

ENDORSED
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CLERK OF THE SUPERIOR COURT
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
ALAMEDA COUNTY
UNLIMITED CIVIL JURISDICTION

LAURENCE VINO CUR,

Plaintiff,

v.

TRUE DESIGN, INC.; STAKMORE
COMPANY; THE MUSIC PEOPLE, INC.;
COSTCO WHOLESALE CORPORATION;
GUITAR CENTER, INC.; and DOES 1-150,
inclusive,

Defendants.

Case No. RG13673027

**FIRST AMENDED 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”), and
5 di(2-ethylhexyl)phthalate (“DEHP”), toxic chemicals found in products sold in California.
6 TDCPP is a toxic chemical that is used to treat polyurethane foam, which is used as padding or
7 cushioning in a variety of products, including upholstered furniture. DEHP is used in the
8 manufacture of vinyl/PVC used in various products, including furniture.

9 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failure to
10 warn citizens, consumers, and other individuals throughout California about the health hazard
11 risks associated with exposures to DEHP and/or TDCPP present in and on the products
12 manufactured, distributed, sold, and offered for sale by Defendants.

13 3. Detectable levels of DEHP and/or TDCPP are commonly found in and on the
14 products Defendants manufacture, distribute, sell, and offer for sale or use without warning in
15 California. Citizens, consumers, and other individuals in California, including infants and
16 children, are exposed to TDCPP in the following ways: (i) by inhalation when they inhale
17 TDCPP present in ambient particles released from upholstered furniture and other products
18 containing TDCPP-treated foam; (ii) by dermal exposure when they touch TDCPP-treated foam
19 directly or contact ambient particles containing TDCPP that are released from upholstered
20 furniture and other products that use TDCPP-treated foam; and (iii) by route of ingestion as a
21 result of hand-to-mouth contact with TDCPP-treated foam or with ambient particles released
22 from upholstered furniture and other products that use TDCPP-treated foam. These same
23 individuals are exposed to DEHP via dermal contact directly with products containing DEHP
24 during use, and through ingestion via hand-to-mouth contact during and after use.

25 4. The Safe Drinking Water and Toxic Enforcement Act of 1986 codified at Health
26 and Safety Code Section 25249.5 et seq. (“Proposition 65), states “[n]o person in the course of
27 doing business shall knowingly and intentionally expose any individual to a chemical known to
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1 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
2 warning to such individual . . .”

3 5. TDCPP has been used in consumer products as an additive flame retardant since
4 the 1960s. In the late 1970s, based on findings that exposures to TDCPP could have mutagenic
5 effects, the United States Consumer Product Safety Commission banned the use of TDCPP in
6 children’s pajamas. DEHP is used as a plasticizer in the vinyl/PVC manufacturing process,
7 however, state and federal laws ban DEHP in quantities greater than 1,000 parts per million
8 (0.1%) in certain children’s and childcare products.

9 6. On October 24, 2003, California identified and listed DEHP pursuant to
10 Proposition 65 as a chemical known to cause birth defects and other reproductive harm. DEHP
11 became subject to the “clear and reasonable warning” requirements of the Act one year later on
12 October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
13 25249.10(b).

14 7. On October 28, 2011, California identified and listed TDCPP, pursuant to
15 Proposition 65, as a chemical known to cause cancer. TDCPP became subject to the “clear and
16 reasonable warning” requirements of the Act one year later on October 28, 2012. Cal. Code
17 Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

18 8. Defendants manufacture, distribute, import, sell, and/or offer for sale in California
19 products containing DEHP and/or TDCPP as follows:

20 a. Defendants True Design, Inc. manufacture, distribute, import, sell, and/or
21 offer for sale without a warning in California, padded upholstered furniture, including
22 office/task chairs, that contains TDCPP. Defendants’ products include, but are not
23 limited to, the *True Innovations Task Office Chair, Model 41832, Itm./Art. 633882, (#6*
24 *56292 41832 2)* sold by, inter alia, Costco Wholesale Corporation.

