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ENDORSED  
FILED  
ALAMEDA COUNTY

MAY 03 2013

CLERK OF THE SUPERIOR COURT  
By Kmel Dhillon Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 STEIN MART, INC.; STYLECRAFT HOME  
18 COLLECTION, INC.; and DOES 1-150,  
19 inclusive,

20 Defendants.

) Case No. RG13 678155

) **COMPLAINT FOR CIVIL PENALTIES**  
) **AND INJUNCTIVE RELIEF**

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

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BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff PETER  
3 ENGLANDER in the public interest of the citizens of the State of California to enforce the  
4 People’s right to be informed of the presence of Tris(1,3-dichloro-2-propyl) phosphate  
5 (“TDCPP”), a toxic chemical found in padded upholstered furniture sold in California. TDCPP  
6 is a toxic chemical that is used to treat polyurethane foam, which is used as padding or  
7 cushioning in a variety of products.

8 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failures to  
9 warn California citizens about the risks of exposures to TDCPP present in and on padded  
10 upholstered furniture manufactured, distributed, sold, and offered for sale or use to consumers  
11 throughout the State of California.

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

20 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
21 Health and Safety Code Section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course  
22 of doing business shall knowingly and intentionally expose any individual to a chemical known  
23 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
24 warning to such individual . . .” (Health & Safety Code § 25249.6.)  
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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(c); Health & Safety Code §§ 25249.8 & 25249.10(b).)

9           7.     Defendants Stein Mart, Inc. and StyleCraft Home Collection, Inc. manufacture,  
10 distribute, import, sell and/or offer for sale in California padded upholstered furniture  
11 containing TDCPP including, but not limited to, chairs such as *Artdreams by StyleCraft Chair*,  
12 *Style Number: ADF2003 (#7 20354 79825 4)*. All such padded upholstered furniture, including  
13 chairs, containing TDCPP, are hereinafter collectively referred to as "PRODUCTS."

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

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

25           10.    Pursuant to Health and Safety Code Section 25249.7(b), plaintiff also seeks civil  
26 penalties against Defendants for their violations of Proposition 65.  
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2 **PARTIES**

3 11. Plaintiff PETER ENGLANDER is a citizen of the State of California who is  
4 dedicated to protecting the health of California citizens through the elimination or reduction of  
5 toxic exposures from consumer products and he brings this action in the public interest pursuant  
6 to Health and Safety Code Section 25249.7(d).

7 12. Defendant Stein Mart, Inc. (“STEIN MART”) is a person in the course of doing  
8 business within the meaning of Health and Safety Code Section 25249.11.

9 13. STEIN MART manufactures, imports, distributes, sells, and/or offers the  
10 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
11 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
12 State of California.

13 14. Defendant StyleCraft Home Collection, Inc. (“STYLECRAFT”) is a person in the  
14 course of doing business within the meaning of Health and Safety Code Section 25249.11.

15 15. STYLECRAFT manufactures, imports, distributes, sells, and/or offers the  
16 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
17 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
18 State of California.

19 16. Defendants DOES 1-150 are each persons in the course of doing business within  
20 the meaning of Health and Safety Code Section 25249.11(b), that manufacture, distribute, sell,  
21 and/or offer the PRODUCTS for sale in the State of California. At this time, the true names and  
22 capacities of defendants DOES 1 through 150, inclusive, are unknown to plaintiff, who,  
23 therefore, sues said defendants by their fictitious names pursuant to Code of Civil Procedure  
24 Section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the  
25 fictitiously named defendants is responsible for the acts and occurrences alleged herein. When  
26 ascertained, their true names and capacities shall be reflected in an amended complaint.  
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1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
2 harm.”

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

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

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

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

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

25 28. DEFENDANTS knew or should have known that the PRODUCTS they  
26 manufacture, import, distribute, sell, and offer for sale or use in California contain TDCPP.  
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1           29.    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 uses of the PRODUCTS.

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

7           31.    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          32.    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          33.    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          34.    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 suffer,  
22 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

23          35.    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.

