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Gregory M. Sheffer, State Bar No. 173124
THE CHANLER GROUP
81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941
Telephone: 415.388.0911
Facsimile: 415.388.9911

Attorneys for Plaintiff
LAURENCE VINO CUR

FILED BY FAX
ALAMEDA COUNTY
March 29, 2013

CLERK OF
THE SUPERIOR COURT
By Rosanne Case, Deputy

CASE NUMBER:
RG13673697

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

LAURENCE VINO CUR,

Plaintiff,

vs.

ACE BAYOU CORP., MARCO GROUP, INC.,
MECO CORPORATION, OFFICE DEPOT,
INC., UNAKA COMPANY,
INCORPORATED and DOES 1-150,

Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. 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”) found in
5 and on certain furniture products manufactured, distributed and/or otherwise sold by Defendants
6 in California.

7 2. By this Complaint, Plaintiffs seek to remedy Defendants’ continuing failures to warn
8 California citizens about the risks of exposures to TDCPP present in and on the products
9 manufactured, distributed, sold, and offered for sale or use to consumers throughout the State of
10 California.

11 3. TDCPP is a toxic chemical that is used to treat the polyurethane foam used as
12 padding or cushioning in a variety of Defendants’ furniture products. Detectable levels of TDCPP
13 have been found and are commonly found in and on the products that Defendants manufacture,
14 distribute, sell, and offer for sale to California consumers, many of whom are infants and children.
15 Individuals in California, including infants and children, are exposed to TDCPP in the products
16 through inhalation, dermal absorption and ingestion. California consumers of Defendants’
17 products inhale airborne TDCPP released from padded upholstered furniture and ingest TDCPP
18 from touching dust or other surfaces to which the chemical released from padded upholstered
19 furniture has adhered or adsorbed and then transferring such dust, either directly or indirectly, to
20 their mouths. California consumers of Defendants’ products also absorb TDCPP that comes into
21 contact with exposed skin surfaces.

22 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
23 California Health & Safety Code Section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the
24 course of doing business shall knowingly and intentionally expose any individual to a chemical
25 known to the state to cause cancer or reproductive toxicity without first giving clear and
26 reasonable warning to such individual. . . .” (*Cal. Health & Safety Code* § 25249.6.)

27 5. TDCPP has been used in consumer products as an additive flame retardant since
28 the 1960s. In the late 1970s, based on findings that exposure to TDCPP could have mutagenic

1 effects, the United States Consumer Product Safety Commission banned the use of TDCPP in
2 children’s pajamas. Pursuant to Proposition 65, on October 28, 2011, California identified and
3 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
4 reasonable warning” requirements of the Act one year later on October 28, 2012. (Cal. Code
5 Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).)

6 6. Defendants cause products containing TDCPP to be sold in California as follows:

7 a. Defendant Ace Bayou Corp. manufactures, causes to be manufactured,
8 distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise
9 offers for sale in California padded, upholstered furniture, including gaming chairs, with
10 foam padding containing TDCPP. Defendant Ace Bayou Corp. also manufactures, causes to
11 be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells
12 and/or otherwise offers for sale in California the Original Xrocker CO. Extreme 2.0 Sound
13 Gaming Chair, Style #5147401, with foam padding containing TDCPP.

14 b. Defendants Marco Group, Inc. and Office Depot, Inc. each manufactures,
15 causes to be manufactured, distributes, causes to be distributed, imports, causes to be
16 imported, sells and/or otherwise offers for sale in California padded, upholstered furniture,
17 including office/stacking chairs, with foam padding containing TDCPP. Defendants Marco
18 Group, Inc. and Office Depot, Inc. each also manufactures, causes to be manufactured,
19 distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise
20 offers for sale in California the Office-Stor Plus Commercial Stacking Chair, Item 543-564, ,
21 with foam padding containing TDCPP.

22 c. Defendant Office Depot, Inc. manufactures, causes to be manufactured,
23 distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise
24 offers for sale in California padded, upholstered furniture, including office/task chairs, with
25 foam padding containing TDCPP. Defendant Office Depot, Inc. also manufactures, causes
26 to be manufactured, distributes, causes to be distributed, imports, causes to be imported,
27 sells and/or otherwise offers for sale in California the Alvy Task Chair, Item #715-010, with
28 foam padding containing TDCPP.

1 toxic exposures from consumer products, and brings this action in the public interest pursuant to
2 California Health & Safety Code Section 25249.7.

3 12. Each defendant Ace Bayou Corp. ("ACE"), Marco Group, Inc. ("MARCO"), Meco
4 Corporation ("MECO"), Office Depot, Inc. ("OFFICE DEPOT") and Unaka Company, Incorporated
5 ("UNAKA") is a person doing business within the meaning of California Health & Safety Code
6 Section 25249.11.

