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ENDORSED  
FILED  
ALAMEDA COUNTY

APR 11 2013

CLERK OF THE SUPERIOR COURT  
By M Hayes Deputy

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

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 SKYLINE FURNITURE MFG., INC.;  
18 HOOKER FURNITURE CORPORATION;  
19 WHELAN FURNITURE MANUFACTURING  
20 INC.; COSTCO WHOLESALE  
21 CORPORATION; and DOES 1-150, inclusive,

22 Defendants.

Case No. **RG13675155**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

**NATURE OF THE ACTION**

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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 products sold in California. TDCPP is a toxic chemical  
6 that is used to treat polyurethane foam, which is used as padding or cushioning in a variety of  
7 products, including upholstered furniture.

8           2.     By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failure to  
9 warn citizens, consumers, and other individuals throughout California about the health hazard  
10 risks associated with exposures to TDCPP present in and on the products manufactured,  
11 distributed, sold, and offered for sale by Defendants.

12           3.     Detectable levels of TDCPP are commonly found in and on the products  
13 Defendants manufacture, distribute, sell, and offer for sale or use without warning in California.  
14 Citizens, consumers, and other individuals in California, including infants and children, are  
15 exposed to TDCPP in the following ways: (i) by inhalation when they inhale TDCPP present in  
16 ambient particles released from upholstered furniture and other products containing TDCPP-  
17 treated foam; (ii) by dermal exposure when they touch TDCPP-treated foam directly or contact  
18 ambient particles containing TDCPP that are released from upholstered furniture and other  
19 products that use TDCPP-treated foam; and (iii) by route of ingestion as a result of hand-to-  
20 mouth contact with TDCPP-treated foam or with ambient particles released from upholstered  
21 furniture and other products that use TDCPP-treated foam.

22           4.     The Safe Drinking Water and Toxic Enforcement Act of 1986 codified at Health  
23 and Safety Code Section 25249.5 et seq. (“Proposition 65), states “[n]o person in the course of  
24 doing business shall knowingly and intentionally expose any individual to a chemical known to  
25 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
26 warning to such individual . . .”

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 exposures 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.     On October 28, 2011, California identified and listed TDCPP, pursuant to  
6 Proposition 65, 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 manufacture, distribute, import, sell, and/or offer for sale in California  
10 products containing TDCPP as follows:

11           a.     Defendant Skyline Furniture Mfg., Inc. manufactures, distributes, imports,  
12 sells, and/or offers for sale without a warning in California padded upholstered furniture,  
13 including chairs, containing TDCPP including, but not limited to, the *Medallion Accident*  
14 *Chair by Skyline Furniture Mfg., Style #: 6705MDLSTN, DPCI-Item #: 249030147 (#4*  
15 *92490 30147 5);*

16           b.     Defendant Hooker Furniture Corporation manufactures, distributes,  
17 imports, sells, and/or offers for sale without a warning in California padded upholstered  
18 furniture, including ottomans, containing TDCPP including, but not limited to, the *Joli*  
19 *Nesting Ottomans, #641-36003, W-10810);*

20           c.     Defendant Whelan Furniture Manufacturing Inc. manufactures,  
21 distributes, imports, sells, and/or offers for sale without a warning in California padded  
22 upholstered furniture, including stools, containing TDCPP including, but not limited to,  
23 the *Bayside Furnishings Century Barstool, Itm./Art. 626832, Model #CTBST, (#7 64053*  
24 *47312 8), sold by, inter alia, Costco Wholesale Corporation.*

25           8.     All such padded upholstered furniture including chairs, ottomans, and stools that  
26 contain TDCPP described in Paragraphs 7(a) through (c) above, shall hereinafter be collectively  
27 be referred to as “PRODUCTS.” As to each specific defendant, however, PRODUCTS shall  
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1 refer only to those categories of products listed for the defendant in Paragraphs 7(a) through (c)  
2 above.

3 9. Although Defendants expose infants, children, and other people to TDCPP in  
4 their PRODUCTS, Defendants provide no warnings about the carcinogenic or teratogenic health  
5 hazards associated with exposures to these Proposition 65-listed chemicals. Defendants' failure  
6 to warn consumers and other individuals in the State of California not covered by California's  
7 Occupational Safety Health Act, Labor Code section 6300 et seq. about their the health hazards  
8 associated with exposures to TDCPP in conjunction with Defendants' distribution, importation,  
9 manufacture, and/or sales of the PRODUCTS, are violations of Proposition 65, and subject  
10 Defendants to enjoinder of such conduct as well as civil penalties for each violation. Health &  
11 Safety Code § 25249.7(a) & (b)(1).

12 10. Pursuant to Health and Safety Code section 25249.7(a), Plaintiff seeks  
13 preliminary and permanent injunctive relief to compel each of the Defendants to provide  
14 purchasers or users of the PRODUCTS with the required health hazard warning regarding the  
15 risks of exposures to TDCPP in the PRODUCTS.

16 11. Pursuant to Health and Safety Code Section 25249.7(b), Plaintiff also seeks civil  
17 penalties against each Defendant for its violations of Proposition 65.

