



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.)

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

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

7 7. Defendants manufacture, distribute, import, sell, and/or offer for sale in the State  
8 of California products containing TDCPP as follows:

9 a. Defendants Grand Basket Co., Inc. ("GRAND BASKET") and Kmart  
10 Corporation ("KMART") manufacture, distribute, import, sell and/or offer for sale in  
11 California padded upholstered patio chairs containing TDCPP without a warning  
12 including, but not limited to, the *Country Living Clover Creek Chair, Item 880053487971*  
13 (*#0 28776 13511 5*);

14 b. Defendants Hancock & Moore, Inc. ("HANCOCK") and Jessica Charles,  
15 LLC ("JESSICA CHARLES") manufacture, distribute, import, sell and/or offer for sale  
16 in California padded upholstered furniture including rockers/chairs containing TDCPP  
17 without a warning including, but not limited to, the *Jessica Charles Holton Swivel*  
18 *Rocker, #422-SR*;

19 c. Defendants Jofran Sales, Inc. ("JOFRAN") and Lifestyle Furniture Home  
20 Store Corporation ("LIFESTYLE") manufacture, distribute, import, sell and/or offer for  
21 sale in California padded upholstered chairs containing TDCPP without a warning  
22 including, but not limited to, the *Serena Chair, #51178, #5530263, NW10347*; and

23 d. Defendant Riverside Furniture Corporation ("RIVERSIDE")  
24 manufactures, distributes, imports, sells and/or offers for sale in California padded  
25 upholstered furniture including chairs containing TDCPP without a warning including,  
26 but not limited to, the *Coventry Upholstered Side Chair, Prod. No: #32557*.



1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
2 State of California.

3 15. Defendant KMART is a person in the course of doing business within the  
4 meaning of Health and Safety Code Section 25249.11.

5 16. KMART manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
6 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
7 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

8 17. Defendant HANCOCK is a person in the course of doing business within the  
9 meaning of Health and Safety Code Section 25249.11.

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

14 19. Defendant JESSICA CHARLES is a person in the course of doing business within  
15 the meaning of Health and Safety Code Section 25249.11.

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

20 21. Defendant JOFRAN is a person in the course of doing business within the  
21 meaning of Health and Safety Code Section 25249.11.

22 22. JOFRAN manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
23 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
24 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

25 23. Defendant LIFESTYLE is a person in the course of doing business within the  
26 meaning of Health and Safety Code Section 25249.11.



1 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the  
2 PRODUCTS.

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

7 31. The California Superior Court has jurisdiction over DEFENDANTS based on  
8 Plaintiff’s information and good faith belief that each Defendant is a person, firm, corporation  
9 or association that is a citizen of the State of California, has sufficient minimum contacts in the  
10 State of California, and/or otherwise purposefully avails itself of the California market.  
11 DEFENDANTS’ purposeful availment of California as a marketplace for the PRODUCTS  
12 renders the exercise of personal jurisdiction by California courts over DEFENDANTS  
13 consistent with traditional notions of fair play and substantial justice.

14 **FIRST CAUSE OF ACTION**

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

16 32. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
17 Paragraphs 1 through 31, inclusive.

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

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

26 35. On February 8, 2013, Plaintiff’s sixty-day notice of violation, together with the  
27 requisite certificate of merit, was provided to RIVERSIDE and certain public enforcement  
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1 agencies stating that, as a result of RIVERSIDE'S sales of the PRODUCTS containing TDCPP,  
2 purchasers and users in the State of California were being exposed to TDCPP resulting from  
3 their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and  
4 users first having been provided with a "clear and reasonable warning" regarding such toxic  
5 exposures, as required by Proposition 65.

6 36. On February 15, 2013, Plaintiff's sixty-day notice of violation, together with the  
7 requisite certificates of merit, were provided to GRAND BASKET, KMART, HANCOCK,  
8 JESSICA CHARLES, JOFRAN, LIFESTYLE and certain public enforcement agencies stating  
9 that, as a result of GRAND BASKET, KMART, HANCOCK, JESSICA CHARLES, JOFRAN,  
10 and LIFESTYLE'S sales of the PRODUCTS containing TDCPP, purchasers and users in the  
11 State of California were being exposed to TDCPP resulting from their reasonably foreseeable  
12 uses of the PRODUCTS, without the individual purchasers and users first having been provided  
13 with a "clear and reasonable warning" regarding such toxic exposures, as required by  
14 Proposition 65.

15 37. 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 38. After receiving Plaintiff's sixty-day notices of violation, the appropriate public  
21 enforcement agencies have failed to commence and diligently prosecute a cause of action  
22 against DEFENDANTS under Proposition 65.

23 39. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
24 or use in the State of California by DEFENDANTS contain TDCPP such that they require a  
25 "clear and reasonable" warning under Proposition 65.  
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1           40. DEFENDANTS knew or should have known that the PRODUCTS they  
2 manufacture, import, distribute, sell, and offer for sale or use in the State of California contain  
3 TDCPP.

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

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

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

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

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

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