7 13. Each defendant ACE, MARCO, MECO, OFFICE DEPOT and UNAKA manufactures,
8 causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported,
9 sells and/or otherwise offers for sale or use in California the PRODUCTS or implies by its conduct
10 that it does so.

11 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons
12 doing business within the meaning of California Health & Safety Code Section 25249.11.
13 MANUFACTURER DEFENDANTS engage in the process of research, testing, designing,
14 assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the
15 process of research, testing, designing, assembling, fabricating, and/or manufacturing, one or
16 more of the PRODUCTS for sale or use in the State of California.

17 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons doing
18 business within the meaning of California Health & Safety Code Section 25249.11. DISTRIBUTOR
19 DEFENDANTS distribute, exchange, transfer, process and/or transport one or more of the
20 PRODUCTS to individuals, businesses or retailers for sale or use in the State of California.

21 16. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing
22 business within the meaning of California Health & Safety Code Section 25249.11. RETAIL
23 DEFENDANTS offer the PRODUCTS for sale to individuals in the State of California.

24 17. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
25 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
26 Code of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges,
27 that each of the fictitiously named defendants is responsible for the acts and occurrences herein
28 alleged. When ascertained, their true names shall be reflected in an amended complaint.

1 24. Proposition 65 states, “[n]o person in the course of doing business shall knowingly
2 and intentionally expose any individual to a chemical known to the state to cause cancer or
3 reproductive toxicity without first giving clear and reasonable warning to such individual”
4 (Health & Safety Code § 25249.6.)

5 25. On December 28, 2012, VINOCUR served a sixty-day notice of violation (“60-Day
6 Notice”), supported by the requisite Certificate of Merit, upon ACE and various public
7 enforcement agencies stating that as a result of the such defendants’ sales of the PRODUCTS,
8 purchasers and users in the State of California are being exposed to TDCPP resulting from the
9 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
10 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

11 26. On January 2, 2013, VINOCUR served a sixty-day notice of violation (“60-Day
12 Notice”), supported by the requisite Certificate of Merit, upon MARCO, OFFICE DEPOT and
13 various public enforcement agencies stating that as a result of the such defendants’ sales of the
14 PRODUCTS, purchasers and users in the State of California are being exposed to TDCPP resulting
15 from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
16 users first having been provided with a “clear and reasonable warning” regarding such toxic
17 exposures.

18 27. On January 8, 2013, VINOCUR served a sixty-day notice of violation (“60-Day
19 Notice”), supported by the requisite Certificate of Merit, upon UNAKA, MECO, OFFICE DEPOT
20 and various public enforcement agencies stating that as a result of the such defendants’ sales of the
21 PRODUCTS, purchasers and users in the State of California are being exposed to TDCPP resulting
22 from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
23 users first having been provided with a “clear and reasonable warning” regarding such toxic
24 exposures.

25 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
26 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
27 plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or offering
28 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6

1 has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice. Plaintiff
2 further alleges and believes that such violations are reasonably likely to occur into the future
3 absent express injunctive relief.

4 29. After receipt of the claims asserted in the 60-Day Notice, the appropriate public
5 enforcement agencies have failed to commence and diligently prosecute a cause of action against
6 DEFENDANTS under Proposition 65.

7 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
8 California by DEFENDANTS contain TDCPP.

9 31. DEFENDANTS knew or should have known that the PRODUCTS contain TDCPP.

10 32. TDCPP is present in or on each of the PRODUCTS in such a way as to expose (as
11 such exposure is defined by 27 CCR Section 25602(b)) individuals to TDCPP through dermal
12 contact, inhalation and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

13 33. DEFENDANTS knew or should have known that the reasonably foreseeable use of
14 the PRODUCTS exposes individuals to TDCPP through dermal contact, inhalation and/or
15 ingestion.

16 34. DEFENDANTS' participation in the manufacture, distribution and/or offer for sale
17 or use of PRODUCTS to individuals in the State of California was deliberate and non-accidental.

18 35. DEFENDANTS failed to provide a "clear and reasonable warning" to those
19 consumers and/or other individuals in the State of California who were or who could become
20 exposed to TDCPP during the reasonably foreseeable use of the PRODUCTS.

21 36. Contrary to the express policy and statutory prohibition of Proposition 65,
22 individuals exposed to the TDCPP through dermal contact, inhalation and/or ingestion resulting
23 from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS without a "clear
24 and reasonable warning", have suffered, and continue to suffer, irreparable harm, for which harm
25 they have no other plain, speedy or adequate remedy at law.

26 37. As a consequence of the above-described acts, DEFENDANTS are liable for a
27 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to
28 California Health & Safety Code Section 25249.7(b).

