

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 (“TDCPP”)
5 and tris(2-chloroethyl) phosphate (“TCEP”), toxic chemicals found in products sold in California.
6 TDCPP and TCEP are toxic chemicals used to treat polyurethane foam, which is used as padding
7 or cushioning in a variety of products, including upholstered furniture.

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

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

23 4. The Safe Drinking Water and Toxic Enforcement Act of 1986 codified at Health and
24 Safety Code Section 25249.5 et seq. (“Proposition 65”) states “[n]o person in the course of doing
25 business shall knowingly and intentionally expose any individual to a chemical known to the state
26 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
27 individual”
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1 5. TDCPP and TCEP have been used in consumer products as additive flame retardants
2 since the 1960s. In 1977, based on findings TDCPP exposures may have mutagenic effects, the
3 United States Consumer Product Safety Commission banned the use of TDCPP in children's
4 pajamas.

5 6. On April 1, 1992, California listed TCEP pursuant to Proposition 65 as a chemical
6 known to cause cancer. TCEP became subject to the "clear and reasonable warning"
7 requirements of the act one year later on April 1, 1993. Cal. Code Regs. tit. 27, § 27001(c);
8 Health & Safety Code §§ 25249.8 & 25249.10(b).

9 7. On October 28, 2011, California listed TDCPP pursuant to Proposition 65 as a
10 chemical known to cause cancer. TDCPP became subject to the "clear and reasonable warning"
11 requirements of the act one year later on October 28, 2012. Cal. Code Regs. tit. 27, § 27001(c);
12 Health & Safety Code §§ 25249.8 & 25249.10(b).

13 8. Defendants manufacture, distribute, import, sell, and/or offer for sale in California
14 products containing TDCPP and TCEP as follows:

15 a. Defendant Bexco Enterprises, Inc. manufactures, distributes, imports,
16 sells, and/or offers for sale without a warning in California, upholstered furniture,
17 including ottomans, with foam padding that contains TDCPP. Defendant Bexco
18 Enterprises, Inc. manufactures, distributes, imports, sells, and/or offers for sale without
19 a warning in California upholstered ottomans with foam padding that contains TDCPP.
20 Defendant Bexco Enterprises, Inc. manufactures, distributes, imports, sells, and/or
21 offers for sale without a warning in California, the *DaVinci Classic Sleigh Glider and*
22 *Ottoman, Item Number: M4887BG (#0 48517 80597 8)* with foam padding that
23 contains TDCPP.

24 b. Defendant Style-Line Furn., Inc. manufactures, distributes, imports,
25 sells, and/or offers for sale without a warning in California, upholstered furniture,
26 including sofas, with foam padding that contains TDCPP. Defendant Style-Line Furn.,
27 Inc. manufactures, distributes, imports, sells, and/or offers for sale without a warning in
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1 California, upholstered sofas with foam padding that contains TDCPP. Defendants
2 Style-Line Furn., Inc. and J. C. Penney Company, Inc. manufacture, distribute, import,
3 sell, and/or offer for sale without a warning in California, upholstered sofas with foam
4 padding that contains TDCPP and that are manufactured for sale and/or distributed for
5 sale to J. C. Penney Company, Inc. by Style-Line Furn., Inc. Defendants Style-Line
6 Furn., Inc. and J. C. Penney Company, Inc. manufacture, distribute, import, sell, and/or
7 offer for sale without a warning in California, the *Colette Loveseat #666 3201100101*
8 with foam padding that contains TDCPP.

9 c. Defendant A.R.T. Furniture, Inc. manufactures, distributes, imports,
10 sells, and/or offers for sale without a warning in California, upholstered furniture,
11 including benches, with foam padding that contains TDCPP. Defendant A.R.T.
12 Furniture, Inc. manufactures, distributes, imports, sells, and/or offers for sale without a
13 warning in California, upholstered benches with foam padding that contains TDCPP.
14 Defendants A.R.T. Furniture, Inc. and J. C. Penney Company, Inc. manufacture,
15 distribute, import, sell, and/or offer for sale without a warning in California,
16 upholstered benches with foam padding that contains TDCPP and that are
17 manufactured for sale and/or distributed for sale to J. C. Penney Company, Inc. by
18 A.R.T. Furniture, Inc. Defendants A.R.T. Furniture, Inc. and J. C. Penney Company,
19 Inc. manufacture, distribute, import, sell, and/or offer for sale without a warning in
20 California, the *Kate Bench, #161149-2636, #665 6165010101* with foam padding that
21 contains TDCPP.

22 d. Defendant Magnussen Holdings Inc. and Magnussen Home Furnishings,
23 Inc. manufacture, distribute, import, sell, and/or offer for sale without a warning in
24 California, upholstered furniture, including benches, with foam padding that contains
25 TCEP. Defendant Magnussen Holdings Inc. and Magnussen Home Furnishings, Inc.
26 manufacture, distribute, import, sell, and/or offer for sale without a warning in
27 California the *Bench* with foam padding that contains TCEP.
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1 e. Defendant Theodore Alexander USA, Inc. manufactures, distributes,
2 imports, sells, and/or offers for sale without a warning in California upholstered
3 furniture, including chairs, with foam padding that contains TDCPP. Defendant
4 Theodore Alexander USA, Inc. manufactures, distributes, imports, sells, and/or offers
5 for sale without a warning in California upholstered chairs with foam padding that
6 contains TDCPP. Defendant Theodore Alexander USA, Inc. manufactures, distributes,
7 imports, sells, and/or offers for sale without a warning in California the *Love Of A*
8 *Chair #4002-127WO* with foam padding that contains TDCPP.

