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11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
12 COUNTY OF SACRAMENTO

13 CHEMTURA CORPORATION, a Delaware
14 corporation,

15 Petitioner and Plaintiff,

16 vs.

17 DENISE D. BROWN et al.,

18 Respondents and Defendants,

19 and

20 CALIFORNIA PROFESSIONAL FIREFIGHTERS,
21 CENTER FOR ENVIRONMENTAL HEALTH,
22 FRIENDS OF THE EARTH, NATURAL
23 RESOURCES DEFENSE COUNCIL, and
24 PHYSICIANS FOR SOCIAL RESPONSIBILITY –
25 LOS ANGELES

26 Proposed Intervenors.

) Case No.: 34-2014-80001731

) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) MOTION TO INTERVENE

) Date: May 16, 2014

) Time: 9:00 a.m.

) Dept: 31

) Judge: Michael P. Kenny

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10 Cal. Bus. & Prof. Code § 191611

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13 Code Civ. Proc. § 387(b)5, 8, 11, 13

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1 **SUMMARY OF ARGUMENT**

2 In November 2013, California’s Bureau of Electronic and Appliance Repair, Home
3 Furnishings and Thermal Insulation (the “Bureau”) revised the state’s furniture flammability
4 standard to better protect against furniture fires caused by contact with smoldering items, such as
5 cigarettes. The revised standard has the additional beneficial effect of reducing the need for toxic
6 flame retardant chemicals in upholstered furniture. Chemtura Corporation (“Chemtura”), one of the
7 leading manufacturers of chemical flame retardants, now seeks to overturn the revised and improved
8 standard, proclaiming a concern for public welfare.

9 California Professional Firefighters, Center for Environmental Health, Friends of the Earth,
10 Natural Resources Defense Council, and Physicians for Social Responsibility – Los Angeles,
11 (collectively, “Firefighters”) are organizations dedicated to promoting fire safety and to protecting
12 human and environmental health. To this end, they have long advocated for robust flammability
13 standards that are effective against the most common causes of furniture fires, and for common sense
14 measures that reduce the need for toxic flame retardants. Firefighters actively supported the
15 Bureau’s efforts to revise California’s furniture flammability standard, because the revised standard
16 advances fire safety and is more health protective.

17 Firefighters seek to intervene as respondents and defendants in this litigation in furtherance
18 of their missions to improve fire safety and public health. If Firefighters are unable to participate in
19 the litigation, they will be forced to remain on the sidelines while a regulation they worked long and
20 hard to achieve is challenged. In the event the new standard is overturned, members of Firefighters
21 – professional firefighters and residents of California – would be placed at greater risk from furniture
22 fires and exposure to flame retardant chemicals.

23 As set forth below, Firefighters have met all the required criteria for intervention as a matter
24 of right and permissive intervention, and should be granted leave to intervene in this action.

25 **BACKGROUND**

26 California’s Home Furnishings and Thermal Insulation Act (the “Act”) requires all “seating
27 furniture” sold in California to be “fire retardant.” (Cal. Bus. & Prof. Code § 19161.) The Bureau is
28 responsible for issuing regulations to uphold the purposes of the Act. (Respondents’ Answer to

1 Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief
2 (“Answer”) at ¶23.)

3 The Bureau first promulgated regulations governing the flammability standards for seating
4 furniture in 1975. Those standards were set forth in Technical Bulletin 117 (“TB 117”), which
5 required manmade and natural furniture filling materials to pass an “open flame” test. (Verified
6 Petition for Writ of Mandate; Complaint for Declaratory and Injunctive Relief (“Complaint”) at ¶¶
7 10-14 and Exh. 3 thereto.) Under the open flame test, filling materials were exposed to an open
8 burner flame for a set period of time (generally 12 seconds for most types of filling) and evaluated
9 based on their ability to withstand the flame and charring from the flame. (*Ibid.*) To meet the
10 requirements of TB 117’s open flame test, manufacturers typically added flame retardant chemicals
11 to the materials used as filling. Since manufacturers are reluctant to incur the additional costs
12 associated with establishing different manufacturing processes for different states, most of the
13 furniture sold across the country was manufactured to meet the specifications of California’s TB
14 117. Indeed, some 74% of the couches purchased in the U.S. since 2005 contain the flame retardant
15 chemical chlorinated tris (TDCCP) or Chemtura’s trade mixture, “Firemaster 550.” (Decl. of Veena
16 Singla in Supp. of Mot. to Intervene (“Singla Decl.”) at ¶10.)