18 **PARTIES**

19 12. Plaintiff PETER ENGLANDER is a citizen of the State of California who is  
20 dedicated to protecting the health of California citizens through the elimination or reduction of  
21 toxic exposures from consumer products; and he brings this action in the public interest pursuant  
22 to Health and Safety Code section 25249.7(d).

23 13. Defendants Skyline Furniture Mfg., Inc. ("SKYLINE"), Hooker Furniture  
24 Corporation ("HOOKER"), Whelan Furniture Manufacturing Inc. ("WHELAN"), and Costco  
25 Wholesale Corporation ("COSTCO") is each a person in the course of doing business within the  
26 meaning of Health and Safety Code sections 25249.6 and 25249.11.



1 Plaintiff's information and good faith belief that each defendant is a person, firm, corporation,  
2 or association that is a citizen of the State of California, has sufficient minimum contacts in the  
3 State of California, and/or otherwise purposefully avails itself of the California market.

4 DEFENDANTS' purposeful availing renders the exercise of personal jurisdiction by California  
5 courts consistent with traditional notions of fair play and substantial justice.

6 **FIRST CAUSE OF ACTION**

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

8 20. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,  
9 Paragraphs 1 through 19, inclusive.

10 21. 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 22. Health and Safety Code section 25249.6 states, "[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 . . ."

18 23. On January 30, 2013, PETER ENGLANDER provided a sixty-day notice of  
19 violation of Proposition 65, together with the requisite certificate of merit, to SKYLINE and  
20 certain required public enforcement agencies, stating that as a result of SKYLINE's sales of the  
21 PRODUCTS, purchasers and users in California were being exposed to TDCPP resulting from  
22 their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and  
23 users first having been provided with a "clear and reasonable warning" regarding the health  
24 hazards of such toxic exposures, as required by Proposition 65.

25 24. On January 30, 2013, PETER ENGLANDER provided a sixty-day notice of  
26 violation of Proposition 65, together with the requisite certificate of merit, to HOOKER and the  
27 required public enforcement agencies, stating that as a result of HOOKER's sales of the  
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1 PRODUCTS, purchasers and users in California were being exposed to TDCPP resulting from  
2 their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and  
3 users first having been provided with a “clear and reasonable warning” regarding the health  
4 hazards of such toxic exposures, as required by Proposition 65.

5 25. On January 30, 2013, PETER ENGLANDER provided a sixty-day notice of  
6 violation of Proposition 65, together with the requisite certificate of merit, to WHELAN and  
7 certain required public enforcement agencies, stating that as a result of WHELAN’s sales of the  
8 PRODUCTS, purchasers and users in California were being exposed to TDCPP resulting from  
9 their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and  
10 users first having been provided with a “clear and reasonable warning” regarding the health  
11 hazards of such toxic exposures, as required by Proposition 65.

12 26. On January 30, 2013, PETER ENGLANDER provided a sixty-day notice of  
13 violation of Proposition 65, together with the requisite certificate of merit, to COSTCO and  
14 certain required public enforcement agencies, stating that as a result of COSTCO’s sales of the  
15 PRODUCTS, purchasers and users in California were being exposed to TDCPP resulting from  
16 their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and  
17 users first having been provided with a “clear and reasonable warning” regarding the health  
18 hazards of such toxic exposures, as required by Proposition 65.

19 27. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
20 and offering of the PRODUCTS for sale or use in California in violation of Health and Safety  
21 Code section 25249.6, and DEFENDANTS’ violations have continued to occur beyond their  
22 receipt of Plaintiff’s sixty-day notices of violation. As such, DEFENDANTS’ violations are  
23 ongoing and continuous in nature, such that they will continue to occur in the future.

24 28. After receiving Plaintiff’s sixty-day notices of violation, the appropriate public  
25 enforcement agencies have failed to commence and diligently prosecute a cause of action  
26 against DEFENDANTS under Proposition 65.

1           29.    The PRODUCTS DEFENDANTS manufacture, import, distribute, sell and offer  
2 for sale or use in California contain TDCPP such that they require a “clear and reasonable”  
3 warning under Proposition 65.

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

6           31.    TDCPP is present in or on the PRODUCTS in such a way as to expose  
7 individuals to TDCPP through dermal contact, ingestion, and/or inhalation during reasonably  
8 foreseeable uses of the PRODUCTS.

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

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

15           34.    DEFENDANTS intended that such exposures to TDCPP from the reasonably  
16 foreseeable uses of the PRODUCTS would occur by DEFENDANTS’ deliberate, non-  
17 accidental participation in the manufacture, importation, distribution, sale, and offering of the  
18 PRODUCTS for sale or use to individuals in the State of California.

19           35.    DEFENDANTS failed to provide a “clear and reasonable warning” to those  
20 consumers and other individuals in the State of California who were or who would become  
21 exposed to TDCPP through dermal contact, ingestion, and/or inhalation during the reasonably  
22 foreseeable uses of the PRODUCTS.

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