

**ENDORSED  
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ALAMEDA COUNTY**

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**CLERK OF THE SUPERIOR COURT  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

14 LAURENCE VINO CUR and PETER  
15 ENGLANDER,

16 Plaintiffs,

17 v.

18 ABAD FOAM, INC.; POMONA QUALITY  
19 FOAM, INC.; FOAM & FIBRE COMPANY  
20 INC.; FOAMCO INDUSTRIES  
21 CORPORATION; TALMOLDER, INC.;  
22 VALLE FOAM INDUSTRIES, INC.; FUTURE  
23 FOAM, INC.; UREBLOCK, S.A. de C.V.;  
24 FLEXIBLE FOAM PRODUCTS, INC.; OHIO  
25 DECORATIVE PRODUCTS, INC.; MEI  
26 YUAN ADORNMENT OF BEDROOM; and  
27 DOES 1-150, inclusive,

28 Defendants.

Case No. RG14-710984

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

(Health & Safety Code § 25249.5, *et seq.*)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiffs Laurence Vinocur and  
3 Peter Englander (collectively, “plaintiffs”) in the public interest of the citizens of the State of  
4 California to enforce the People’s right to be informed of the presence of tris(1,3-dichloro-2-propyl)  
5 phosphate (“TDCPP”) and tris(2-chloroethyl) phosphate (“TCEP”), toxic flame-retardant chemicals  
6 found in foam and foam-containing products, including padded, upholstered chairs, ottomans, seat  
7 cushions, bedding, and other furniture sold in the State of California. TDCPP and TCEP are used to  
8 treat polyurethane foam, which is used as padding or cushioning in a variety of consumer products.

9 2. By this First Amended Complaint, plaintiffs seek to remedy defendants’ continuing  
10 failure to warn California citizens about the risks of exposures to TDCPP and TCEP present in and  
11 on foam and foam-containing products, including, without limitation, padding in chairs, ottomans,  
12 seat cushions, bedding, and furniture manufactured, shaped, brokered, distributed, sold, and offered  
13 for sale or use to consumers throughout the State of California.

14 3. Detectable levels of TDCPP and TCEP are commonly found in and on foam and  
15 foam-containing products that defendants manufacture, shape, broker, distribute, and offer for sale  
16 to consumers throughout the State of California. Workers, consumers and other individuals in  
17 California, including infants and children, are exposed to TDCPP and TCEP from defendants’  
18 products through various routes of exposure, including: (i) through inhalation when TDCPP and/or  
19 TCEP are released from the foam component of the separately sold seat cushions; (ii) through  
20 dermal exposure when TDCPP and/or TCEP in the foam component of the separately sold seat  
21 cushions accumulates in ambient particles that are subsequently touched by such individuals; and  
22 (iii) through ingestion when such particles are brought into contact with the mouth.

23 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
24 Health and Safety Code section 25249.5, *et seq.* (“Proposition 65”), “No person in the course of  
25 doing business shall knowingly and intentionally expose any individual to a chemical known to the  
26 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to  
27 such individual . . .” (Health & Safety Code § 25249.6.)  
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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 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 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” requirements  
7 of Proposition 65 one year later on April 1, 1993. (Cal. Code Regs. tit. 27, § 27001(b); Health &  
8 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 Proposition 65 one year later on October 28, 2012. (Cal. Code Regs. tit. 27,  
12 § 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b).)

13           8.     Defendants manufacture, shape, broker, distribute, import, sell and/or offer for sale  
14 without a warning in California, foam containing TDCPP and/or TCEP, and consumer products  
15 manufactured with foam containing TDCPP and/or TCEP, including, without limitation, padding in  
16 chairs, ottomans, seat cushions, bedding, and furniture, as follows:

17           a.     Defendants Abad Foam, Inc. and Pomona Quality Foam, Inc. manufacture,  
18 shape, broker, distribute, import, sell and/or offer for sale foam that contains TDCPP used as  
19 padding in chairs including, but not limited to, the *Virco Stack Chair*, #8915, M-8915,  
20 *CB/OLY/DST*, #89155E51G3 (#4 62314 55998 6) identified as an exemplar of the type of  
21 products Defendants Abad Foam, Inc. and Pomona Quality Foam, Inc. manufacture, shape,  
22 broker, distribute, import, sell and/or offer for sale in Plaintiff Laurence Vinocur’s 60-Day  
23 Notice of Violation of Proposition 65;

24           b.     Defendants Foam & Fibre Company, Inc., Foamco Industries Corporation,  
25 Talmolder, Inc., and Valle Foam Industries, Inc. manufacture, shape, broker, distribute,  
26 import, sell and/or offer for sale foam that contains TDCPP used as padding in upholstered  
27 chairs including, but not limited to, the *Sonic Armless Stacking Chair*, SKU 6509-1 and the  
28 *Offices To Go Leather Task Chair*, Model #OTG11655B (#0 66158 59689 5) identified as

