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SAN FRANCISCO COUNTY  
SUPERIOR COURT

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CLERK OF THE COURT

BY: \_\_\_\_\_ DEPUTY CLERK Deborah Stepp

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WHITNEY R. LEEMAN, PH.D.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO  
11 UNLIMITED CIVIL JURISDICTION

CGC-14-538060

14 WHITNEY R. LEEMAN, PH.D.,

15 Plaintiff,

16 v.

17 TAKKT AMERICA HOLDING, INC.;  
18 NATIONAL BUSINESS FURNITURE, LLC;  
19 K + K AMERICA CORPORATION.; and  
DOES 1-150, inclusive,

20 Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff WHITNEY R.  
3 LEEMAN, PH.D. in the public interest of the citizens of the State of California to enforce the  
4 People’s right to be informed of the health hazards caused by exposures to di(2-  
5 ethylhexyl)phthalate (“DEHP”), a toxic chemical found in the vinyl/PVC upholstery of chairs  
6 sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
8 consumers, citizens, and other individuals in California about the risks of exposure to DEHP  
9 which is present in the vinyl/PVC upholstery of chairs manufactured, distributed, and offered  
10 for sale and use to consumers and other individuals throughout California.

11 3. Detectable levels of DEHP are commonly found in the vinyl/PVC upholstery of  
12 the chairs that defendants manufacture, distribute, sell and offer for sale to consumers and other  
13 individuals throughout California.

14 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
15 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of  
16 doing business shall knowingly and intentionally expose any individual to a chemical known to  
17 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
18 warning to such individual . . . .” Health & Safety Code § 25249.6.

19 5. On October 24, 2003, California identified and listed DEHP pursuant to  
20 Proposition 65 as a chemical known to cause birth defects or other reproductive harm. DEHP  
21 became subject to the “clear and reasonable warning” requirement of the act one year later on  
22 October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
23 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

24 6. Defendants manufacture, distribute, import, sell, and offer for sale without  
25 warning in California, chairs with vinyl/PVC upholstery containing the LISTED CHEMICAL,  
26 including, but not limited to, the *Sterling High-Back Chair, Model #42157, #000837*. All such  
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1 chairs with vinyl/PVC upholstery containing DEHP are referred to collectively hereinafter as  
2 the “PRODUCTS.”

3 7. Defendants’ failure to warn consumers, workers and other individuals in  
4 California about the health hazards associated with exposures to the LISTED CHEMICAL, in  
5 conjunction with defendants’ sales of the PRODUCTS are violations of Proposition 65, and  
6 subject defendants, and each of them, to enjoinder of such conduct as well as civil penalties  
7 for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

8 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and  
9 permanent injunctive relief to compel defendants to provide purchasers or users of the  
10 PRODUCTS with the required warning regarding the health hazards associated with exposures  
11 to the LISTED CHEMICAL. Health & Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil  
13 penalties against defendants, and each of them, for their violations of Proposition 65.

14 **PARTIES**

15 10. Plaintiff WHITNEY R. LEEMAN, PH.D. is a citizen of the State of California  
16 who is dedicated to protecting the health of California citizens through the elimination or  
17 reduction of toxic exposures from consumer products; she brings this action in the public  
18 interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant TAKKT AMERICA HOLDING, INC. (“TAKKT”) is a person in the  
20 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
21 25249.11.

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

25 13. Defendant NATIONAL BUSINESS FURNITURE, LLC (“NATIONAL  
26 BUSINESS”) is a person in the course of doing business within the meaning of Health and  
27 Safety Code sections 25249.6 and 25249.11.

1           14. NATIONAL BUSINESS manufactures, imports, distributes, sells, and/or offers  
2 the PRODUCTS for sale or use in California, or it implies by its conduct that it manufactures,  
3 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

4           15. Defendant K + K AMERICA CORPORATION (“K + K AMERICA”) is a person  
5 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
6 and 25249.11.