25 b. Defendant True Design., Inc. manufactures, distributes, imports, sells,
26 and/or offers for sale without a warning in California padded upholstered furniture,
27 including benches, that contain TDCPP. Defendants’ products include, but are not
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1 limited to, the *On Stage Stands Flip-Top Style Keyboard & Piano Bench, OSS KB8902B,*
2 *Item No. 54787 (#6 59814 40746 0)* sold by, inter alia, The Guitar Center, Inc.

3 c. Defendant Stakmore Company manufactures, distributes, imports, sells,
4 and/or offers for sale without a warning in California chairs with padded seats that
5 contain TDCPP. Defendants' products include, but are not limited to, *Stakmore Folding*
6 *Chair Itm./Art. 536366, (#7 92790 46258 7)* sold by, inter alia, Costco Wholesale
7 Corporation.

8 9. All such padded upholstered furniture, including office/task chairs and benches,
9 and chairs with padded seats, that contains TDCPP, and all such padded upholstered furniture,
10 including office/task chairs and benches, and chairs with padded seats, that contains DEHP
11 described in Paragraphs 8(a) and (c) above, shall hereinafter be collectively be referred to as
12 "PRODUCTS." As to each specific defendant, however, PRODUCTS shall refer only to those
13 categories of products listed for the defendant in Paragraphs 8(a) and (c) above.

14 10. Although Defendants expose infants, children, and other people to DEHP and/or
15 TDCPP in their PRODUCTS, Defendants provide no warnings about the carcinogenic or
16 teratogenic health hazards associated with exposures to these Proposition 65-listed chemicals.
17 Defendants' failure to warn consumers and other individuals in the State of California not
18 covered by California's Occupational Safety Health Act, Labor Code section 6300 et seq. about
19 their the health hazards associated with exposures to DEHP and/or TDCPP in conjunction with
20 Defendants' distribution, importation, manufacture, and/or sales of the PRODUCTS, are
21 violations of Proposition 65, and subject Defendants to enjoinder of such conduct as well as
22 civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

23 11. Pursuant to Health and Safety Code section 25249.7(a), Plaintiff seeks
24 preliminary and permanent injunctive relief to compel each of the Defendants to provide
25 purchasers or users of the PRODUCTS with the required health hazard warning regarding the
26 risks of exposures to DEHP and/or TDCPP in the PRODUCTS.

1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
2 harm.”

3 23. Health and Safety Code section 25249.6 states, “[n]o person in the course of
4 doing business shall knowingly and intentionally expose any individual to a chemical known to
5 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
6 warning to such individual”

7 24. On January 10, 2013, LAURENCE VINOCUR provided a sixty-day notice of
8 violation of Proposition 65, together with the requisite certificate of merit, to TRUE DESIGN
9 and certain required public enforcement agencies, stating that as a result of TRUE DESIGN’s
10 sales of the PRODUCTS, purchasers and users in California were being exposed to TDCPP
11 resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual
12 purchasers and users first having been provided with a “clear and reasonable warning”
13 regarding the health hazards of such toxic exposures, as required by Proposition 65.

14 25. On January 10, 2013, LAURENCE VINOCUR provided a sixty-day notice of
15 violation of Proposition 65, together with the requisite certificate of merit, to MUSIC PEOPLE
16 and the required public enforcement agencies, stating that as a result of MUSIC PEOPLE’s
17 sales of the PRODUCTS, purchasers and users in California were being exposed to TDCPP
18 resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual
19 purchasers and users first having been provided with a “clear and reasonable warning”
20 regarding the health hazards of such toxic exposures, as required by Proposition 65.

