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10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION
14

15 LAURENCE VINOCUR and PETER
ENGLANDER

16 Plaintiffs,

17 v.

18 CHEYENNE INDUSTRIES, LLC; GLOBAL
19 INDUSTRIES, INC.; HELEN OF TROY L.P.;
RITE AID CORPORATION; STEIN WORLD
20 OPERATING COMPANY; SUMMER
INFANT (USA), INC.; THE UTTERMOST
21 CO.; LEXINGTON FURNITURE
INDUSTRIES, INC.; RESTORATION
22 HARDWARE, INC.; VIRCO MFG.
CORPORATION; TARGET CORPORATION;
23 OTTO INTERNATIONAL (USA) LLC;
BURLINGTON COAT FACTORY
24 WAREHOUSE CORPORATION; SEARS
HOLDING CORPORATION; KMART
25 CORPORATION; CONNOLLY'S
FURNITURE-APPLIANCES, INC.;
26 CALIFORNIA OFFICE FURNITURE;
EASTERN WHOLESALE FURNITURE CO.
27 OF CALIFORNIA, INC.; KANTOR'S
DISCOUNT OFFICE FURNITURE AND
28 EQUIPMENT; TOYS "R" US, INC.;

ENDORSED
FILED
ALAMEDA COUNTY

JUL 19 2013

CLERK OF THE SUPERIOR COURT
By M. Cohen Deputy

Case No. RG 13-673710
ASSIGNED FOR ALL PURPOSES TO:
JUDGE STEVEN A. BRICK
DEPARTMENT 17

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

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

Complaint Filed: April 2, 2013

First Amended Complaint filed: April 19,
2013

BY FAX

1 JONATHAN LOUIS INTERNATIONAL
2 LTD.; LIVING SPACES FURNITURE, LLC;
3 RECARO CHILD SAFETY, LLC; BED BATH
& BEYOND INC.; BUY BUY BABY, INC.;
4 THE FAIRFIELD PROCESSING
CORPORATION; MICHAELS STORES, INC.
and DOES 21 -150, inclusive,

5 Defendants.

6
7 Plaintiffs hereby amend this Complaint to substitute Target Corporation, Otto
8 International (USA) LLC, Burlington Coat Factory Warehouse Corporation, Sears Holding
9 Corporation, Kmart Corporation, Connolly's Furniture-Appliances, Inc., California Office
10 Furniture, Eastern Wholesale Furniture Co. of California, Inc., Kantor's Discount Office
11 Furniture and Equipment, Toys "R" Us, Inc., Jonathan Louis International Ltd., Living Spaces
12 Furniture, LLC, Recaro Child Safety, LLC, Bed Bath & Beyond Inc., Buy Buy Baby, Inc., The
13 Fairfield Processing Corporation, and Michaels Stores, Inc. for DOE Defendants 4 through 20
14 of the original Complaint filed on April 2, 2013 and the First Amended Complaint filed on April
15 19, 2013.

16 **NATURE OF THE ACTION**

17 1. This Complaint is a representative action brought by plaintiffs LAURENCE
18 VINOCUR and PETER ENGLANDER (collectively referred to herein as "PLAINTIFFS") in
19 the public interest of the citizens of the State of California to enforce the People's right to be
20 informed of the presence of Tris(1,3-dichloro-2-propyl) phosphate ("TDCPP") and tris(2-
21 chlorethyl) phosphate ("TCEP"), toxic chemicals found in padded upholstered furniture,
22 cushion massagers, and infant travel beds with padding sold in California. TDCPP and TCEP
23 are toxic chemicals used to treat polyurethane foam, which is used as padding or cushioning in a
24 variety of products.

25 2. By this Complaint, PLAINTIFFS seek to remedy Defendants' continuing failures
26 to warn California citizens about the risk of exposure to TDCPP and TCEP present in and on the
27 padded upholstered furniture, cushion massagers, and infant travel beds with padding
28

1 manufactured, distributed, and offered for sale or use to consumers throughout the State of
2 California.

