODUCTS, without the  
26 individual purchasers and users first having been provided with a “clear and reasonable  
27 warning” regarding such toxic exposures, as required by Proposition 65.

1           25.    On January 10, 2013, VINOCUR’s sixty-day notice of violation, together with the  
2 requisite certificate of merit, was provided to GLOBAL and certain public enforcement  
3 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing  
4 TDCPP, purchasers and users in the State of California were being exposed to TDCPP resulting  
5 from their reasonably foreseeable use 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, as required by Proposition 65.

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

15           27.    DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
16 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
17 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
18 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and  
19 continuous in nature, and will continue to occur in the future.

20           28.    After receiving PLAINTIFFS’ sixty-day notice of violation, the appropriate  
21 public enforcement agencies have failed to commence and diligently prosecute a cause of action  
22 against DEFENDANTS under Proposition 65.

23           29.    The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
24 or use in California by DEFENDANTS contain TDCPP such that they require a “clear and  
25 reasonable” warning under Proposition 65.

26           30.    DEFENDANTS knew or should have known that the PRODUCTS they  
27 manufacture, import, distribute, sell, and offer for sale or use in California contain TDCPP.  
28

1           31.    TDCPP is present in or on the PRODUCTS in such a way as to expose  
2 individuals to TDCPP through dermal contact, ingestion, and/or inhalation during reasonably  
3 foreseeable use of the PRODUCTS.

4           32.    The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
5 continue to cause, consumer exposures to TDCPP, as such exposures are defined by the  
6 California Code of Regulations title 27, section 25602(b).

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

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

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

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

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

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