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ENDORSED
FILED
ALAMEDA COUNTY

JUL 09 2013

CLERK OF THE SUPERIOR COURT
By Angela Yamsuan

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION
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15 LAURENCE VINOCUR,

16 Plaintiff,

17 v.

18 NORSTAR OFFICE PRODUCTS, INC.;
19 OFFICEMAX INCORPORATED; SAUDER
20 WOODWORKING CO.; TARGET
21 CORPORATION; KANTOR'S DISCOUNT
22 OFFICE FURNITURE AND EQUIPMENT,
23 INC.; THE BEST QUALITY FURNITURE
24 MANUFACTURING, INC.; and DOES 1-150,
25 inclusive,

26 Defendants.

Case No. RG13672551

*Assigned for All Purposes to the Honorable
Steven A. Brick, Department 17*

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Safety Code § 25249.6 et seq.)

1 **NATURE OF THE ACTION**

2 1. This First Amended Complaint is a representative action brought by Plaintiff
3 LAURENCE VINOCUR in the public interest of the citizens of the State of California to
4 enforce the People’s right to be informed of the presence of tris(1,3-dichloro-2-propyl)
5 phosphate (“TDCPP”), tris(2-chloroethyl) phosphate (“TCEP”), and di(2-ethylhexyl)phthalate
6 (“DEHP”), toxic chemicals found in products sold in California. TDCPP and TCEP are toxic
7 chemicals used to treat polyurethane foam, which is used as padding or cushioning in a variety
8 of products, including upholstered furniture. DEHP is used in the manufacture of vinyl/PVC
9 used in various commercial and consumer products, including furniture.

10 2. By this First Amended Complaint, Plaintiff seeks to remedy Defendants’
11 continuing failure to warn citizens, consumers, and other individuals in California about the
12 health hazards associated with exposures to TDCPP, TCEP, and DEHP present in and on the
13 products manufactured, distributed, sold, and offered for sale by Defendants.

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

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

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

14 6. On April 1, 1992, California identified and listed TCEP pursuant to Proposition 65
15 as a chemical known to cause cancer. TCEP became subject to the “clear and reasonable warning”
16 requirements of the Act one year later on April 1, 1993. Cal. Code Regs. tit. 27, § 27001(c);
17 Health & Safety Code §§ 25249.8 & 25249.10(b).

18 7. On October 24, 2003, California identified and listed DEHP pursuant to Proposition
19 65 as a chemical known to cause birth defects and other reproductive harm. DEHP became subject
20 to the “clear and reasonable warning” requirements of the Act one year later on October 24, 2004.
21 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

26 9. Defendants manufacture, distribute, import, sell, and/or offer for sale without a
27 warning in California products containing TDCPP, TCEP, and DEHP as follows:
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1 a. Defendants Norstar Office Products, Inc. and OfficeMax Incorporated
2 manufacture, distribute, import, sell, and/or offer for sale without a warning in California,
3 upholstered furniture, including office/stacking chairs, with foam padding that contains
4 TDCPP. Defendant OfficeMax Incorporated manufactures, distributes, imports, sells,
5 and/or offers for sale without a warning in California, upholstered furniture, including
6 office/stacking chairs, with foam padding that contains TDCPP and that is manufactured
7 by and/or distributed for sale to OfficeMax Incorporated by Norstar Office Products, Inc.
8 Defendants Norstar Office Products, Inc. and OfficeMax Incorporated manufacture,
9 distribute, import, sell, and/or offer for sale without a warning in California, the *Stack*
10 *Chair* (#0 11491 03652 2) with foam padding that contains TDCPP.

11 b. Defendants Sauder Woodworking Co. and Target Corporation
12 manufacture, distribute, import, sell, and/or offer for sale without a warning in California
13 upholstered furniture, including office/task chairs, with foam padding that contains
14 TDCPP. Defendant Target Corporation manufactures, distributes, imports, sells, and/or
15 offers for sale without a warning in California, upholstered furniture, including chairs,
16 with foam padding that contains TDCPP and that is manufactured and/or distributed for
17 sale to Target Corporation by Sauder Woodworking Co., including, without limitation,
18 the *Room Essentials Task Chair, Item 0050, Style #411093 #249 15 0050, ID101456-*
19 *0086, #70492491500500 (UPC No. 0 42666 10737 2)*. Defendants Sauder Woodworking
20 Co. and Target Corporation manufacture, distribute, import, sell, and/or offer for sale
21 without a warning in California, the *Room Essentials Task Chair, Item 0050, Style*
22 *#411093 #249 15 0050, ID101456-0086, #70492491500500 (#0 42666 10737 2)* with
23 foam padding that contains TDCPP.

24 c. Defendants Norstar Office Products, Inc. and Kantor's Discount Office
25 Furniture and Equipment, Inc. manufacture, distribute, import, sell, and/or offer for sale
26 without a warning in California, padded upholstered furniture, including office/stack
27 chairs, that contains TCEP. Defendant Kantor's Discount Office Furniture and
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1 Equipment, Inc. manufactures, distributes, imports, sells, and/or offers for sale without a
2 warning in California, upholstered furniture, including office/stacking chairs, with foam
3 padding that contains TCEP and that is manufactured by and/or distributed for sale to
4 Kantor's Discount Office Furniture and Equipment, Inc. by Norstar Office Products, Inc.
5 Norstar Office Products, Inc. and Kantor's Discount Office Furniture and Equipment,
6 Inc.' manufacture, distribute, import, sell, and/or offer for sale without a warning in
7 California the *Stack Chair* with foam padding that contains TCEP.