3 3. Detectable levels of TDCPP and TCEP are commonly found in and on the padded
4 upholstered furniture, cushion massagers, and infant travel beds with padding that Defendants
5 manufacture, distribute, and offer for sale to consumers throughout the State of California.
6 Individuals in California, including infants and children, are exposed to TDCPP and TCEP in
7 the products through various routes of exposure: (i) through inhalation when TDCPP and TCEP
8 are released from padded upholstered furniture, cushion massagers, and infant travel beds with
9 padding; (ii) through dermal exposure when TDCPP and TCEP from padded upholstered
10 furniture, cushion massagers, and infant travel beds with padding accumulate in ambient
11 particles that are subsequently touched by such individuals; and (iii) through ingestion when
12 such particles are brought into contact with the mouth.

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

18 5. TDCPP and TCEP have been used in consumer products as an additive flame
19 retardant since the 1960s. In the late 1970s, based on findings that exposure to TDCPP could
20 have mutagenic effects, the United States Consumer Product Safety Commission banned the use
21 of TDCPP in children’s pajamas.

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

26 7. Pursuant to Proposition 65, on April 1, 1992, California identified and listed
27 TCEP as a chemical known to cause cancer. TCEP became subject to the “clear and reasonable
28

1 warning” requirements of the Act one year later on April 1, 1993. Cal. Code Regs., Tit. 27, §
2 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

3 8. TDCPP and TCEP are hereinafter collectively referred to as the “LISTED
4 CHEMICALS.” As to each specific defendant, however, LISTED CHEMICALS shall refer
5 only to the specific chemical(s) listed for that defendant in paragraphs 9(a) through (bb) below.

6 9. Defendants manufacture, distribute, import, sell, and/or offer for sale in California
7 products containing the LISTED CHEMICALS as follows:

8 a. Defendants CHEYENNE INDUSTRIES, LLC and TARGET
9 CORPORATION manufacture, distribute, import, sell and/or offer for sale in California
10 the *Target Home 29-Inch Bar-Height Stool, Item 0143, #249 01 0143, ID102424-0046*
11 (*#0 50276 98698 0*) containing TDCPP and TCEP without a warning;

12 b. Defendants CHEYENNE INDUSTRIES, LLC and TARGET
13 CORPORATION manufacture, distribute, import, sell and/or offer for sale in California
14 padded upholstered furniture including stools containing TDCPP and TCEP without a
15 warning and either distributed to TARGET CORPORATION by, or manufactured by,
16 CHEYENNE INDUSTRIES, LLC;

17 c. Defendants GLOBAL INDUSTRIES, INC. and KANTOR’S DISCOUNT
18 OFFICE FURNITURE AND EQUIPMENT manufacture, distribute, import, sell and/or
19 offer for sale in California the *Sonic Armless Stacking Chair, SKU 6509-1* containing
20 TDCPP without a warning;

21 d. Defendants GLOBAL INDUSTRIES, INC and KANTOR’S DISCOUNT
22 OFFICE FURNITURE AND EQUIPMENT manufacture, distribute, import, sell and/or
23 offer for sale in California padded upholstered furniture including office/stacking chairs
24 containing TDCPP without a warning, with the exception of padded upholstered furniture
25 manufactured, distributed, imported, sold, and/or offered for sale by Norstar Office
26 Products, Inc.;

27 e. Defendants HELEN OF TROY L.P. and RITE AID CORPORATION
28 manufacture, distribute, import, sell and/or offer for sale in California the *Dr. Scholl’s*

1 *Soothing 5-Motor Full Cushion Massager, Model DR8573 (#6 30623 08573 5)*

2 containing TDCPP without a warning;

3 f. Defendants HELEN OF TROY L.P. and RITE AID CORPORATION
4 manufacture, distribute, import, sell and/or offer for sale in California cushion massagers
5 containing TDCPP without a warning;

6 g. Defendants STEIN WORLD OPERATING COMPANY and
7 CONNOLLY'S FURNITURE-APPLIANCES, INC. manufacture, distribute, import, sell
8 and/or offer for sale in California the *Stein World Bench With Handles, Item #57216*
9 containing TDCPP and TCEP without a warning;

