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**ENDORSED
FILED
ALAMEDA COUNTY**

APR 11 2013

CLERK OF THE SUPERIOR COURT
By M Hayes Deputy

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

LAURENCE VINOUCUR,

Plaintiff,

v.

STAPLES, INC.; and DOES 1-150, inclusive,

Defendants.

Case No. **RG 13 675 144**

**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 seat/back
10 cushions manufactured, distributed, and offered for sale or use to consumers throughout the
11 State of California.

12 3. Detectable levels of TDCPP are commonly found in and on the seat/back
13 cushions that Defendants manufacture, distribute, sell, 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 seat/back cushions, and also when TDCPP from seat/back cushions accumulates in ambient
17 particles that are subsequently touched by such individuals and brought into contact with the
18 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 6. Pursuant to Proposition 65, on October 28, 2011, California identified and listed
2 TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
3 reasonable warning” requirements of the Act one year later on October 28, 2012. (Cal. Code
4 Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).) TDCPP is
5 hereinafter referred to as the “LISTED CHEMICAL.”

6 7. Defendants manufacture, distribute, import, sell, and/or offer for sale seat/back
7 cushions containing TDCPP without a warning, including, but not limited to, the *Staples Deluxe*
8 *Adjustable Seat and Back Cushion*, #22286 (#7 18103 16983 7). All such seat/back cushions
9 containing TDCPP are hereinafter collectively referred to as “PRODUCTS.”

10 8. Although Defendants expose infants, children, and other people to TDCPP in the
11 PRODUCTS, Defendants provide no warnings about the carcinogenic hazards associated with
12 these TDCPP exposures. Defendants’ failures to warn consumers and other individuals in the
13 State of California about their exposures to the LISTED CHEMICAL in conjunction with
14 Defendants’ sales of the PRODUCTS, is a violation of Proposition 65, and subjects Defendants
15 to enjoinder of such conduct as well as civil penalties for each violation. (Health & Safety
16 Code § 25249.7(a) & (b)(1).)

17 9. As a result of Defendants’ violations of Proposition 65, plaintiff seeks preliminary
18 and permanent injunctive relief to compel Defendants to provide purchasers or users of the
19 PRODUCTS with the required warning regarding the health hazards of the LISTED
20 CHEMICAL. (Health & Safety Code § 25249.7(a).)

21 10. Pursuant to Health and Safety Code § 25249.7(b), plaintiff also seeks civil
22 penalties against Defendants for their violations of Proposition 65.

PARTIES

24 11. Plaintiff LAURENCE VINOCUR is a citizen of the State of California who is
25 dedicated to protecting the health of California citizens through the elimination or reduction of
26 toxic exposures from consumer products; and he brings this action in the public interest
27 pursuant to Health and Safety Code Section 25249.7(d).

1 12. Defendant STAPLES, INC. (“STAPLES”) is a person in the course of doing
2 business within the meaning of Health and Safety Code § 25249.11.

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

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

14 15. STAPLES and Defendants DOES 1-150 are collectively referred to herein as
15 “Defendants.”

16 VENUE AND JURISDICTION

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

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

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

7 **FIRST CAUSE OF ACTION**

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

9 19. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
10 Paragraphs 1 through 18, inclusive.

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

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

19 22. On January 30, 2013, plaintiff's sixty-day notice of violation of Proposition 65,
20 together with the requisite certificate of merit, was provided to STAPLES and certain public
21 enforcement agencies stating that, as a result of Defendants' sales of the PRODUCTS
22 containing the LISTED CHEMICAL, purchasers and users in the State of California were being
23 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the
24 PRODUCTS, without the individual purchasers and users first having been provided with a
25 "clear and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

26 23. Defendants have engaged in the manufacture, importation, distribution, sale, and
27 offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6,
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1 and Defendants' violations have continued to occur beyond their receipt of plaintiff's sixty-day
2 notice of violation. As such, Defendants' violations are ongoing and continuous in nature, and
3 will continue to occur in the future.

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

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

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

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

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

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

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

25 31. Defendants failed to provide a "clear and reasonable warning" to those consumers
26 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 10, 2013

THE CHANLER GROUP

 For Jonathan Bornstein

By: _____
Jonathan A. Bornstein
Attorneys for Plaintiff
LAURENCE VINOCUR