17 By focusing on furniture fires started by small open flames, TB 117 did not adequately
18 address the far greater fire safety risks posed by smoldering ignition sources. Most furniture fires
19 are ignited by smoldering sources, such as cigarettes, space heaters, and extension cords. According
20 to research conducted by the U.S. Department of Commerce, some 65 percent of upholstered
21 furniture fires are caused by cigarettes alone. (Vytenis Babrauskas, *et. al.*, *Fire Behavior of*
22 *Upholstered Furniture*, National Engineering Laboratory, Center for Fire Research, U.S. Department
23 of Commerce (Nov. 1985)(“Babrauskas”) at 1¹; see also Office of Governor Edmund G. Brown,
24 Press Release, “Governor Brown Announces New Standards to Reduce Toxic Chemicals in
25 Furniture” (Nov. 21, 2013); *available at* <http://gov.ca.gov/news.php?id=18301>.) By contrast, a
26 relatively small minority of upholstered furniture fires are caused by small open flames.

27
28 ¹ Department of Consumer Affairs, Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal
Insulation, Attachment 2 to Initial Statement of Reasons Regarding New Flammability Standards, *available at*
http://www.bhfti.ca.gov/about/laws/attach_2.pdf

1 (Babrauskas at 11.) The economic and social costs of furniture fires started by smoldering materials
2 are also far greater than those started by small open flames. The U.S. Consumer Product Safety
3 Commission estimates that the cost of deaths, injuries and property losses attributed to furniture fires
4 started by cigarettes alone is \$2.3 billion a year, while furniture fires ignited by small open flames
5 are responsible for just \$470 million a year in losses. (United States Consumer Product Safety
6 Commission, *Upholstered Furniture Flammability: Regulatory Options for Small Open Flame &*
7 *Smoking Material Ignited Fires* (Oct. 1997) (“USCPSC Report”) at 6.)²

8 In addition to failing to protect against the most common ignition source of furniture fires,
9 TB 117 also failed to slow fires that had already started. A growing body of research demonstrates
10 that after exposure to a smoldering ignition source, fires involving furniture treated with flame
11 retardants to meet TB 117 are no less severe than fires involving untreated furniture, and foam filling
12 treated with flame retardants burns more severely than untreated foam. (See Department of
13 Consumer Affairs, Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal
14 Insulation, Initial Statement of Reasons at 33; Final Statement of Reasons at 42; Letter from Eve
15 Gartner to Chief Tonya Blood (March 25, 2013) (“Firefighters’ Comment Letter”) at 3, attached as
16 Exhibit A to Decl. of Judy Levin in Support of Motion for Intervention (“Levin Decl.”), internal
17 citations omitted.) This is because TB 117 tested whether filling material can withstand a small
18 open flame, but it is the outer fabric cover of furniture, not the filling material, that is typically the
19 first component of furniture to encounter an ignition source. (Firefighters’ Comment Letter at 3.)
20 When a smoldering source causes the outer fabric cover to catch fire, it results in exposure of the
21 filling material to a large open flame, not a small one, and the TB 117 standard was ineffective in the
22 context of a large open flame. (*Ibid.*) Thus, the TB 117 standard, which Chemtura benefited from
23 financially and no doubt prefers, threatened the safety and welfare of the public in general and
24 Firefighters’ members in particular.

25 Not only was the TB 117 standard ineffective in protecting against furniture fires, when
26 flame retardant treated furniture burns, it poses risks to firefighters and anyone else inside the

27
28 ² Department of Consumer Affairs, Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal
Insulation, Attachment 4 to Initial Statement of Reasons Regarding New Flammability Standards, *available at*
http://www.bhfti.ca.gov/about/laws/attach_4.pdf

1 burning building. This occurs in two ways: (1) when furniture treated with flame retardants burns,
2 it results in the release of more carbon dioxide and soot than untreated furniture, posing acute
3 respiratory risks to firefighters and others in the vicinity of the burn site; and (2) when halogenated
4 flame retardants (the most prevalent type of flame retardant used to meet the TB 117 standard) burn,
5 they break down into dioxins and furans, which are carcinogenic and toxic in other ways. (See
6 USCPSC Report at 33; Decl. of Lou Paulson In Support of Motion to Intervene (“Paulson Decl.”) at
7 ¶6; Singla Decl. at ¶7.) Firefighters have increased burdens of flame retardants in their systems, far
8 more than the general population, and face a variety of health problems. (Paulson Decl. at ¶¶6-7;
9 Singla Decl. at ¶7.)