10 h. Defendants STEIN WORLD OPERATING COMPANY and
11 CONNOLLY'S FURNITURE-APPLIANCES, INC. manufacture, distribute, import, sell
12 and/or offer for sale in California padded upholstered furniture including benches
13 containing TDCEP and TCEP without a warning;

14 i. Defendants SUMMER INFANT (USA), INC. and TOYS "R" US, INC.
15 manufacture, distribute, import, sell and/or offer for sale in California the *Summer Infant*
16 *Travel Bed On-The-Go Bed by Kiddopotamus, #70790 (#0 12914 70790 6)* containing
17 TDCPP without a warning;

18 j. Defendants SUMMER INFANT (USA), INC. and TOYS "R" US, INC.
19 manufacture, distribute, import, sell and/or offer for sale in California infant travel beds
20 with padding containing TDCPP without a warning;

21 k. Defendant THE UTTERMOST CO. manufactures, distributes, imports,
22 sells and/or offers for sale in California the *Karline, Small Bench, Item #23052*;
23 containing TDCPP and TCEP without a warning;

24 l. Defendant THE UTTERMOST CO. manufactures, distributes, imports,
25 sells and/or offers for sale in California padded upholstered furniture including
26 ottomans/benches containing TDCPP and TCEP without a warning;

27 m. Defendants LEXINGTON FURNITURE INDUSTRIES, INC. and
28 EASTERNS WHOLESALE FURNITURE CO. OF CALIFORNIA, INC. manufacture,

1 distribute, import, sell and/or offer for sale in California the *Bennett Ottoman*, #7330-44
2 containing TDCPP without a warning;

3 n. Defendants LEXINGTON FURNITURE INDUSTRIES, INC. and
4 EASTERNS WHOLESALE FURNITURE CO. OF CALIFORNIA, INC. manufacture,
5 distribute, import, sell and/or offer for sale in California padded upholstered furniture
6 including ottomans containing TDCPP without a warning;

7 o. Defendant RESTORATION HARDWARE, INC. manufactures,
8 distributes, imports, sells and/or offers for sale in California the *Neoclassical Rondelle*
9 *Tufted Stool*, SKU #57390508BRLP (#4 57395 09000 8) containing TDCPP without a
10 warning;

11 p. Defendant RESTORATION HARDWARE, INC. manufactures,
12 distributes, imports, sells and/or offer for sale in California padded upholstered furniture
13 including stools containing TDCPP without a warning;

14 q. Defendants VIRCO MFG. CORPORATION and CALIFORNIA OFFICE
15 FURNITURE, INC. manufacture, distribute, import, sell and/or offer for sale in
16 California the *Virco Stack Chair*, #8915, M-8915, CB/OLY/DST, #89155E51G3 (#4
17 62314 55998 6) containing TDCPP without a warning;

18 r. Defendants VIRCO MFG. CORPORATION and CALIFORNIA OFFICE
19 FURNITURE, INC. manufacture, distribute, import, sell and/or offer for sale in
20 California padded upholstered furniture including stack chairs containing TDCPP without
21 a warning and either distributed to CALIFORNIA OFFICE FURNITURE, INC. by, or
22 manufactured by, VIRCO MFG. CORPORATION;

23 s. Defendants OTTO INTERNATIONAL (USA) LLC and BURLINGTON
24 COAT FACTORY WAREHOUSE CORPORATION manufacture, distribute, import,
25 sell and/or offer for sale in California the *brown ottoman* (pictured in the 60-Day Notice
26 dated February 26, 2013) containing TCEP without a warning;

27 t. Defendants OTTO INTERNATIONAL (USA) LLC and BURLINGTON
28 COAT FACTORYWAREHOUSE CORPORATION manufacture, distribute, import, sell

1 and/or offer for sale in California padded upholstered ottomans containing TCEP without
2 a warning and either distributed to BURLINGTON COAT FACTORY WAREHOUSE
3 CORPORATION by, or manufactured by, OTTO INTERNATIONAL (USA) LLC;

4 u. Defendants SEARS HOLDINGS CORPORATION and KMART
5 CORPORATION manufacture, distribute, import, sell and/or offer for sale in California
6 *Ottoman, #01498231508* containing TCEP without a warning;