21 26. On January 17, 2013, LAURENCE VINOCUR provided a sixty-day notice of
22 violation of Proposition 65, together with the requisite certificate of merit, to MUSIC PEOPLE
23 and the required public enforcement agencies, stating that as a result of MUSIC PEOPLE’s
24 sales of the PRODUCTS, purchasers and users in California were being exposed to DEHP
25 resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual
26 purchasers and users first having been provided with a “clear and reasonable warning”
27 regarding the health hazards of such toxic exposures, as required by Proposition 65.

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1 27. On January 10, 2013, LAURENCE VINOCUR served a sixty-day notice of
2 violation of Proposition 65, together with the requisite certificate of merit, to STAKMORE and
3 the required public enforcement agencies, stating that as a result of STAKMORE's sales of the
4 PRODUCTS, purchasers and users in California were being exposed to TDCPP resulting from
5 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
6 first having been provided with a "clear and reasonable warning" regarding the health hazards
7 of such toxic exposures, as required by Proposition 65.

8 28. On January 10, 2013, LAURENCE VINOCUR served a sixty-day notice of
9 violation of Proposition 65, together with the requisite certificate of merit, to COSTCO, and the
10 required public enforcement agencies, stating that as a result COSTCO's and of sales of the
11 PRODUCTS, purchasers and users in California were being exposed to TDCPP as a result of
12 their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
13 users first having been provided with a "clear and reasonable warning" regarding the health
14 hazards of such toxic exposures, as required by Proposition 65.

15 29. On January 10, 2013, LAURENCE VINOCUR served a sixty-day notice of
16 violation of Proposition 65, together with the requisite certificate of merit, GUITAR CENTER,
17 and the required public enforcement agencies, stating that as a result of GUITAR CENTER's
18 sales of the PRODUCTS, purchasers and users in California were being exposed to TDCPP
19 resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual
20 purchasers and users first having been provided with a "clear and reasonable warning"
21 regarding the health hazards of such toxic exposures, as required by Proposition 65.

22 30. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
23 and offering of the PRODUCTS for sale or use in California in violation of Health and Safety
24 Code section 25249.6, and DEFENDANTS' violations have continued to occur beyond their
25 receipt of Plaintiff's sixty-day notices of violation. As such, DEFENDANTS' violations are
26 ongoing and continuous in nature, such that they will continue to occur in the future.

27 31. After receiving Plaintiff's sixty-day notices of violation, the appropriate public
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1 enforcement agencies have failed to commence and diligently prosecute a cause of action
2 against DEFENDANTS under Proposition 65.

3 32. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell and offer
4 for sale or use in California contain DEHP and/or TDCPP such that they require a “clear and
5 reasonable” warning under Proposition 65.

6 33. DEFENDANTS knew or should have known that the PRODUCTS they
7 manufacture, import, distribute, sell, and offer for sale or use in California contain DEHP and/or
8 TDCPP.

9 34. DEHP and/or TDCPP is present in or on the PRODUCTS in such a way as to
10 expose individuals to DEHP and/or TDCPP through dermal contact, ingestion, and/or inhalation
11 during reasonably foreseeable uses of the PRODUCTS.

12 35. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
13 continue to cause, consumer products exposures and occupational exposures to DEHP and/or
14 TDCPP, as such exposures are defined by California Code of Regulations title 27, section
15 25602(b).

16 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
17 of the PRODUCTS expose individuals to DEHP and/or TDCPP through dermal contact,
18 ingestion, and/or inhalation.

19 37. DEFENDANTS intended that such exposures to DEHP and/or TDCPP from the
20 reasonably foreseeable uses of the PRODUCTS would occur by DEFENDANTS’ deliberate,
21 non-accidental participation in the manufacture, importation, distribution, sale, and offering of
22 the PRODUCTS for sale or use to individuals in the State of California.

23 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
24 consumers and other individuals in the State of California who were or who would become
25 exposed to DEHP and/or TDCPP through dermal contact, ingestion, and/or inhalation during
26 the reasonably foreseeable uses of the PRODUCTS.

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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: March 28, 2013

THE CHANLER GROUP

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