10 Even in the absence of a fire, the use of flame retardants in furniture presents serious health
11 concerns. An increasing body of scientific research has linked exposure to the chemical flame
12 retardants used in upholstered furniture to a host of adverse health effects, including reduced IQs in
13 children, reduced fertility, endocrine and thyroid disruption, changes in male hormone levels, and
14 impaired development. (Firefighters’ Letter at 6 (internal citations omitted); Singla Decl. at ¶9; see
15 also Chicago Tribune, “Playing With Fire”³). Flame retardants are not sealed into the furniture and
16 migrate readily into the surrounding environment. (Firefighters’ Letter at 4; Levin Decl. at ¶8.) As a
17 result, flame retardants are routinely found in household dust and indoor air (in amounts that can be
18 measured in pounds in most homes), where they are ingested by humans – especially children who
19 engage in frequent hand-to-mouth behavior. (Firefighters’ Letter at 4; Singla Decl. at ¶9.)
20 Wastewater transports the chemicals into the outdoor environment, where they have been detected in
21 surface waters, sediments and wildlife. (Firefighters’ Letter at 4.)

22 Recognizing TB 117’s many shortcomings, after many months of administrative proceedings
23 the Bureau issued a revised flammability standard on November 2, 2013. The Bureau’s revised
24 standard is set forth in “Technical Bulletin 117-2013,” titled “Requirements, Test Procedure and
25 Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture” (“TB
26 117-2013”). (Complaint at ¶¶ 22-49.) TB 117-2013 requires all components of upholstered
27 furniture – the upholstery cover material, the intermediate barrier material, and the filling material –

28 ³ Available at <http://media.apps.chicagotribune.com/flames/index.html>

1 to pass tests designed to evaluate their resistance to a smoldering ignition source. (TB 117-2013 at
2 1, attached as Exh. 2 to Complaint.) These new test procedures more closely mimic the conditions
3 responsible for causing most upholstered furniture fires. As an additional benefit, manufacturers
4 will be able to satisfy the new smolder test without using chemical flame retardants. Firefighters
5 applauded the Bureau's revised standard as better able to promote fire safety and reduce the risk of
6 exposure to toxic chemicals, and they submitted comment letters supporting TB 117-2013. (See
7 Firefighters' Letter at 1; Levin Decl. ¶6; Singla Decl. ¶6, Attachments A and B.)

8 On January 16, 2014, Chemtura filed this lawsuit against the Bureau challenging the revised
9 flammability standards contained in TB 117-2013. (Complaint at ¶¶ 22-49.) Chemtura contends
10 that the California Home Furnishings and Thermal Insulation Act requires the use of the "open
11 flame" test when evaluating fire safety in upholstered furniture. (Complaint at 1, ¶¶ 17-18, 22-49.)
12 Chemtura seeks a writ of mandate directing the Bureau to rescind TB 117-2013 and other relief.

13 ARGUMENT

14 Firefighters readily meet the requirements for both "intervention as a matter of right," and
15 "permissive" intervention. (Code Civ. Proc. § 387.) Allowing Firefighters to intervene and defend
16 regulations they worked hard to achieve and which better protect the health of their members will
17 fulfill the purposes of the intervention statute, which is intended to "protect the interests of others
18 who may be affected by the judgment and to obviate delay and multiplicity of actions." (*People ex*
19 *rel. Rominger v. County of Trinity* (1983) 147 Cal. App. 3d 655, 660.) When evaluating both
20 mandatory and permissive intervention, the criteria "should be liberally construed in favor of
21 intervention." (*Simpson Redwood Co. v. State of California* (1987) 196 Cal. App. 3d 1192, 1200).

22 **I. Firefighters Are Entitled to Intervene as a Matter of Right.**

23 Courts have recognized that California Code of Civil Procedure section 387(b) provides the
24 following test for intervention as a matter of right:

25 [If] the person seeking intervention claims an interest relating to the property or
26 transaction which is the subject of the action and that person is so situated that the
27 disposition of the action may as a practical matter impair or impede that person's
28 ability to protect that interest, unless that person's interest is adequately represented
by existing parties, the court shall, upon timely application, permit that person to
intervene.

1 (*Hodge v. Kirkpatrick* (2005) 130 Cal.App.4th 540, 548). As set forth below, Firefighters satisfy
2 each of these factors.

3 **A. Firefighters Have An Interest In Upholding the More Protective TB 117-2013**
4 **Standard.**

5 Chemtura has challenged the Bureau's revised furniture flammability standard, as set forth in
6 TB 117-2013. (See Complaint at 1, ¶¶17-18, 22-49). Firefighters have a strong interest in ensuring
7 that TB 117-2013 remains in place, since it provides significant improvements in fire safety, is more
8 protective of human and environmental health, and reflects years of advocacy.

