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ENDORSED
FILED
ALAMEDA COUNTY

APR 15 2013

CLERK OF THE SUPERIOR COURT
Anita Dhir

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

RG13674322

LAURENCE VINOUCUR,

Plaintiff,

v.

OFFICEMAX INCORPORATED;
and DOES 1-150, inclusive,

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 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-dichloro-2-propyl) phosphate (“TDCPP”), a
5 toxic chemical found in padded upholstered furniture sold in California. TDCPP is a toxic
6 chemical that is used to treat polyurethane foam, which is used as padding or cushioning in a
7 variety of products.

8 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failures to
9 warn California citizens about the risks of exposures to TDCPP present in and on the padded
10 upholstered furniture manufactured, distributed, and offered for sale or use to consumers
11 throughout the State of California.

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

19 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
20 Health and Safety Code § 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 offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6,
2 and Defendants' violations have continued to occur beyond their receipt of plaintiff's sixty-day
3 notice of violation. As such, Defendants' violations are ongoing and continuous in nature, and
4 will continue to occur in the future.

5 24. After receiving plaintiff's sixty-day notice of violation, the appropriate public
6 enforcement agencies have failed to commence and diligently prosecute a cause of action
7 against Defendants under Proposition 65.

8 25. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
9 or use in California by Defendants contain the LISTED CHEMICAL such that they require a
10 "clear and reasonable" warning under Proposition 65.

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

13 27. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
14 expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or
15 inhalation during reasonably foreseeable uses of the PRODUCTS.

16 28. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
17 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
18 defined by Title 27 of the California Code of Regulations, § 25602(b).

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

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

26 31. Defendants failed to provide a "clear and reasonable warning" to those consumers
27 and other individuals in the State of California who were or who would become exposed to the
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1 LISTED CHEMICAL through dermal contact, ingestion, and/or inhalation during the
2 reasonably foreseeable uses of the PRODUCTS.

3 32. Defendants' failures to warn consumers and/or other individuals in the State of
4 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*
5 *seq.*, about their exposure to LISTED CHEMICAL in conjunction with Defendants'
6 distribution, importation, manufacturing, and/or sale of the PRODUCTS is a violation of
7 Proposition 65 and subjects Defendants to enjoinder of such conduct as well as civil penalties
8 for each such violation.

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

12 34. As a consequence of the above-described acts, Health and Safety Code
13 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against Defendants.

14 **PRAYER FOR RELIEF**

15 Wherefore, plaintiff prays for judgment against Defendants, and each of them, as
16 follows:

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

19 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily
20 and permanently enjoin Defendants from manufacturing, distributing, or offering the
21 PRODUCTS for sale or use in California without first providing a "clear and reasonable
22 warning" as defined by Title 27 of the California Code of Regulations, § 25601 *et seq.*, as to the
23 harms associated with exposures the LISTED CHEMICAL;

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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: April 4, 2013

THE CHANLER GROUP

By:  Jonathan BORNSTEIN
Jonathan A. Bornstein
Attorneys for Plaintiff
LAURENCE VINOUCUR