7 v. Defendants SEARS HOLDINGS CORPORATION and KMART
8 CORPORATION manufacture, distribute, import, sell and/or offer for sale in California
9 padded upholstered ottomans containing TCEP without a warning;

10 w. Defendants JONATHAN LOUIS INTERNATION LTD. and LIVING
11 SPACES FURNITURE, LLC manufacture, distribute, import, sell and/or offer for sale in
12 California the Tulare Accent Ottoman, #12076-106, #62654, containing TDCPP without
13 a warning;

14 x. Defendants JONATHAN LOUIS INTERNATION LTD. and LIVING
15 SPACES FURNITURE, LLC manufacture, distribute, import, sell and/or offer for sale in
16 California padded upholstered furniture including ottomans containing TDCPP without a
17 warning;

18 y. Defendants RECARO CHILD SAFETY, LLC, BED BATH & BEYOND
19 INC., and BUY BUY BABY, INC. manufacture, distribute, import, sell and/or offer for
20 sale in California the Recaro ProRide Car Seat, #332.01.MC11, #500283092 (#8 82854
21 99035 1) containing TDCPP without a warning;

22 z. Defendants RECARO CHILD SAFETY, LLC, BED BATH & BEYOND
23 INC., and BUY BUY BABY, INC. manufacture, distribute, import, sell and/or offer for
24 sale in California upholstered children's car seats containing TDCPP without a warning.

25 aa. Defendants THE FAIRFIELD PROCESSING CORPORATION and
26 MICHAELS STORES, INC. manufacture, distribute, import, sell and/or offer for sale in
27 California the Poly-Fil Tru-Foam Bio-Based Foam Roll, TF24721 (#0 35352 10034 4)
28 containing TDCPP without a warning;

1 15. Defendants CHEYENNE INDUSTRIES, LLC (“CHEYENNE”), GLOBAL
2 INDUSTRIES, INC. (“GLOBAL”), , HELEN OF TROY L.P. (“HELEN”), RITE AID
3 CORPORATION (“RITE AID”), STEIN WORLD OPERATING COMPANY (“STEIN
4 WORLD”), SUMMER INFANT (USA), INC. (“SUMMER INFANT”), THE UTTERMOST
5 CO. (“UTTERMOST”), LEXINGTON FURNITURE INDUSTRIES, INC. (“LEXINGTON”),
6 RESTORATION HARDWARE, INC. (“RESTORATION HARDWARE”), VIRCO MFG.
7 CORPORATION (“VIRCO”), TARGET CORPORATION (“TARGET”), OTTO
8 INTERNATIONAL (USA) LLC (“OTTO”), BURLINGTON COAT FACTORY
9 WAREHOUSE CORPORATION (“BURLINGTON”), SEARS HOLDING CORPORATION
10 (“SEARS”), KMART CORPORATION (“KMART”), CONNOLLY’S FURNITURE-
11 APPLIANCES, INC. (“CONNOLLY’S”), CALIFORNIA OFFICE FURNITURE, INC.
12 (“CALIFORNIA OFFICE”), EASTERN WHOLESALE FURNITURE CO. OF CALIFORNIA,
13 INC. (“EASTERN”), KANTOR’S DISCOUNT OFFICE FURNITURE AND EQUIPMENT
14 (“KANTOR’S”), TOYS “R” US, INC. (“TOYS”), JONATHAN LOUIS INTERNATIONAL
15 LTD. (“LOUIS”), LIVING SPACES FURNITURE, LLC (“LIVING”), RECARO CHILD
16 SAFETY, LLC (“RECARO”), BED BATH & BEYOND INC. (“BED BATH”), BUY BUY
17 BABY, INC. (“BUY BUY”), THE FAIRFIELD PROCESSING CORPORATION
18 (“FAIRFIELD”), and MICHAELS STORES, INC. (“MICHAELS”) are each a person in the
19 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
20 25249.11.

