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**ENDORSED
FILED
ALAMEDA COUNTY**

MAR 22 2013

CLERK OF THE SUPERIOR COURT

By Kmel Dhillon Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

ALAMEDA COUNTY

UNLIMITED CIVIL JURISDICTION

11 LAURENCE VINOCUR,

12 Plaintiff,

13 v.

14 NORSTAR OFFICE PRODUCTS, INC.;
15 OFFICEMAX INCORPORATED; SAUDER
16 WOODWORKING CO.; and DOES 1-150,
17 inclusive,

18 Defendants.

Case No.

RG13 672551

**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 products sold in California. TDCPP is a toxic chemical that is used to
6 treat polyurethane foam, which is used as padding or cushioning in a variety of products,
7 including upholstered furniture.

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

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

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

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

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

9 7. Defendants manufacture, distribute, import, sell, and/or offer for sale in California
10 products containing TDCPP as follows:

11 a. Defendants Norstar Office Products, Inc. and Officemax Incorporated
12 manufacture, distribute, import, sell, and/or offer for sale without a warning in California,
13 padded upholstered furniture, including office/stacking chairs, that contains TDCPP.

14 Defendants’ products include, but are not limited to, the *Stack Chair* (#0 11491 03652 2).

15 b. Defendant Sauder Woodworking Co. manufactures, distributes, imports,
16 sells, and/or offers for sale without a warning in California padded upholstered furniture,
17 including office/task chairs, that contains TDCPP including, but not limited to, the *Room*
18 *Essentials Task Chair, Item 0050, Style #411093 #249 15 0050, ID101456-0086,*
19 *#70492491500500 (#0 42666 10737 2).*

20 9. All such padded upholstered furniture, including office/stacking chairs and
21 office/task chairs, that contains TDCPP described in Paragraphs 8(a) through (b) above, shall
22 hereinafter be collectively be referred to as “PRODUCTS.” As to each specific defendant,
23 however, PRODUCTS shall refer only to those categories of products listed for the defendant in
24 Paragraphs 8(a) through (b) above.

25 10. Although Defendants expose infants, children, and other people to TDCPP in
26 their PRODUCTS, Defendants provide no warnings about the carcinogenic health hazards
27 associated with exposures to this Proposition 65-listed chemical. Defendants’ failure to warn
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1 consumers and other individuals in the State of California not covered by California's
2 Occupational Safety Health Act, Labor Code section 6300 et seq. about the health hazards
3 associated with exposures to TDCPP in conjunction with Defendants' distribution, importation,
4 manufacture, and/or sales of the PRODUCTS, are violations of Proposition 65, and subject
5 Defendants to enjoinder of such conduct as well as civil penalties for each violation. Health &
6 Safety Code § 25249.7(a) & (b)(1).

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

11 12. Pursuant to Health and Safety Code section 25249.7(b), Plaintiff also seeks civil
12 penalties against each Defendant for its violations of Proposition 65.

13 PARTIES

14 13. Plaintiff LAURENCE VINOCUR is a citizen of the State of California who is
15 dedicated to protecting the health of California citizens through the elimination or reduction of
16 toxic exposures from consumer products; and he brings this action in the public interest
17 pursuant to Health and Safety Code section 25249.7(d).

18 14. Defendants Norstar Office Products, Inc. ("NORSTAR"), Officemax Incorporated
19 ("OFFICEMAX"), and Sauder Woodworking Co. ("SAUDER") are each a person in the course
20 of doing business within the meaning of Health and Safety Code sections 25249.6 and
21 25249.11.

22 15. NORSTAR, OFFICEMAX, and SAUDER each manufactures, imports, distributes,
23 sells, and/or offers the PRODUCTS for sale or use in the State of California, or implies by its
24 conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or
25 use in the State of California.

26 16. Defendants DOES 1-150 are each a person in the course of doing business within
27 the meaning of Health and Safety Code sections 25249.6 and 25249.11. DOES 1 – 150 import,
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1 manufacture, distribute, sell, and/or offer the PRODUCTS for sale or use in the State of
2 California. At this time, the true names and capacities of defendants DOES 1 – 150, inclusive,
3 are unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant
4 to Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
5 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
6 alleged herein. When ascertained, the true name and capacity of each such Defendant shall be
7 reflected in an amended complaint.

8 17. NORSTAR, OFFICEMAX, SAUDER, and Defendants DOES 1-150 are
9 collectively referred to hereinafter as “DEFENDANTS.”

10 VENUE AND JURISDICTION

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

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

21 20. The California Superior Court has jurisdiction over DEFENDANTS based on
22 Plaintiff’s information and good faith belief that each defendant is a person, firm, corporation,
23 or association that is a citizen of the State of California, has sufficient minimum contacts in the
24 State of California, and/or otherwise purposefully avails itself of the California market.
25 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
26 California courts consistent with traditional notions of fair play and substantial justice.

1 **FIRST CAUSE OF ACTION**

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

3 21. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 20, inclusive.

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

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

13 24. On December 28, 2012, LAURENCE VINOCUR provided a sixty-day notice of
14 violation of Proposition 65, together with the requisite certificate of merit, to NORSTAR,
15 OFFICEMAX, and certain required public enforcement agencies, stating that as a result of
16 NORSTAR’s and OFFICEMAX’s sales of the PRODUCTS, purchasers and users in California
17 were being exposed to TDCPP resulting from their reasonably foreseeable uses of the
18 PRODUCTS, without the individual purchasers and users first having been provided with a
19 “clear and reasonable warning” regarding the health hazards of such toxic exposures, as
20 required by Proposition 65.

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

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

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

9 28. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell and offer
10 for sale or use in California contain TDCPP such that they require a "clear and reasonable"
11 warning under Proposition 65.

12 29. DEFENDANTS knew or should have known that the PRODUCTS they
13 manufacture, import, distribute, sell, and offer for sale or use in California contain TDCPP.

14 30. TDCPP is present in or on the PRODUCTS in such a way as to expose
15 individuals through dermal contact, ingestion, and/or inhalation during the reasonably
16 foreseeable uses of the PRODUCTS.

17 31. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
18 continue to cause, consumer product exposures and occupational exposures to TDCPP, as such
19 exposures are defined by California Code of Regulations title 27, section 25602(b).

20 32. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
21 of the PRODUCTS expose individuals to TDCPP through dermal contact, ingestion, and/or
22 inhalation.

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

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

Dated: March 22, 2013

THE CHANLER GROUP

By: 
Brian Johnson
Attorneys for Plaintiff
LAURENCE VINO CUR