9 Firefighters are a coalition of organizations dedicated to promoting fire safety and/or
10 protecting human and environmental health. (Declaration of Marcie Kever In Support of Motion to
11 Intervene ("Kever Decl.") at ¶3; Declaration of Martha Dina Arguello In Support of Motion to
12 Intervene ("Arguello Decl.") at ¶2; Levin Decl. at ¶3; Paulson Decl. at ¶3; Singla Decl. at ¶2.)
13 California Professional Firefighters is an organization dedicated to improving "the lives and working
14 conditions of career firefighters in California," and which furthers this mission by "legislative and
15 regulatory advocacy on behalf of its members in policy areas impacting public safety, such as
16 firefighter health and safety." (Paulson Decl. at ¶3). Center for Environmental Health works with
17 various sectors "to demand and support business practices that are safe for public health and the
18 environment." (Levin Decl. at ¶2). Friends of the Earth strives to "defend the environment and
19 create a more healthy and just world." (Kever Decl. at ¶3). Natural Resources Defense Council is
20 an environmental advocacy organization, dedicated to safeguarding the Earth and its people, and has
21 campaigned "to reform California's furniture flammability standards so that they provide greater
22 protection against the spread of furniture fires and do not drive the use of harmful flame retardant
23 chemicals." (Singla Decl. at ¶¶3-4). Physicians for Social Responsibility—Los Angeles aims "to
24 protect the public from environmental toxins, and to create solutions that improve the health and
25 environment for all Californians." (Arguello Decl. at ¶2).

26 Firefighters' aim is to better protect the health and safety of their members and constituents,
27 by encouraging development of a safer furniture flammability standard, which would protect against
28 the conditions leading to furniture fires, decrease the smoke and inhalation risks that occur once fires

1 are already underway, and reduce the use of toxic flame retardants. (Levin Decl. at ¶¶4-7, Paulson
2 Decl. at ¶¶4-7; Keever Decl. at ¶¶5-6; Singla Decl. at ¶¶4-6, 9; Arguello Decl. at ¶¶3-5.) They have
3 a strong interest in ensuring that firefighters face less dangerous fire-fighting conditions and are not
4 burdened with long-term health effects from performing their duties. (See Paulson Decl. at ¶¶4-7.)

5 Over the years, these groups have actively campaigned to reform California’s fire safety
6 standards. (See Levin Decl. at ¶¶3-6, Paulson Decl. at ¶¶3-8; Keever Decl. at ¶¶4-5; Singla Decl. at
7 ¶¶3-10; Arguello Decl. at ¶¶3-4.) Firefighters have undertaken various actions to achieve these
8 goals. Center for Environmental Health and Physicians for Social Responsibility led a coalition
9 titled “Californians for Toxic-Free Safety,” which urged the Bureau to reform the outdated furniture
10 flammability standard. (Levin Decl. at ¶5; Arguello Decl. at ¶3.) These groups have engaged with
11 various stakeholders, including manufacturers of consumer goods, and individual and institutional
12 purchasers of such goods, to shift away from flame retardant treated goods. (Levin Decl. at ¶¶3-6,
13 Singla Decl. at ¶¶3-10, Keever Decl. at ¶¶4-5; Paulson Decl. at ¶¶3-8; Arguello Decl. at ¶¶3-4.)
14 They have also sought to raise public awareness about the hazards posed by California’s old
15 flammability standard and its role in the use of flame retardant chemicals. (*Ibid.*) Firefighters have
16 engaged in legislative advocacy to reform the furniture flammability and other flammability
17 standards. (Levin Decl. at ¶¶5-6; Keever Decl. at ¶¶4-5; Paulson Decl. at ¶¶2, 8.) Representatives
18 from California Professional Firefighters have provided testimony to the California legislature on
19 flammability standards and the dangers of flame retardant use. (Paulson Decl. ¶2.)

20 Firefighters support the TB 117-2013 standard as better able to protect against furniture fires
21 and to protect the health of their members. (Levin Decl. at ¶¶4-7, Paulson Decl. at ¶¶4-7; Keever
22 Decl. at ¶¶5-6; Singla Decl. at ¶¶4-6, 9; Arguello Decl. at ¶¶3-5.) They seek to intervene in order to
23 defend a standard they have worked hard to achieve, and also to ensure the protection of the health
24 of their members and constituents. (Levin Decl. at ¶8, Paulson Decl. at ¶¶4, 9-10; Keever Decl. at
25 ¶¶6-7; Singla Decl. at ¶¶10-11; Arguello Decl. at ¶6.)