21 16. CHEYENNE, GLOBAL, HELEN, RIGHT AID, STEIN WORLD, SUMMER
22 INFANT, UTTERMOST, LEXINGTON, RESTORATION HARDWARE, VIRCO, TARGET,
23 OTTO, BURLINGTON, SEARS, KMART, CONNOLLY’S, CALIFORNIA OFFICE,
24 EASTERN, KANTOR’S, TOYS, LOUIS, LIVING, RECARO, BED BATH, BUY BUY,
25 FAIRFIELD, and MICHAELS each manufactures, imports, distributes, sells, and/or offers the
26 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
27 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
28 State of California.

1 corporation, or association that is a citizen of the State of California, has sufficient minimum
2 contacts in the State of California, and/or otherwise purposefully avails itself of the California
3 market. DEFENDANTS' purposeful availment of California as a marketplace for the
4 PRODUCTS renders the exercise of personal jurisdiction by California courts over
5 DEFENDANTS consistent with traditional notions of fair play and substantial justice.

6 **FIRST CAUSE OF ACTION**

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

8 22. PLAINTIFFS reallege and incorporate by reference, as if fully set forth herein,
9 Paragraphs 1 through 21, inclusive.

10 23. 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 24. 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 25. On January 8, 2013, VINOCUR's sixty-day notice of violation, together with the
19 requisite certificate of merit, was provided to SUMMER INFANT and certain public
20 enforcement agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS
21 containing TDCPP, purchasers and users in the State of California were being exposed to
22 TDCPP resulting from their reasonably foreseeable use of the PRODUCTS, without the
23 individual purchasers and users first having been provided with a "clear and reasonable
24 warning" regarding such toxic exposures, as required by Proposition 65.

25 26. On January 8, 2013, ENGLANDER's sixty-day notice of violation, together with
26 the requisite certificate of merit, was provided to CHEYENNE, HELEN, RITE AID,
27 UTTERMOST, and certain public enforcement agencies stating that, as a result of
28 DEFENDANTS' sales of the PRODUCTS containing TDCPP, purchasers and users in the State

1 of California were being exposed to TDCPP resulting from their reasonably foreseeable use of
2 the PRODUCTS, without the individual purchasers and users first having been provided with a
3 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

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

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

18 29. On January 28, 2013, ENGLANDER’s sixty-day notice of violation, together
19 with the requisite certificate of merit, was provided to RESTORATION HARDWARE and
20 certain public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
21 PRODUCTS containing TDCPP, purchasers and users in the State of California were being
22 exposed to TDCPP resulting from their reasonably foreseeable use of the PRODUCTS, without
23 the individual purchasers and users first having been provided with a “clear and reasonable
24 warning” regarding such toxic exposures, as required by Proposition 65.

25 30. On January 28, 2013, ENGLANDER’s sixty-day notice of violation, together
26 with the requisite certificate of merit, was provided to LEXINGTON, LOUIS, LIVING and
27 certain public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
28 PRODUCTS containing TDCPP, purchasers and users in the State of California were being

1 exposed to TDCPP resulting from their reasonably foreseeable use of the PRODUCTS, without
2 the individual purchasers and users first having been provided with a “clear and reasonable
3 warning” regarding such toxic exposures, as required by Proposition 65.

4 31. On January 30, 2013, VINOCUR’s sixty-day notice of violation, together with the
5 requisite certificate of merit, was provided to FAIRFIELD, MICHAELS and certain public
6 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS
7 containing TDCPP, purchasers and users in the State of California were being exposed to
8 TDCPP resulting from their reasonably foreseeable use of the PRODUCTS, without the
9 individual purchasers and users first having been provided with a “clear and reasonable
10 warning” regarding such toxic exposures, as required by Proposition 65.

11 32. On February 5, 2013, VINOCUR’s sixty-day notice of violation, together with the
12 requisite certificate of merit, was provided to VIRCO and certain public enforcement agencies
13 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing TDCPP,
14 purchasers and users in the State of California were being exposed to TDCPP resulting from
15 their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and
16 users first having been provided with a “clear and reasonable warning” regarding such toxic
17 exposures, as required by Proposition 65.

18 33. On February 25, 2013, ENGLANDER’s sixty-day notice of violation, together
19 with the requisite certificate of merit, was provided to CHEYENNE, TARGET, UTTERMOST,
20 and certain public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
21 PRODUCTS containing TCEP, purchasers and users in the State of California were being
22 exposed to TCEP resulting from their reasonably foreseeable use of the PRODUCTS, without
23 the individual purchasers and users first having been provided with a “clear and reasonable
24 warning” regarding such toxic exposures, as required by Proposition 65.

