

ENDORSED
FILED
ALAMEDA COUNTY

MAR 26 2013

CLERK OF THE SUPERIOR COURT
BY Esther Coleman DEPUTY

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF ALAMEDA
15 UNLIMITED CIVIL JURISDICTION
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19 LAURENCE VINOCUR,

20 Plaintiff,

21 v.

22 EVENFLO COMPANY, INC.; and DOES 1-
23 150, inclusive,

24 Defendants.
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Case No. RG13673019

**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 LAURENCE
3 VINOCUR in the public interest of the citizens of the State of California to enforce the People’s
4 right to be informed of the presence of Tris(1,3-dichloroisopropyl) phosphate (“TDCPP”), a
5 toxic chemical found car seats with padding sold in California. TDCPP is a toxic chemical that
6 is used to treat polyurethane foam, which is used as padding or cushioning in a variety of
7 products.

8 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failures to
9 warn California citizens about the risk of exposure to TDCPP present in and on car seats with
10 padding manufactured, distributed, and offered for sale or use to consumers throughout the State
11 of California.

12 3. Detectable levels of TDCPP are commonly found in and on car seats with
13 padding that Defendants manufacture, distribute, and offer for sale to consumers, many of
14 whom are infants and children, throughout the State of California. Individuals in California,
15 including infants and children, are exposed to TDCPP when they inhale TDCPP released from
16 car seats with padding, and also when TDCPP from car seats with padding accumulates in
17 ambient particles that are subsequently touched by such individuals and brought into contact
18 with the mouth.

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

24 5. TDCPP has been used in consumer products as an additive flame retardant since
25 the 1960s. In the late 1970s, based on findings that exposure to TDCPP could have mutagenic
26 effects, the United States Consumer Product Safety Commission banned the use of TDCPP in
27 children’s pajamas.

1 toxic exposures from consumer products; and he brings this action in the public interest
2 pursuant to Health and Safety Code section 25249.7, subdivision (d).

3 12. Defendant EVENFLO COMPANY, INC. (“EVENFLO”) is a person in the course
4 of doing business within the meaning of Health and Safety Code section 25249.11.

5 13. EVENFLO manufactures, imports, distributes, sells, and/or offers the PRODUCTS
6 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
7 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

8 14. Defendants DOES 1-150 are each persons in the course of doing business within
9 the meaning of Health and Safety Code section 25249.11, subdivision (b), which manufacture,
10 distribute, sell, and/or offer the PRODUCTS for sale in the State of California. At this time, the
11 true names and capacities of defendants DOES 1 through 150, inclusive, are unknown to
12 Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to Code of Civil
13 Procedure section 474. Plaintiff is informed and believes, and on that basis alleges, that each of
14 the fictitiously named defendants is responsible for the acts and occurrences alleged herein.
15 When ascertained, their true names and capacities shall be reflected in an amended complaint.

16 15. EVENFLOW and Defendants DOES 1-150 are collectively referred to herein as
17 “Defendants.”

18 VENUE AND JURISDICTION

19 16. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
20 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
21 because Plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
22 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because
23 Defendants conducted, and continue to conduct, business in this county with respect to the
24 PRODUCTS.

25 17. The California Superior Court has jurisdiction over this action pursuant to
26 California Constitution, article VI, section 10, which grants the Superior Court “original
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1 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
2 which this action is brought does not specify any other basis of subject matter jurisdiction.

3 18. The California Superior Court has jurisdiction over Defendants based on
4 Plaintiff’s information and good faith belief that each Defendant is a person, firm, corporation
5 or association that is a citizen of the State of California, has sufficient minimum contacts in the
6 State of California, and/or otherwise purposefully avails itself of the California market.
7 Defendants’ purposeful availment of California as a marketplace for the PRODUCTS renders
8 the exercise of personal jurisdiction by California courts over Defendants consistent with
9 traditional notions of fair play and substantial justice.

10 **FIRST CAUSE OF ACTION**

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

12 19. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
13 Paragraphs 1 through 18, inclusive.

14 20. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
15 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
16 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
17 harm.”