26 Firefighters’ organizational missions and well-documented support for TB 117-2013 provide
27 them with the requisite “interest relating to the property or transaction which is the subject of the
28 action.” (Cal. Civ. Proc. § 387(b)). Analogous organizational interests and involvement have

1 justified intervention as a matter of right in other cases challenging the government’s adoption of
2 new policies. (See e.g., *Idaho Farm Bureau Fed. v. Babbitt* (9th Cir. 1995) 58 F.3d 1392, 1397
3 (conservation group had interests entitling it to intervene as a matter of right “in an action
4 challenging the legality of a measure it has supported”); *California Dump Truck Owners Ass’n v.*
5 *Nichols* (E.D. Cal. 2011) 275 F.R.D. 303, 306-07 (NRDC’s interests in health of its members and in
6 upholding regulation it supported, justified intervention as a matter of right); *Yount v. Salazar* (D
7 Ariz. Apr. 20, 2012) No. CV-11-08171, 2012 WL 1378684, at *3 (environmental and tribal groups’
8 interests in health and defending legislation warranted intervention as of right); *Am. Farm Bureau*
9 *Fed. v. EPA* (M.D. Pa. 2011) 278 F.R.D. 98, 107 (environmental groups’ missions and efforts in
10 developing TMDLs justified intervention as of right))⁴.

11 Based on their desire to protect the health of their members and their efforts to reform the
12 flammability standard, Firefighters have shown that they have an interest in the subject matter of this
13 action, and should be granted leave to intervene as a matter of right.

14 **B. Firefighters’ Interests Will be Impaired If Chemtura Prevails in this Litigation.**

15 Parties seeking to intervene as a matter of right must also show that “disposition of the action
16 may as a practical matter impair and impede” their ability to protect their interests. (Cal. Civ. Proc.
17 § 387(b)). Intervention as a matter of right is appropriate here, since Firefighters “would be
18 substantially affected in a practical sense by the determination made in [the] action.” (*Citizens for*
19 *Balanced Use v. Montana Wilderness Ass’n* (9th Cir. 2011) 647 F.3d 893, 898 (internal citations
20 omitted)).

21 **1. If Chemtura Prevails, Firefighters’ Members Could Suffer Serious Injury**
22 **to Their Health and Safety.**

23 Firefighters’ members could face real health and safety risks if Chemtura is successful in this
24 litigation. First, the prior TB 117 standard failed to provide protection against smoldering ignition
25 sources, which are the leading cause of furniture fires. (Levin Decl. at ¶¶4-7, Paulson Decl. at ¶¶4-7;

26 ⁴ Cal. Civ. Proc. §387(b) “is in substance the exact counterpart to rule 24(a) of the Federal Rules of Civil Procedure,”
27 and “the Legislature must have intended that they should have the same meaning, force and effect as have been given the
28 federal rules by the federal courts.” (See *Siena Court Homeowners Ass’n v. Green Valley Corp.* (2008) 164 Cal. App.
4th 1416, 1423 (internal citations omitted). Thus, federal cases regarding intervention as a matter of right are appropriate
guides to intervention in state proceedings. (See *Hodge, supra*, 130 Cal. App. 4th at 556 (finding state intervention right
should be interpreted consistently with federal cases regarding insurers’ rights to intervention)).

1 Keever Decl. at ¶¶5-6; Singla Decl. at ¶¶4-6, 9; Arguello Decl. at ¶¶3-5.) TB 117-2013 thus
2 provides significant improvements in fire safety for members of the public and for firefighters:
3 “[b]y evaluating the smolder resistance of upholstered furniture, [TB 117-2013] better addresses
4 both how and where most upholstered furniture fires start,” (Singla Decl. at ¶6) and it is “more
5 effective than the preexisting standard at slowing the spread of furniture fires, making it safer and
6 simpler for firefighters to do their jobs.” (Paulson Decl. at ¶4).

7 Second, the TB 117 standard encouraged the use of flame retardants, and when treated
8 furniture burns, it produces more soot and carbon monoxide than untreated furniture, making fire
9 conditions more dangerous for firefighters and bystanders. Such a result is significant, since “the
10 majority of residential fire deaths result from inhalation of toxic gases, soot and smoke.” (Singla
11 Decl. at ¶7). Due to the soot and carbon monoxide produced by flame retardant-treated furniture
12 when it burns, “firefighters face more dangerous conditions when responding to fires, and are at
13 increased risk of suffering more severe skin and respiratory system burns and other injuries when
14 fighting these types of fires”. (Paulson Decl. at ¶4; Singla Decl. at ¶7).

15 Finally, flame retardant exposure, from fire incidents as well as daily exposure in the home,
16 can result in serious long-term health effects for members of the public and firefighters. (Paulson
17 Decl. at ¶7; Keever Decl. at ¶4; Levin Decl. at ¶7; Singla Decl. at ¶7). As many as one in three
18 firefighters are diagnosed with cancer, and many studies link firefighter exposures to flame
19 retardants and their combustion by-products with these adverse health outcomes. (Paulson Decl. at
20 ¶7; Singla Decl. at ¶7). Californians “have a significantly higher body burden” of flame retardants
21 than residents of other states, and such exposure has been linked to a range of adverse health effects,
22 from “reduced IQs in children, reduced fertility, disruption of the endocrine system and thyroid,
23 changes in male hormone levels, to impaired fetal development.” (Keever Decl. at ¶6; Levin Decl.
24 at ¶7; Singla Decl. at ¶7).