7           16. K + K AMERICA manufactures, imports, distributes, sells, and/or offers the  
8 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it  
9 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
10 State of California.

11           17. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
12 person in the course of doing business within the meaning of Health and Safety Code sections  
13 25249.6 and 25249.11.

14           18. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
15 and manufacture, or they imply by their conduct that they research, test, design, assemble,  
16 fabricate, and manufacture one or more of the PRODUCTS offered for sale or use in the State  
17 of California.

18           19. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
19 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
20 and 25249.11.

21           20. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
22 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
23 in the State of California.

24           21. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
25 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
26 and 25249.11.



1 **FIRST CAUSE OF ACTION**

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

3 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
4 Paragraphs 1 through 27, inclusive.

5 29. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
6 Enforcement Act of 1986, the People of California expressly declare their right “[t]o be  
7 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
8 harm.”

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

13 31. On December 13, 2013, plaintiff served a sixty-day notice of violation, together  
14 with the requisite certificate of merit, on TAKKT, NATIONAL BUSINESS, K + K AMERICA,  
15 and certain requisite public enforcement agencies alleging that, as a result of DEFENDANTS’  
16 sales of the PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State  
17 of California were being exposed to the LISTED CHEMICAL resulting from their reasonably  
18 foreseeable use of the PRODUCTS, without the individual purchasers and users first having  
19 been provided with a “clear and reasonable warning” regarding the harms associated with such  
20 exposures, as required by Proposition 65.

21 32. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
22 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’  
23 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.  
24 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, unless enjoined  
25 will continue in the future.

26 33. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate  
27 public enforcement agencies have commenced and diligently prosecuted a cause of action  
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1 against DEFENDANTS to enforce the alleged violations of Proposition 65 that are the subject  
2 of plaintiff's notice of violation.

3 34. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
4 offer for sale or use in California, cause exposures to the LISTED CHEMICAL as a result of the  
5 reasonably foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and  
6 endured by consumers and other individuals in California are not exempt from the "clear and  
7 reasonable" warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

8 35. DEFENDANTS have knowledge that the PRODUCTS they manufacture, import,  
9 distribute, sell, and offer for sale in California contain the LISTED CHEMICAL.

10 36. The LISTED CHEMICAL is present on the PRODUCTS in such a way as to  
11 expose individuals through dermal contact, inhalation, and/or ingestion during reasonably  
12 foreseeable use.

13 37. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
14 continues to cause, consumer exposures to the LISTED CHEMICAL, as defined by title 27 of  
15 the California Code of Regulations, section 25602(b).

16 38. DEFENDANTS have knowledge that the normal and reasonably foreseeable use  
17 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact,  
18 inhalation, and/or ingestion.

19 39. DEFENDANTS intend that exposures to the LISTED CHEMICAL from the  
20 reasonably foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental  
21 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS  
22 for sale or use to consumers and other individuals in California.

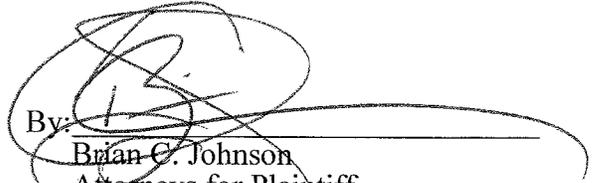
23 40. DEFENDANTS have failed to provide a "clear and reasonable warning" to those  
24 consumers and other individuals in California who are or who will be exposed to the LISTED  
25 CHEMICAL through dermal contact, inhalation, and/or ingestion resulting from their  
26 reasonably foreseeable uses of the PRODUCTS.  
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1           4.     That the Court grant such other and further relief as may be just and proper.

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3     Dated: March 18, 2014

Respectfully Submitted,  
THE CHANLER GROUP

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6           By:   
7           Brian C. Johnson  
8           Attorneys for Plaintiff  
9           WHITNEY R. LEEMAN, PH.D.

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