

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

#### Tris(1,3-dichloro-2-propyl) Phosphate ("TDCPP") in Foam-Cushioned Upholstered Furniture

January 15, 2013

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice of Violation is provided by the Center for Environmental Health ("CEH"), 2201 Broadway, Suite 302, Oakland, CA 94612, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices. Charlie Pizarro is the Associate Director of and a responsible individual within CEH.

#### **Description of Violation:**

- Violators: The names and addresses of the violators are listed on the attached Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least October 28, 2012, and are continuing to this day.
- Provision of Proposition 65: This Notice of Violation covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The name of the listed chemical involved in these violations is tris(1,3-dichloro-2-propyl) phosphate ("TDCPP"). Exposures to TDCPP occur from use of the products identified in this Notice.
- Type of Products: The specific type of products causing this violation is Foam-Cushioned Upholstered Furniture. Non-exclusive examples of this specific type of products are listed on the attached Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to TDCPP. Use of the products identified in this Notice results in human exposures to TDCPP. The products contain TDCPP, particularly in the foam-padded portions that have been treated with TDCPP as a flame retardant. The routes of exposure for the violations include inhalation, ingestion, and/or dermal absorption by consumers (including children). Inhalation occurs when TDCPP is released from the products into the ambient environment. Ingestion and dermal absorption occur when TDCPP from the products accumulates in ambient particles (e.g., dust) that are subsequently touched by consumers (including children) and brought into contact with the mouth. No clear and reasonable warning is provided with these products regarding the carcinogenic hazards of

TDCPP.

**Resolution of Noticed Claims:**

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against each of the alleged violators unless such violator agrees in a binding written instrument to: (1) recall products already sold; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the TDCPP exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If any of the alleged violators is interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact CEH through its counsel identified below. It should be noted that CEH cannot: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

Please direct any inquiries regarding this Notice to CEH through its counsel Mark N. Todzo (mtodzo at lexlawgroup.com) at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800.

**EXHIBIT 1**  
**January 15, 2013 Notice of Violation**  
**Tris(1,3-dichloro-2-propyl) Phosphate in Foam-Cushioned Upholstered Furniture**

Names and Addresses of Responsible Parties	Non-Exclusive Examples of the Products	Item or SKU # or Further Description
<b>Ameriwood Industries, Inc.</b> 410 East First Street South Wright City, MO 63390	Mainstays Faux Leather Futon in Rich Black	UPC No. 0-29986-31912-8 SKU No. MS12-021-003-11
<b>Dorel Asia Inc.</b> 410 East First Street South Wright City, MO 63390	Better Homes and Gardens Deluxe Recliner in Chocolate	UPC No. 0-65857-15045-2 SKU No. BH-11-084-001-09
<b>Dorel Industries Inc.</b> 1255 Greene Avenue Suite 300 Montreal, Quebec Canada H3Z 2A4	Mainstays Faux Leather Futon in Rich Black	UPC No. 0-29986-31912-8 SKU No. MS12-021-003-11
	Better Homes and Gardens Deluxe Recliner in Chocolate	UPC No. 0-65857-15045-2 SKU No. BH-11-084-001-09
<b>Kinfine U.S.A. Inc.<sup>1</sup></b> 13824 Yorba Avenue Chino, CA 91710-5518	Threshold Tufted Ottoman in Faux Leather	UPC No. 6-55258-81933-3 SKU No. 249-12-1626
<b>Kmart Corporation</b> 3333 Beverly Road Hoffman Estates, IL 60179	Jaclyn Smith Rocker Recliner in Chocolate Faux Leather	UPC No. 0-22113-07379-5 Model No. 07-2238
<b>Largo International, Inc.</b> 9540 Clay Road Houston, TX 77080	Jaclyn Smith Rocker Recliner in Chocolate Faux Leather	UPC No. 0-22113-07379-5 Model No. 07-2238

Names and Addresses of Responsible Parties	Non-Exclusive Examples of the Products	Item or SKU # or Further Description
<b>Wal-Mart Stores, Inc.</b> 702 SW 8th Street Bentonville AR 72716	Mainstays Faux Leather Futon in Rich Black	UPC No. 0-29986-31912-8 SKU No. MS12-021-003-11
	Better Homes and Gardens Deluxe Recliner in Chocolate	UPC No. 0-65857-15045-2 SKU No. BH-11-084-001-09

<sup>1</sup> The violations alleged against vendor Kinfine U.S.A. Inc. were initially noticed by CEH on December 6, 2012 against the retailer of the same non-exclusive exemplar identified herein, based on the same factual information referenced in the attached Certificate of Merit. See AG Number 2012-00797.

## PROOF OF SERVICE BY MAIL AND ELECTRONIC MAIL

I declare that:

I am employed in San Francisco County, California; my business address is 503 Divisadero Street, San Francisco, California 94117. I am over the age of 18 years and not a party to the within cause and my electronic notification address is [cfisher@lexlawgroup.com](mailto:cfisher@lexlawgroup.com).

On January 15, 2013, I served true copies of the following documents:

**NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT;**

**CERTIFICATE OF MERIT; and**

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an asterisk).

On this date, I deposited fully prepaid and sealed envelopes containing the above-mentioned documents with the United States Postal Service, addressed to the following individuals:

***Please see attached service list.***

Also on this date, I transmitted via electronic mail the documents listed above to the electronic mail addresses set forth below at 2:16 p.m. on January 15, 2013:

Lon Wixson, Deputy District  
Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
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[epu@da.sccgov.org](mailto:epu@da.sccgov.org)

Birgit Fladager, District Attorney  
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Modesto, CA 95354  
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931 Parkway Mall  
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600 Administration Drive, Rm. 212J  
Santa Rosa, CA 95403  
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Paul E. Zellerbach, District Attorney  
Riverside County  
4075 Main Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on January 15, 2013, at San Francisco, California.

Signed:   
Casey Fisher

**CERTIFICATE OF MERIT**  
**Health & Safety Code § 25249.7(d)**

I, Mark N. Todzo, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice have violated Health & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.

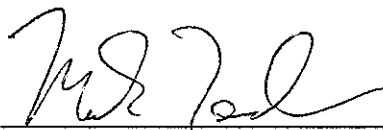
2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

3. Members of my firm and I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposures to the listed chemical that is the subject of the action.

4. Based on the information obtained through those consultations, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violators will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of the Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code § 25249.7(h)(2), i.e. (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

January 15, 2013



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Mark N. Todzo  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

## SERVICE LIST

District Attorney of Alameda County  
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City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113

California Attorney General's Office  
Attention: Proposition 65  
Coordinator and Robert Thomas  
1515 Clay Street, Ste. 2000  
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Oakland, CA 94612-0550

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