25 34. On February 26, 2013, ENGLANDER’s sixty-day notice of violation, together
26 with the requisite certificate of merit, was provided to OTTO, BURLINGTON, SEARS,
27 KMART and certain public enforcement agencies stating that, as a result of DEFENDANTS’
28 sales of the PRODUCTS containing TCEP, purchasers and users in the State of California were

1 being exposed to TCEP resulting from their reasonably foreseeable use of the PRODUCTS,
2 without the individual purchasers and users first having been provided with a “clear and
3 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

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

11 36. On March 18, 2013, ENGLANDER’s sixty-day notice of violation, together with
12 the requisite certificate of merit, was provided to LEXINGTON, EASTERN, STEIN WORLD,
13 CONNOLLY’S and certain public enforcement agencies stating that, as a result of
14 DEFENDANTS’ sales of the PRODUCTS containing TDCPP, purchasers and users in the State
15 of California were being exposed to TDCPP resulting from their reasonably foreseeable use of
16 the PRODUCTS, without the individual purchasers and users first having been provided with a
17 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

18 37. On March 18, 2013, VINOCUR’s sixty-day notice of violation, together with the
19 requisite certificate of merit, was provided to CALIFORNIA OFFICE, VIRCO and certain
20 public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
21 PRODUCTS containing TDCPP, purchasers and users in the State of California were being
22 exposed to TDCPP resulting from their reasonably foreseeable use of the PRODUCTS, without
23 the individual purchasers and users first having been provided with a “clear and reasonable
24 warning” regarding such toxic exposures, as required by Proposition 65.

25 38. On March 20, 2013, VINOCUR’s sixty-day notice of violation, together with the
26 requisite certificate of merit, was provided to TOYS, SUMMER INFANT and certain public
27 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS
28 containing TDCPP, purchasers and users in the State of California were being exposed to

1 TDCPP resulting from their reasonably foreseeable use of the PRODUCTS, without the
2 individual purchasers and users first having been provided with a “clear and reasonable
3 warning” regarding such toxic exposures, as required by Proposition 65.

4 39. On April 11, 2013, VINOCUR’s sixty-day notice of violation, together with the
5 requisite certificate of merit, was provided to RECARO, BED BATH, and BUY BUY and
6 certain public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
7 PRODUCTS containing TDCPP, purchasers and users in the State of California were being
8 exposed to TDCPP resulting from their reasonably foreseeable use of the PRODUCTS, without
9 the individual purchasers and users first having been provided with a “clear and reasonable
10 warning” regarding such toxic exposures, as required by Proposition 65.

11 40. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
12 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
13 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
14 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
15 continuous in nature, and will continue to occur in the future.

16 41. After receiving PLAINTIFFS’ sixty-day notices of violation, the appropriate
17 public enforcement agencies have failed to commence and diligently prosecute a cause of action
18 against DEFENDANTS under Proposition 65.

19 42. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
20 or use in California by DEFENDANTS contain LISTED CHEMICALS such that they require a
21 “clear and reasonable” warning under Proposition 65.

22 43. DEFENDANTS knew or should have known that the PRODUCTS they
23 manufacture, import, distribute, sell, and offer for sale or use in California contain LISTED
24 CHEMICALS.

25 44. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
26 to expose individuals to the LISTED CHEMICALS through dermal contact, ingestion, and/or
27 inhalation during reasonably foreseeable use of the PRODUCTS including through workplace
28 exposure to the PRODUCTS.

1 45. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
2 continue to cause, consumer exposures to LISTED CHEMICALS, as such exposures are
3 defined by the California Code of Regulations title 27, section 25602(b).

4 46. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
5 of the PRODUCTS expose individuals to LISTED CHEMICALS through dermal contact,
6 ingestion, and/or inhalation.

7 47. DEFENDANTS intended that such exposures to LISTED CHEMICALS from the
8 reasonably foreseeable uses of the PRODUCTS would occur by DEFENDANTS' deliberate,
9 non-accidental participation in the manufacture, importation, distribution, sale, and offering of
10 the PRODUCTS for sale or use to individuals in the State of California.