25 Where a proposed intervenor’s members are at risk of concrete injury, due to a matter
26 challenged in the litigation, courts have held that intervention is appropriate. In *Rominger*, for
27 example, the plaintiff challenged county ordinances restricting pesticide use. (147 Cal.App.3d at
28 658.) The Sierra Club was found to have an interest justifying permissive intervention, since it not

1 only supported the challenged ordinances, but also its members would suffer real harm if the
2 pesticide spraying regulated by the ordinances was allowed to resume. (*Ibid.* at 662-63.) As noted
3 by the court in *Rominger*:

4 Where a statute exists specifically to protect the public from a hazard to its health and
5 welfare that would allegedly occur without such statute, members of the public have a
6 substantial interest in the protection and benefit provided such statute. If a party
7 brings an action to invalidate such statute such action has an immediate and direct
8 effect on the public's interest in protecting its health and welfare.

9 (*Ibid.*) As outlined above, the firefighter groups, as well as the members and constituents of other
10 Firefighters, will suffer real harms if the improved TB 117-2013 standard is overturned, and
11 therefore meet this prong of the intervention standard.

12 **2. If Chemtura Prevails, Firefighters Would Have All Their Efforts In**
13 **Reforming the Furniture Flammability Standard Undone.**

14 Additionally, if Chemtura is successful in this lawsuit, the advances made by Firefighters in
15 achieving a more protective flammability standard will be undone.

16 Where non-profit organizations have actively worked to achieve a particular law or
17 regulation, and risk seeing their efforts undone, courts have found their interests would be impaired
18 and impeded. (See, e.g., *Yount, supra*, 2012 WL 1378684, at *3 (granting intervention to groups that
19 submitted comments and testified before Congress in support of agency action)); *California Dump*
20 *Truck Owners, supra*, 275 F.R.D. at 306-07 (NRDC granted intervention where it had attended
21 meetings with ARB staff, provided written comments and testimony, and engaged in other activities
22 leading to air quality regulations); *Idaho Farm Bureau, supra*, 58 F.3d at 1398 (conservation groups
23 granted intervention where they were active in petitioning for listing of endangered species); *Am.*
24 *Farm Bureau Fed., supra*, 278 F.R.D. at 107 (environmental groups allowed to intervene, since they
25 had provided comments regarding development of TMDLs and engaged in other activities to
26 improve water quality.) As in the preceding cases, Firefighters have been “directly involved in the
27 enactment of the law or in the administrative proceedings out of which the litigation arose.” (*Yount,*
28 *supra*, 2012 WL 1378684, at *3). They took an active role in the administrative process leading to
enactment of TB 117-2013, submitting comments in support of TB 117-2013, and providing

1 testimony regarding the importance of reforming furniture flammability standards. (Levin Decl. at
2 ¶¶3-6, Singla Decl. at ¶¶3-10, Keever Decl. at ¶¶4-5; Paulson Decl. ¶¶3-8; Arguello Decl. ¶¶3-4).

3 Additionally, where a law or regulation aligned with an organization’s mission and interests
4 is challenged, courts have found the requisite “impairment.” (See *Simpson, supra*, 196 Cal. App. 3d
5 at 1201 (group’s “purpose of conserving lands...in their natural state” justified intervention);
6 *Citizens for Balanced Use, supra*, 647 F.3d at 898 (granting intervention since interest in
7 “conserving and enjoying wilderness” could be impaired); *Sagebrush Rebellion, Inc. v. Watt* (9th
8 Cir. 1983) 713 F.2d 525, 528 (intervention granted where interests in species and habitat
9 preservation could be impaired)). Here, Firefighters are dedicated to promoting fire safety and
10 human health and, in addition to engaging in the administrative process leading to the promulgation
11 of TB 117-2013, have engaged in a range of activities to educate individual and institutional
12 consumers about the importance of reforming furniture flammability standards. (Levin Decl. at ¶3,
13 Paulson Decl. at ¶3; Singla Decl. at ¶2, Keever Decl. at ¶3; Arguello Decl. at ¶2). These interests
14 could be impaired if the litigation is conducted in their absence.

15 For all these foregoing reasons, disposition of this lawsuit in their absence will impair and
16 impede Firefighters’ ability to protect their interests.