18 21. Proposition 65 states, “[n]o person in the course of doing business shall
19 knowingly and intentionally expose any individual to a chemical known to the state to cause
20 cancer or reproductive toxicity without first giving clear and reasonable warning to such
21 individual” (Health & Saf. Code, § 25249.6.)

22 22. On December 28, 2012, Plaintiff’s sixty-day notice of violation, together with the
23 requisite certificate of merit, was provided to EVENFLO and certain public enforcement
24 agencies stating that, as a result of Defendants’ sales of the PRODUCTS containing the
25 LISTED CHEMICAL, purchasers and users in the State of California were being exposed to the
26 LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS,
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1 without the individual purchasers and users first having been provided with a “clear and
2 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

3 23. Defendants have engaged in the manufacture, importation, distribution, sale, and
4 offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
5 25249.6, and Defendants’ violations have continued to occur beyond their receipt of Plaintiff’s
6 sixty-day notice of violation. As such, Defendants’ violations are ongoing and continuous in
7 nature, and will continue to occur in the future.

8 24. After receiving Plaintiff’s sixty-day notice of violation, the appropriate public
9 enforcement agencies have failed to commence and diligently prosecute a cause of action
10 against Defendants under Proposition 65.

11 25. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
12 or use in California by Defendants contain the LISTED CHEMICAL such that they require a
13 “clear and reasonable” warning under Proposition 65.

14 26. Defendants knew or should have known that the PRODUCTS they manufacture,
15 import, distribute, sell, and offer for sale or use in California contain the LISTED CHEMICAL.

16 27. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
17 expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or
18 inhalation during reasonably foreseeable use of the PRODUCTS.

19 28. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
20 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
21 defined by California Code of Regulations, title 27, section 25602, subdivision (b).

22 29. Defendants had knowledge that the normal and reasonably foreseeable uses of the
23 PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact, ingestion,
24 and/or inhalation.

25 30. Defendants intended that such exposures to the LISTED CHEMICAL from the
26 reasonably foreseeable uses of the PRODUCTS would occur by Defendants’ deliberate, non-
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1 accidental participation in the manufacture, importation, distribution, sale, and offering of the
2 PRODUCTS for sale or use to individuals in the State of California.

3 31. Defendants failed to provide a “clear and reasonable warning” to those consumers
4 and other individuals in the State of California who were or who would become exposed to the
5 LISTED CHEMICAL through dermal contact, ingestion, and/or inhalation during the
6 reasonably foreseeable uses of the PRODUCTS.

7 32. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
8 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
9 contact, ingestion, and/or inhalation resulting from the reasonably foreseeable uses of the
10 PRODUCTS sold by Defendants without a “clear and reasonable warning,” have suffered, and
11 continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at
12 law.

13 33. Pursuant to Health and Safety Code section 25249.7, subdivision (b), as a
14 consequence of the above-described acts, Defendants are liable for a maximum civil penalty of
15 \$2,500 per day for each violation.

16 34. As a consequence of the above-described acts, Health and Safety Code
17 section 25249.7, subdivision (a) also specifically authorizes the Court to grant injunctive relief
18 against Defendants.

19 **PRAYER FOR RELIEF**

20 Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as
21 follows:

22 1. That the Court, pursuant to Health and Safety Code section 25249.7, subdivision
23 (b), assess civil penalties against Defendants in the amount of \$2,500 per day for each violation;

24 2. That the Court, pursuant to Health and Safety Code section 25249.7, subdivision
25 (a), preliminarily and permanently enjoin Defendants from manufacturing, distributing, or
26 offering the PRODUCTS for sale or use in California without first providing a “clear and
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1 reasonable warning” as defined by California Code of Regulations, title 27, section 25601 *et*
2 *seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

3 3. That the Court grant Plaintiff his reasonable attorneys’ fees and costs of suit; and

4 4. That the Court grant such other and further relief as may be just and proper.

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6 Dated: March 26, 2013

THE CHANLER GROUP

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8 By: 

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10 Attorneys for Plaintiff
11 LAURENCE VINOCUR
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