1 exemplars of the type of products Defendants Foam & Fibre Company, Inc., Foamco  
2 Industries Corporation, Talmolder, Inc., and Valle Foam Industries, Inc. manufacture, shape,  
3 broker, distribute, import, sell and/or offer for sale in Plaintiff Laurence Vinocur's 60-Day  
4 Notice of Violation of Proposition 65;

5 c. Defendants Future Foam, Inc. and Ureblock, S.A. de C.V. manufacture,  
6 shape, broker, distribute, import, sell and/or offer for sale foam that contains TDCPP used as  
7 padding in upholstered ottomans including, but not limited to, the *Tulare Accent Ottoman*,  
8 #12076-106, #62654 identified as an exemplar of the type of products Future Foam, Inc. and  
9 Ureblock, S.A. de C.V. manufacture, shape, broker, distribute, import, sell and/or offer for  
10 sale in Plaintiff Peter Englander's 60-Day Notice of Violation of Proposition 65;

11 d. Defendants Flexible Foam Products, Inc. and Ohio Decorative Products, Inc.  
12 manufacture, shape, broker, distribute, import, sell and/or offer for sale foam that contains  
13 TDCPP used as padding in upholstered ottomans including, but not limited to, the *Bennett*  
14 *Ottoman*, #7330-44 identified as an exemplar of the type of products Defendants Flexible  
15 Foam Products, Inc. and Ohio Decorative Products, Inc. manufacture, shape, broker,  
16 distribute, import, sell and/or offer for sale in Plaintiff Peter Englander's 60-Day Notice of  
17 Violation of Proposition 65; and,

18 e. Defendant Mei Yuan Adornment of Bedroom manufactures, shapes, brokers,  
19 distributes, imports, sells and/or offers for sale padded upholstered children's ottomans  
20 containing TDCPP and TCEP including, but not limited to, the *Bubble Gum Chenille*  
21 *Upholstered Rocker & Ottoman with Slip Cover*, #103531/18633/39 identified as an  
22 exemplar of the type of products Defendant Mei Yuan Adornment of Bedroom manufactures,  
23 shapes, brokers, distributes, imports, sells, and /or offers for sale in Plaintiff Peter  
24 Englander's 60-Day Notice of Violation of Proposition 65.

25 All such TDCPP-containing and/or TCEP-containing foam, and consumer products manufactured  
26 with TDCPP-containing foam and/or TCEP-containing foam are collectively referred to hereinafter  
27 as "Products."

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1           17. Defendant Talmolder, Inc. (“Talmolder”) is a person in the course of doing business  
2 within the meaning of Health and Safety Code section 25249.11.

3           18. Defendant Valle Foam Industries, Inc. (“Valle”) is a person in the course of doing  
4 business within the meaning of Health and Safety Code section 25249.11.

5           19. Defendant Future Foam, Inc. (“Future”) is a person in the course of doing business  
6 within the meaning of Health and Safety Code section 25249.11.

7           20. Defendant Ureblock, S.A. de C.V. (“Ureblock”) is a person in the course of doing  
8 business within the meaning of Health and Safety Code section 25249.11.

9           21. Defendant Flexible Foam Products, Inc. (“Flexible Foam”) is a person in the course  
10 of doing business within the meaning of Health and Safety Code section 25249.11.

11           22. Defendant Ohio Decorative Products, Inc. (“Ohio Decorative”) is a person in the  
12 course of doing business within the meaning of Health and Safety Code section 25249.11.

13           23. Defendant Mei Yuan Adornment of Bedroom (“Mei Yuan”) is a person in the course  
14 of doing business within the meaning of Health and Safety Code section 25249.11.

15           24. Defendants Abad, Pomona, Foam & Fibre, Foamco, Talmolder, Valle, Future Foam,  
16 Ureblock, Flexible Foam, Ohio Decorative, and Mei Yuan manufacture, shape, broker, distribute,  
17 sell, and/or offer the Products for sale or use in the State of California, or they imply by their  
18 conduct that they manufacture, shape, broker, distribute, sell, and/or offer the Products for sale or  
19 use in the State of California.

