

# SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)

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**DATE:** June 19, 2013

**TO:** Carlos Alberini, Chief Executive Officer – Restoration Hardware, Inc.  
California Attorney General’s Office;  
District Attorney’s Office for 58 Counties; and  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles

**FROM:** Peter Englander

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## I. INTRODUCTION

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My name is Peter Englander. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the public agencies listed above pursuant to California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”) and supplements the 60-Day Notice of Violation sent on January 28, 2013. As noted above, notice is also being provided to the alleged violator, Restoration Hardware, Inc. (the “Violator”). The violations covered by this Notice consist of the product exposures, routes of exposure, and types of harm potentially resulting from exposure to the toxic chemicals (“listed chemicals”) identified below, as follows:

Product Exposure: See Section VII. Exhibit A  
Listed Chemicals: Tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”);  
Tris(2-chloroethyl) phosphate (“TCEP”);  
Di(2-ethylhexyl)phthalate (“DEHP”)  
Routes of Exposure: Ingestion, Dermal, Inhalation  
Types of Harm: Cancer; Birth Defects and Other Reproductive Harm

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## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

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The specific types of products that are causing consumer and occupational exposures in violation of Proposition 65, and that are covered by this Notice, are listed under “Product Category/Type” in Exhibit A in Section VII below. All products within the types covered by this Notice shall be referred to hereinafter as the “products.” Exposures to the listed chemicals from the use of the products have been occurring without clear and reasonable warnings as required by Proposition 65, dating as far back as October 28, 2012 (for TDCPP) and June 19, 2010 (for TCEP and DEHP). Without proper warnings regarding the toxic effects of exposure to the listed chemicals resulting from contact with the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemicals from the reasonably foreseeable use of the products.

#### **A. CONSUMER PRODUCT EXPOSURE (TDCPP & TCEP)**

California citizens, including infants and children, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemicals. California citizens, including infants and children, ingest the listed chemicals when they, among other activities, touch the products, and transfer the listed chemicals from the products to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the products stops. California citizens, including infants and children, are exposed to the listed chemicals through direct dermal contact when they, among other activities, handle, touch or otherwise use the products. California citizens, including infants and children, inhale the listed chemicals when, among other activities, they breathe indoor air with airborne particles that are released from the products containing the listed chemicals.

#### **B. CONSUMER PRODUCT EXPOSURE (DEHP)**

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. Women of childbearing age ingest the listed chemical when they, among other activities, touch the products and transfer the listed chemical from the products to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the products stops. Women of childbearing age are exposed to the listed chemical through direct dermal contact when they, among other activities, handle, touch or otherwise use the products. Women of childbearing age inhale the listed chemical when, among other activities, they breathe indoor air with airborne particles that are released from the products containing the listed chemical.

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### **III. CONTACT INFORMATION**

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Please direct all questions concerning this notice to me through my counsel's office at the following address:

Peter Englander  
c/o Josh Voorhees  
The Chanler Group  
Parker Plaza  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710  
Telephone: (510) 848-8880

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### **IV. PROPOSITION 65 INFORMATION**

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For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

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**V. RESOLUTION OF NOTICED CLAIMS**

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Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code § 25249.7(b). If the alleged Violator is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel nor I can: (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 this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

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**VI. ADDITIONAL NOTICE INFORMATION**

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Identified below are specific examples of products recently purchased and witnessed as being available for purchase or use in California that are within the categories or types of offending products covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the examples within the categories or types of products are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 “clear and reasonable warnings” at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the internet and/or via a catalog by the Violator.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Neoclassical Rondelle Tufted Stool, SKU #57390508BRLP (#4 57395 09000 8)	Restoration Hardware, Inc. Placer County, Northern California	
Changing Pad, Item# 102954 WHI (#4 89050 01000 7)	Restoration Hardware, Inc. ( <a href="http://www.rhbabyandchild.com">http://www.rhbabyandchild.com</a> )	
Clear Vinyl Shower Curtain Liner, Item# 100835 CLR (#4 84230 04000 3)	Restoration Hardware, Inc. ( <a href="http://www.rhbabyandchild.com">http://www.rhbabyandchild.com</a> )	

**VII. EXHIBIT A**

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Upholstered Stools with Foam Padding containing Tris(1,3-dichloro-2-propyl) phosphate	Neoclassical Rondelle Tufted Stool, SKU #57390508BRLP (#4 57395 09000 8)	Tris(1,3-dichloro-2-propyl) phosphate
Changing Pads with Foam Padding containing Tris(1,3-dichloro-2-propyl) phosphate	Changing Pad, Item# 102954 WHT (#4 89050 01000 7)	Tris(1,3-dichloro-2-propyl) phosphate
Changing Pads with Foam Padding containing Tris(2-chloroethyl) phosphate	Changing Pad, Item# 102954 WHT (#4 89050 01000 7)	Tris(2-chloroethyl) phosphate
Vinyl/PVC Shower Curtains containing Di(2-ethylhexyl)phthalate	Clear Vinyl Shower Curtain Liner, Item# 100835 CLR (#4 84230 04000 3)	Di(2-ethylhexyl)phthalate

\*The specifically identified examples of the types of products that are subject to this Notice are for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemicals from other items within the product categories/types listed in Exhibit A. It is important to note that these examples are not meant to be an exhaustive or comprehensive identification of each specific offending product of the types listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the types or categories described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

# PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am over the age of 18 years, and not a party to the within action; my business address is Parker Plaza, 2560 Ninth Street, Suite 214, Berkeley, CA 94710.

On June 19, 2013, I served the following documents:

**SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d);**

**PROPOSITION 65: A SUMMARY;**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)**

on the entity listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such envelope to a United States Postal Service Representative:

Carlos Alberini, Chief Executive Officer  
Restoration Hardware, Inc.  
15 Koch Road, Suite J  
Corte Madera, CA 94925

as well as by providing copies of the above documents electronically uploaded to the public enforcers according to directions from their respective offices, and/or by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Electronically Uploaded to the Attorney General's website, and sent 2<sup>nd</sup> Day Air Service by placing such envelope in a Federal Express Drop-Off Box:</i>	The Attorney General of the State of California;
<i>By placing each envelope in a United States Postal Service mailbox, postage prepaid:</i>	The District Attorney for Each of the 58 counties in California; and  The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento

*A list of addresses for each of these recipients is attached.*

Executed on June 19, 2013, at Berkeley, California.



Caroline Liang

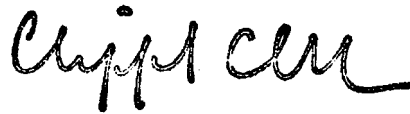
# CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Clifford A. Chanler, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health and Safety Code § 25249.6 by failing to provide clear and reasonable warnings;
2. I am the attorney for the noticing party;
3. 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 *alleged* exposure to the listed chemicals that is the subject of this action;
4. Based on the information obtained through those consultations, and on all 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 Violator will be able to establish any of the affirmative defenses set forth in the statute;
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and 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).

Dated: June 19, 2013



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Clifford A. Chanler