8 d. Defendant The Best Quality Furniture Manufacturing, Inc. manufactures,
9 distributes, imports, sells, and/or offers for sale without a warning in California
10 upholstered furniture, including office chairs, with foam padding that contains TDCPP.
11 that contains TDCPP. Defendant The Best Quality Furniture Manufacturing, Inc.
12 manufactures, distributes, imports, sells, and/or offers for sale without a warning in
13 California, including, but not limited to, the *Office Chair* with foam padding that contains
14 TDCPP.

15 e. Defendant The Best Quality Furniture Manufacturing, Inc. manufactures,
16 distributes, imports, sells, and/or offers for sale without a warning in California office
17 chairs with vinyl/PVC components, including seats, that contain DEHP including,
18 without limitation, the *Office Chair*. Defendant The Best Quality Furniture
19 Manufacturing, Inc. manufactures, distributes, imports, sells, and/or offers for sale
20 without a warning in California, the *Office Chair* with vinyl/PVC components that
21 contain DEHP.

22 10. All such padded upholstered furniture, including office/stacking chairs, office/task
23 chairs, office chairs and guest chairs that contain TDCPP, TCEP, and/or DEHP described in
24 Paragraphs 9(a) through 9(e) above, shall hereinafter be collectively be referred to as
25 "PRODUCTS." As to each specific defendant, however, PRODUCTS shall refer only to those
26 categories of products listed for each defendant in Paragraphs 9(a) through 9(f) above.
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1 required public enforcement agencies, stating that as a result of SAUDER's sales of the
2 PRODUCTS, purchasers and users in California are being exposed to TDCPP resulting from
3 their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
4 users receiving a "clear and reasonable warning" regarding the health hazards of such toxic
5 exposures, as required by Proposition 65.

6 27. On February 5, 2013, LAURENCE VINOCUR provided a sixty-day notice of
7 violation of Proposition 65, together with the requisite certificate of merit, to BEST QUALITY
8 FURNITURE and the required public enforcement agencies, stating that as a result of BEST
9 QUALITY FURNITURE's sales of the PRODUCTS, purchasers and users in California are
10 being exposed to TDCPP and DEHP resulting from their reasonably foreseeable uses of the
11 PRODUCTS, without the individual purchasers and users first receiving a "clear and reasonable
12 warning" regarding the health hazards of such toxic exposures, as required by Proposition 65.

13 28. On March 13, 2013, LAURENCE VINOCUR provided a sixty-day notice of
14 violation of Proposition 65, together with the requisite certificate of merit, to NORSTAR,
15 KANTOR'S and the required public enforcement agencies, stating that as a result of
16 NORSTAR's and KANTOR'S sales of the PRODUCTS, purchasers and users in California are
17 being exposed to TCEP resulting from their reasonably foreseeable uses of the PRODUCTS,
18 without the individual purchasers and users first receiving a "clear and reasonable warning"
19 regarding the health hazards of such toxic exposures, as required by Proposition 65.

20 29. On March 20, 2013, LAURENCE VINOCUR provided a supplemental sixty-day
21 notice of violation of Proposition 65, together with the requisite certificate of merit, to
22 SAUDER, TARGET and the required public enforcement agencies, stating that as a result of
23 SAUDER's and TARGET's sales of the PRODUCTS, purchasers and users in California are
24 being exposed to TDCPP resulting from their reasonably foreseeable uses of the PRODUCTS,
25 without the individual purchasers and users first receiving a "clear and reasonable warning"
26 regarding the health hazards of such toxic exposures, as required by Proposition 65.

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

6 31. 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 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell and
10 offer for sale or use in California contain TDCPP, TCEP, and DEHP and expose individuals to
11 in amounts that require a "clear and reasonable" warning under Proposition 65.

12 33. 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 TCEP, and DEHP.

15 34. TDCPP, TCEP, and DEHP are present in or on the PRODUCTS in such a way as
16 to expose individuals through dermal contact, ingestion, and/or inhalation during reasonably
17 foreseeable use.

18 35. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
19 continue to cause, consumer product exposures and occupational exposures to TDCPP, TCEP,
20 and DEHP, as such exposures are defined by California Code of Regulations title 27, section
21 25602(b).

22 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
23 of the PRODUCTS expose individuals to TDCPP, TCEP, and DEHP through dermal contact,
24 ingestion, and/or inhalation.

25 37. DEFENDANTS intended that such exposures to TDCPP, TCEP, and DEHP from
26 the reasonably foreseeable uses of the PRODUCTS would occur by DEFENDANTS'

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1 deliberate, non-accidental participation in the manufacture, importation, distribution, sale, and
2 offering of the PRODUCTS for sale or use to individuals in the State of California.

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

7 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
8 directly by California voters, individuals exposed to TDCPP, TCEP, and DEHP through dermal
9 contact, ingestion, and/or inhalation, resulting from their reasonably foreseeable use of the
10 DEFENDANTS’ PRODUCTS without first receiving a “clear and reasonable warning,” have
11 suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or
12 adequate remedy at law.

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

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

19 **PRAYER FOR RELIEF**

20 Wherefore, Plaintiff prays for judgment against each of the DEFENDANTS as follows:

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

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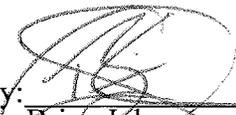
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“clear and reasonable warning” as defined by California Code of Regulations tit. 27, section 25601 et seq., as to the harms associated with exposures to TDCPP, TCEP, and DEHP;

- 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: ~~June~~ ⁸ 2013
July

THE CHANLER GROUP

By: 

Brian Johnson
Attorneys for Plaintiff
LAURENCE VINOCUR