20           25. Defendant DOES 1-150 are each persons in the course of doing business within the  
21 meaning of Health and Safety Code Section 25249.11(b), that manufacture, distribute, sell, and/or  
22 offer the Products for sale in the State of California. At this time, the true names and capacities of  
23 defendants DOES 1 through 150, inclusive, are unknown to plaintiffs, who, therefore, sue said  
24 defendants by their fictitious names pursuant to Code of Civil Procedure section 474. Plaintiffs are  
25 informed and believe, and on that basis allege, that each of the fictitiously named defendants is  
26 responsible for the acts and occurrences alleged herein. When ascertained, their true names and  
27 capacities shall be reflected in an amended complaint.

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1           32. Proposition 65 states, “No person in the course of doing business shall knowingly and  
2 intentionally expose any individual to a chemical known to the state to cause cancer or reproductive  
3 toxicity without first giving clear and reasonable warning to such individual . . .” (Health & Safety  
4 Code § 25249.6.)

5           33. On May 3, 2013, Plaintiff Peter Englander served a 60-Day Notice of Violation  
6 (“Notice”), together with the requisite certificate of merit, on Mei Yuan, and certain public  
7 enforcement agencies stating that, as a result of Mei Yuan’s sales of the Products containing  
8 TDCPP and/or TCEP, purchasers and users in the State of California are being exposed to these  
9 Proposition 65-listed chemicals from reasonably foreseeable uses of the Products, without the  
10 individual purchasers and users first having been provided with the “clear and reasonable warning”  
11 required by Proposition 65.

12           34. On June 14, 2013, Plaintiff Laurence Vinocur served a 60-Day Notice of Violation  
13 (“Notice”), together with the requisite certificate of merit, on Defendants Abad Foam, Pomona,  
14 Foam & Fibre, Foamco, Talmolder, Valle, and certain public enforcement agencies stating that, as a  
15 result of Defendants’ sales of the Products containing TDCPP, purchasers and users in the State of  
16 California are being exposed to this Proposition 65-listed chemical from reasonably foreseeable  
17 uses of the Products, without the individual purchasers and users first having been provided with  
18 the “clear and reasonable warning” required by Proposition 65.

19           35. On June 14, 2013, Plaintiff Peter Englander served a Notice, together with the  
20 requisite certificate of merit, on Defendants Future Foam, Ureblock, Flexible Foam, Ohio  
21 Decorative , and certain public enforcement agencies stating that, as a result of Defendants’ sales of  
22 the Products containing TDCPP, purchasers and users in the State of California are being exposed  
23 to this Proposition 65-listed chemical from reasonably foreseeable uses of the Products, without the  
24 individual purchasers and users first having been provided with the “clear and reasonable warning”  
25 required by Proposition 65.

26           36. Defendants have engaged in the manufacture, shaping, importation, brokering,  
27 distribution, sale, and offering of the Products for sale or use in violation of Health and Safety Code  
28 section 25249.6, and Defendants’ violations have continued to occur beyond their receipt of



1 plaintiffs' Notices. As such, Defendants' violations are ongoing and continuous in nature, and will  
2 continue to occur in the future. After receiving plaintiffs' Notices, the appropriate public  
3 enforcement agencies have failed to commence and diligently prosecute a cause of action against  
4 Defendants under Proposition 65.

5 37. The Products manufactured, imported, shaped, brokered, distributed, sold, and  
6 offered for sale or use in California by Defendants cause exposures to TDCPP and/or TCEP that are  
7 not exempt from the "clear and reasonable" warning requirements of Proposition 65.

8 38. Defendants knew or should have known that the Products they manufacture, import,  
9 shape, broker, distribute, sell, and offer for sale or use in the State of California contain TDCPP  
10 and/or TCEP.

11 39. TDCPP and/or TCEP are present in or on the Products in such a way as to expose  
12 individuals to the chemicals through dermal contact, ingestion, and/or inhalation during reasonably  
13 foreseeable uses of the Products.

14 40. The normal and reasonably foreseeable uses of the Products have caused, and  
15 continue to cause, consumer exposures and workplace exposures to TDCPP and/or TCEP, as such  
16 exposures are defined by Title 27 of the California Code of Regulations, section 25602(b).

17 41. Defendants have knowledge that the normal and reasonably foreseeable uses of the  
18 Products expose individuals to TDCPP and/or TCEP through dermal contact, ingestion, and/or  
19 inhalation.

20 42. Defendants intended that such exposures to TDCPP and/or TCEP from the reasonably  
21 foreseeable uses of the Products would occur by Defendants' deliberate, non-accidental  
22 participation in the manufacture, shaping, importation, brokering, distribution, sale, and offering of  
23 the Products for sale or use to individuals in the State of California.

24 43. Defendants failed to provide a "clear and reasonable warning" to those consumers  
25 and other individuals in the State of California who were or who would become exposed to TDCPP  
26 and/or TCEP through dermal contact, ingestion, and/or inhalation during the reasonably foreseeable  
27 uses of the Products.

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