9 All such padded upholstered furniture including chairs, ottomans, sofas and benches that contains
10 TDCPP and/or TCEP described in Paragraphs 8(a) through 8(e), above, is collectively referred to
11 hereinafter as "PRODUCTS." As to each specific defendant, however, PRODUCTS shall refer
12 only to those categories of products listed for the defendant in Paragraphs 8(a) through 8(e),
13 above.

14 9. Although Defendants expose workers and other individuals, including infants and
15 children to TCEP and TDCPP in their PRODUCTS, Defendants provide no warnings about the
16 carcinogenic or teratogenic health hazards associated with exposures to these Proposition 65-
17 listed chemicals. Defendants' failure to warn consumers, workers and other individuals in the
18 State of California not covered by California's Occupational Safety Health Act, Labor Code
19 section 6300 et seq. about the health hazards associated with exposures to TCEP and TDCPP in
20 conjunction with Defendants' distribution, importation, manufacture, and/or sales of the
21 PRODUCTS, are violations of Proposition 65, and subject Defendants to enjoinder of such
22 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

23 10. Pursuant to Health and Safety Code section 25249.7(a), Plaintiff seeks preliminary
24 and permanent injunctive relief to compel each of the Defendants to provide purchasers or users
25 of the PRODUCTS with the required health hazard warning regarding the risks associated with
26 exposures to TDCPP and TCEP from their PRODUCTS.

1 22. Health and Safety Code section 25249.6 states, “[n]o person in the course of doing
2 business shall knowingly and intentionally expose any individual to a chemical known to the state
3 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
4 individual”

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

12 24. On April 11, 2013, PETER ENGLANDER served a sixty-day notice of violation,
13 together with the requisite certificate of merit to STYLE-LINE, J. C. PENNEY and the required
14 public enforcement agencies, stating that as a result of STYLE-LINE’s and J. C. PENNEY’s sales
15 of the PRODUCTS, purchasers and users in California were being exposed to TDCPP resulting
16 from 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 25. On April 11, 2013, PETER ENGLANDER served a sixty-day notice of violation,
20 together with the requisite certificate of merit, to THEODORE ALEXANDER and the required
21 public enforcement agencies, stating that as a result of THEODORE ALEXANDER’s sales of the
22 PRODUCTS, purchasers and users in California were being exposed to TDCPP resulting from
23 their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
24 first having been provided with a “clear and reasonable warning” regarding the health hazards of
25 such toxic exposures, as required by Proposition 65.

26 26. On May 1, 2013, PETER ENGLANDER provided a sixty-day notice of violation of
27 Proposition 65, together with the requisite certificate of merit, to A.R.T. FURNITURE, J. C.
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1 PENNEY, and the required public enforcement agencies, stating that as a result of A.R.T.
2 FURNITURE's and J. C. PENNEY's sales of the PRODUCTS, purchasers and users in California
3 were being exposed to TDCPP resulting from their reasonably foreseeable uses of the
4 PRODUCTS, without the individual purchasers and users first having been provided with a "clear
5 and reasonable warning" regarding the health hazards of such toxic exposures, as required by
6 Proposition 65.

7 27. On May 1, 2013, PETER ENGLANDER served a sixty-day notice of violation,
8 together with the requisite certificate of merit, to MAGNUSSEN HOLDINGS, MAGNUSSEN
9 HOME FURNISHINGS and the required public enforcement agencies, stating that as a result of
10 MAGNUSSEN HOLDINGS' and MAGNUSSEN HOME FURNISHINGS' sales of the
11 PRODUCTS, purchasers and users in California were being exposed to TCEP as a result of their
12 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
13 having been provided with a "clear and reasonable warning" regarding the health hazards of such
14 toxic exposures, as required by Proposition 65.

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

20 29. 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 against
22 DEFENDANTS under Proposition 65.

23 30. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell and offer for
24 sale or use in California contain TDCPP and TCEP such that they require a "clear and reasonable"
25 warning under Proposition 65.
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1 31. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufacture, import, distribute, sell, and offer for sale or use in California contain TDCPP and
3 TCEP.

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

7 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
8 continue to cause, consumer exposures and occupational exposures within the definition of
9 California Code of Regulations title 27, section 25602(b).

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

13 35. DEFENDANTS intended that such exposures to TDCPP and TCEP from the
14 reasonably 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 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those workers,
18 consumers and other individuals in the State of California who were or who would become
19 exposed to TDCPP and TCEP through dermal contact, ingestion, and/or inhalation during the
20 reasonably foreseeable uses of the PRODUCTS.

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