11 48. DEFENDANTS failed to provide a "clear and reasonable warning" to those
12 consumers and other individuals in the State of California who were or who would become
13 exposed to the LISTED CHEMICALS through dermal contact, ingestion, and/or inhalation
14 during the reasonably foreseeable uses of the PRODUCTS including through workplace
15 exposure to the PRODUCTS.

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

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

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

28

1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiffs pray for judgment against DEFENDANTS, and each of them, as
3 follows:

4 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
5 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
8 offering the PRODUCTS for sale or use in California without first providing a "clear and
9 reasonable warning" as defined by the California Code of Regulations title 27, section 25601 *et*
10 *seq.*, as to the harms associated with exposures the LISTED CHEMICALS;

11 3. That the Court, pursuant to Health and Safety Code section 25249.7(a), issue
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
13 currently in the chain of commerce in California without a "clear and reasonable warning" as
14 defined by California Code of Regulations title 27, section 25601 *et seq.*,

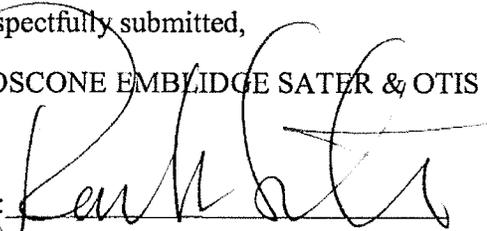
15 4. That the Court grant PLAINTIFFS their reasonable attorneys' fees and costs of
16 suit; and

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

18
19 Dated: June 25, 2013

Respectfully submitted,

MOSCONE EMBLIDGE SATER & OTIS

20
21
22 By: 

23 Rachel Sater
24 Attorneys for Plaintiffs
25 LAURENCE VINO CUR
26 PETER ENGLANDER
27
28

1 **PROOF OF SERVICE**
2 Case No. RG 13-673710

3 I, Mardoux Torrise, declare as follows:

4 I am a citizen of the United States, over the age of eighteen years and not a party to the
5 within entitled action. On July 9, 2013, I served the attached:

- 6 • **AMENDED SUMMONS**
- 7 • **SECOND AMENDED COMPLAINT FOR CIVIL PENALTIES
8 AND INJUNCTIVE RELIEF**

9 on the interested party(ies) named below:

10 Michael J. Steel
11 MORRISON & FOERSTER LLP
12 425 Market Street
13 San Francisco, CA 94105-2482
14 Tel: (415) 268-7000
15 Fax: (415) 268-7522

16 Robert L. Falk
17 MORRISON & FOERSTER LLP
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19 San Francisco, CA 94105-2482
20 Tel: (415) 268-6294
21 Fax: (415) 268-7522

22 *Attorneys for Defendant STEIN WORLD
23 OPERATING COMPANY*

24 *Attorney for Defendants CHEYENNE
25 INDUSTRIES, LLC.; GLOBAL INDUSTRIES,
26 INC.; HELEN OF TROY L.P.; RITE AID
27 CORPORATION; SUMMER INFANT (USA),
28 INC.; THE UTTERMOST CO. ; LEXINGTON
FURNITURE INDUSTRIES, INC. ;
RESTORATION HARDWARE, INC.; VIRCO
MFG. CORPPORATION*

1 I served the attached document(s) in the manner indicated below:

- 2 **BY MAIL:** I caused true and correct copy(ies) of the above documents to be placed and sealed
3 in envelope(s) addressed to the addressee(s) named above and, following ordinary business
4 practices, placed said envelope(s) at the Law Offices of Moscone Emblidge Sater & Otis LLP,
5 220 Montgomery, Ste. 2100, San Francisco, California, 94104, for collection and mailing with
6 the United States Postal Service and there is delivery by the United States Post Office at said
7 address(es). In the ordinary course of business, correspondence placed for collection on a
8 particular day is deposited with the United States Postal Service that same day.

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct. Executed July 9, 2013, at San Francisco, California.

11 
12 _____
13 Mardoux Torrise