17 **C. Firefighters’ Interests Cannot Be Adequately Represented By Either Chemtura**
18 **or the Bureau.**

19 Once a proposed intervenor has shown that it has an interest in the subject matter of an action
20 and that disposition of the action could impair or impede its ability to protect that interest, then
21 intervention must be permitted unless that person’s interest is adequately represented by existing
22 parties. (Cal. Civ. Proc. § 387(b)). A proposed intervenor need not prove with certainty that
23 representation by existing parties will be inadequate; rather, this prong of the intervention standard
24 will be satisfied “if the applicant shows that representation of his interest ‘may be’ inadequate; and
25 the burden of making that showing should be treated as minimal.” (*Lewis v. County of Sacramento*
26 (1990) 218 Cal. App. 3d 214, 219).

27 None of the other parties to the instant litigation will adequately represent the interests of
28 Firefighters. Chemtura is one of the leading manufacturers of flame retardants, and such, is

1 concerned with ensuring that its products remain in continued use, and stands at odds to the interests
2 of the Firefighters. (See Complaint at ¶¶3, 30.) The Bureau, in turn, administers the provisions of
3 the California Home Furnishings and Thermal Insulation Act and issued the revised flammability
4 regulations set forth in TB 117-2013. (Complaint at ¶¶4-6; Cal. Bus. & Prof. §§ 19000, *et. seq.*)
5 While the Bureau supports TB 117-2013, the Bureau must balance various interests, such as those of
6 consumers and businesses. It has stated that its vision is to serve as an agency that “effectively
7 protects consumers and improves the marketplace through excellent consumer service, prompt
8 registration, comprehensive education, and enforcement of the law.” (Cal. Bus. & Prof. § 19004.1;
9 http://www.bear.ca.gov/about_us/mission.shtml.)

10 Unlike the Bureau, Firefighters have specialized interests in protecting human health and
11 represent a particular sector of interests of the state’s population. California Professional
12 Firefighters, for example, are dedicated to improving “the lives and working conditions of career
13 firefighters in California.” (Paulson Decl. at ¶3.) Groups like the Center for Environmental Health
14 and Physicians for Social Responsibility have interests in working “to protect the public from
15 environmental toxins,” and focus their work on achieving those goals. (Arguello Decl. at ¶2; Levin
16 Decl. at ¶2). NRDC and Friends of the Earth are dedicated to protecting human and environmental
17 health, and have organizational initiatives to reform the furniture flammability standards. (Singla
18 Decl. at ¶¶2-4, Keever Decl. at ¶¶3-4.) None of the other parties represent these targeted interests.

19 Government agencies charged with representing a variety of interests have frequently been
20 found to be inadequate representatives of the specialized interests of advocacy groups. In *California*
21 *Dump Truck Owners*, the Air Resources Board (“ARB”) did not adequately represent intervenor
22 NRDC’s interests. The court in that case noted intervention was appropriate, since ARB must
23 balance “relevant environmental and health interests with competing resource constraints and the
24 interests of various constituencies,” while NRDC need not balance concerns about “economic
25 impact” against its targeted concerns “pertaining to health and environmental protections.” (275
26 F.R.D. at 308.) Likewise, in *Rominger*, the court allowed the Sierra Club to intervene – even though
27 the county was also concerned “with the protection of its residents” – noting that the Club’s
28 specialized interest “stems from their concern for their own health and well-being.” (147 Cal.

1 App.3d at 665; see also *U.S. Ecology, Inc. v. State of California* (2001)92 Cal. App. 4th 113, 139
2 (environmental groups had interest which would not be adequately represented by state, since state
3 had to balance economic concerns in litigation); *Bustop v. Superior Court* (1977) 69 Cal. App. 3d
4 66, 71 (holding that school district did not adequately represent interests of parent groups within
5 district); *Forest Conservation Council v. U.S. Forest Service* (9th Cir. 1995) 66 F.3d 1489, 1499
6 (noting “government must present the broad public interest”), *abrogated on other grounds*,
7 *Wilderness Soc. v. U.S. Forest Service* (9th Cir. 2011) 630 F.3d 1173; *In re Sierra Club* (4th Cir.
8 1991) 945 F.2d 776, 780 (intervention granted, since Sierra Club represented “subset of citizens
9 concerned with hazardous waste,” while agency represented all citizens of state, including those with
10 adverse interests to Sierra Club).

11 As in the cases cited above, the Bureau represents the interests of the public at large, and it
12 does not have the same focused and targeted interests as Firefighters. Only Firefighters are
13 dedicated to promoting fire safety and protecting human and environmental health, and only they
14 can properly assert these interests in this litigation. Thus, the interests of Firefighters are not
15 adequately represented by the other parties to the litigation, and they should be permitted to
16 intervene as a matter of right.

17 **D. Firefighters’ Motion to Intervene Is Timely.**

18 In order to be “timely,” the “right to intervene should be asserted within a reasonable time
19 and . . . the intervenor must not be guilty of an unreasonable delay after knowledge of the suit.”
20 (Cal. Civ. Proc. § 387(b); *Mar v. Sakti Internat. Corp.* (1992) 9 Cal. App. 4th 1780, 1785 (motion to
21 intervene timely when filed before conclusion of trial on the facts).)

22 Here, Firefighters’ motion to intervene is timely. Entering the lawsuit at this juncture will
23 not interfere with the timely prosecution of the litigation, since only Chemtura’s complaint and the
24 Bureau’s answer have been filed. (See *Citizens for Balanced Use, supra*, 647 F.3d at 897
25 (intervention timely, since intervention would not disrupt or delay proceedings).) Firefighters are
26 willing and able to abide by pretrial and hearing dates proposed by the other parties. (See
27 Stipulation and [Proposed] Order Re Briefing Scheduled, filed April 3, 2014).

1 **II. Firefighters Also Meet the Criteria for Permissive Intervention.**

2 This Court should also find that Firefighters meet the standard for permissive intervention,
3 since the Firefighters have timely filed their motion and have: “(1) a direct and immediate interest in
4 the action; (2) the intervention will not enlarge the issues in the litigation; and (3) the reasons for the
5 intervention outweigh any opposition by the parties presently in the action.” (Code Civ. Proc. §
6 387(a); *U.S. Ecology, supra*, 92 Cal. App. 4th at 139.)

7 Firefighters have dedicated themselves to achieving a more protective furniture flammability
8 standard, and would be adversely affected if that standard were rolled back. Allowing intervention
9 would meet the purposes of the intervention statute, which provides liberally for intervention in
10 order “to protect the interest of those who may be affected by the judgment and to obviate delay and
11 multiplicity of actions.” (*San Bernardino Cty. v. Harsh Cal. Corp.* (1959) 52 Cal.2d 341, 346).

12 As set forth above, Firefighters have direct and immediate interests in protecting the health
13 and safety of their members, and in defending a regulation they have worked hard to achieve, which
14 would be negatively impacted if Chemtura prevailed in this case. (Levin Decl. at ¶¶4-7, Paulson
15 Decl. at ¶¶4-7; Keever Decl. at ¶¶5-6; Singla Decl. at ¶¶4-6, 9; Arguello Decl. at ¶¶3-5.) Permissive
16 intervention has previously been granted when similar interests have been at play. (See *Rominger*,
17 147 Cal.App.3d at 662 (interest in defending ordinances protecting health and safety of members
18 justified intervention); *Simpson*, 196 Cal.App.3d at 1201 (group’s “purpose of conserving lands...in
19 their natural state” appropriate for intervention)).

20 Firefighters will not enlarge the issues in the litigation, since they seek to defend the
21 challenged regulations, and neither this motion for intervention nor their Proposed Answer in
22 Intervention would raise “new legal or factual issues to be decided by the trial court.” (Code Civ.
23 Proc. § 387(a); *Rominger, supra*, 147 Cal. App. 3d at 664). The relevant facts are contained in the
24 administrative record and are not in dispute. Furthermore, Firefighters will address the legal issues
25 that have already been framed by Chemtura’s complaint. Nothing indicates that Intervenors “will
26 prolong, confuse or disrupt the present lawsuit.” (See *Simpson, supra*, 196 Cal. App. 3d at 1203.)

27 Firefighters’ participation in the litigation would not interfere with the original parties’ ability
28 to “conduct their lawsuit on their own terms.” (*Rominger, supra*, 147 Cal.App.3d at 661). In

1 evaluating whether the interests of the original parties outweigh those of the proposed intervenors,
2 courts will look to whether intervention “would retard the principal suit, or require a reopening of
3 the case for further evidence, or delay the trial of the action, or change the position of the original
4 parties.” (*In re Marriage of Kerr* (1986) 185 Cal.App.3d 130, 134). As previously noted, the
5 participation of Firefighters in the litigation would not broaden the scope of the litigation, or
6 introduce undue delay into proceedings. Moreover, they have compelling reasons to take part in the
7 litigation to represent their interests and those of their members. As stated by the *Rominger* court,
8 “[a]ny argument that the parties should be permitted to litigate without the ‘interference’ of the very
9 people those ordinances were designed to protect is an unacceptable assertion of bureaucratic
10 dominion and control to the exclusion of the citizenry.” (147 Cal. App. 3d at 665.)

11 **CONCLUSION**

12 For the foregoing reasons, Firefighters respectfully request that the Court grant their motion
13 to intervene.

14 Respectfully submitted,

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