NATURE OF THE ACTION

- 1. This Complaint is a representative action brought by plaintiff LAURENCE VINOCUR, in the public interest of the citizens of the State of California, to enforce the People's right to be informed of the presence of Tris(1,3-dichloro-2-propyl) phosphate ("TDCPP") found in and on certain furniture products manufactured, distributed and/or otherwise sold by Defendants in California.
- 2. By this Complaint, Plaintiffs seek to remedy Defendants' continuing failures to warn California citizens about the risks of exposures to TDCPP present in and on the products manufactured, distributed, sold, and offered for sale or use to consumers throughout the State of California.
- 3. TDCPP is a toxic chemical that is used to treat the polyurethane foam used as padding or cushioning in a variety of Defendants' furniture products. Detectable levels of TDCPP have been found and are commonly found in and on the products that Defendants manufacture, distribute, sell, and offer for sale to California consumers, many of whom are infants and children. Individuals in California, including infants and children, are exposed to TDCPP in the products through inhalation, dermal absorption and ingestion. California consumers of Defendants' products inhale airborne TDCPP released from padded upholstered furniture and ingest TDCPP from touching dust or other surfaces to which the chemical released from padded upholstered furniture has adhered or adsorbed and then transferring such dust, either directly or indirectly, to their mouths. California consumers of Defendants' products also absorb TDCPP that comes into contact with exposed skin surfaces.
- 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. . . ." (Cal. Health & Safety Code § 25249.6.)
- 5. TDCPP has been used in consumer products as an additive flame retardant since the 1960s. In the late 1970s, based on findings that exposure to TDCPP could have mutagenic

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

- 6. Defendants cause products containing TDCPP to be sold in California as follows:
- a. Defendant Ace Bayou Corp. manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California padded, upholstered furniture, including gaming chairs, with foam padding containing TDCPP. Defendant Ace Bayou Corp. also manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California the Original Xrocker CO. Extreme 2.0 Sound Gaming Chair, Style #5147401, with foam padding containing TDCPP.
- b. Defendants Marco Group, Inc. and Office Depot, Inc. each manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California padded, upholstered furniture, including office/stacking chairs, with foam padding containing TDCPP. Defendants Marco Group, Inc. and Office Depot, Inc. each also manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California the Office-Stor Plus Commercial Stacking Chair, Item 543-564, , with foam padding containing TDCPP.
- c. Defendant Office Depot, Inc. manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California padded, upholstered furniture, including office/task chairs, with foam padding containing TDCPP. Defendant Office Depot, Inc. also manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California the Alvy Task Chair, Item #715-010, with foam padding containing TDCPP.

- d. Defendants Unaka Company, Incorporated, Meco Corporation and Office Depot, Inc. each manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California chairs with padded seats and foam padding containing TDCPP. Defendants Unaka Company, Incorporated, Meco Corporation and Office Depot, Inc. each also manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale in California the Sudden Comfort by Meco chair, WS01C4S021, with foam padding containing TDCPP.
- 7. All such padded, upholstered furniture, including ottomans, stool and chairs, made with foam padding or cushion materials containing TDCPP and identified in paragraphs 6(a) through 6(d) above, shall hereinafter be referred to as "PRODUCTS." However, as to each defendant, PRODUCTS shall only mean or reference only those specific products or types of products listed for each specific defendant in paragraphs 6(a) through 6(g).
- 8. Although Defendants expose infants, children, and other California consumers to TDCPP through the reasonably foreseeable use of the PRODUCTS, Defendants provide no warnings about the carcinogenic hazards associated with these TDCPP exposures. Defendants' failure to warn consumers and/or other individuals in the State of California about their exposures to TDCPP in conjunction with defendants' sale of the PRODUCTS is a violation of Proposition 65.
- 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary and permanent injunctive relief to compel defendants to provide purchasers or users of any and all of the PRODUCTS with the required warning regarding the health hazards of TDCPP in the PRODUCTS. (*Cal. Health & Safety Code §* 25249.7(a).)
- 10. Plaintiff also seeks civil penalties against defendants for their violations of Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

PARTIES

11. Plaintiff LAURENCE VINOCUR is a citizen of the State of California who is experienced in protecting the health of California citizens through the elimination or reduction of

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

- 12. Each defendant Ace Bayou Corp. ("ACE"), Marco Group, Inc. ("MARCO"), Meco Corporation ("MECO"), Office Depot, Inc. ("OFFICE DEPOT") and Unaka Company, Incorporated ("UNAKA") is a person doing business within the meaning of California Health & Safety Code Section 25249.11.
- 13. Each defendant ACE, MARCO, MECO, OFFICE DEPOT and UNAKA manufactures, causes to be manufactured, distributes, causes to be distributed, imports, causes to be imported, sells and/or otherwise offers for sale or use in California the PRODUCTS or implies by its conduct that it does so.
- 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons doing business within the meaning of California Health & Safety Code Section 25249.11.

 MANUFACTURER DEFENDANTS engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the process of research, testing, designing, assembling, fabricating, and/or manufacturing, one or more of the PRODUCTS for sale or use in the State of California.
- 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons doing business within the meaning of California Health & Safety Code Section 25249.11. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in the State of California.
- 16. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing business within the meaning of California Health & Safety Code Section 25249.11. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State of California.
- 17. At this time, the true names of Defendants DOES 1 through 150, inclusive, are unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences herein alleged. When ascertained, their true names shall be reflected in an amended complaint.

18. ACE, MARCO, MECO, OFFICE DEPOT, UNAKA, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as "DEFENDANTS".

VENUE AND JURISDICTION

- 19. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil Procedure Sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of wrongful conduct occurred, and continues to occur, in this County and/or because DEFENDANTS conducted, and continue to conduct, business in this County with respect to the PRODUCTS.
- 20. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other trial courts." The statute under which this action is brought does not specify any other basis of subject matter jurisdiction.
- 21. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation or association that either is a citizen of the State of California and has sufficient minimum contacts in the State of California, or otherwise purposefully avails them self of the California market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

- 22. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 21, inclusive.
- 23. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986, the People of California expressly declared their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm."

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

- 25. On December 28, 2012, VINOCUR served a sixty-day notice of violation ("60-Day Notice"), supported by the requisite Certificate of Merit, upon ACE and various public enforcement agencies stating that as a result of the such defendants' sales of the PRODUCTS, purchasers and users in the State of California are being exposed to TDCPP resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been provided with a "clear and reasonable warning" regarding such toxic exposures.
- 26. On January 2, 2013, VINOCUR served a sixty-day notice of violation ("60-Day Notice"), supported by the requisite Certificate of Merit, upon MARCO, OFFICE DEPOT and various public enforcement agencies stating that as a result of the such defendants' sales of the PRODUCTS, purchasers and users in the State of California are being exposed to TDCPP resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been provided with a "clear and reasonable warning" regarding such toxic exposures.
- 27. On January 8, 2013, VINOCUR served a sixty-day notice of violation ("60-Day Notice"), supported by the requisite Certificate of Merit, upon UNAKA, MECO, OFFICE DEPOT and various public enforcement agencies stating that as a result of the such defendants' sales of the PRODUCTS, purchasers and users in the State of California are being exposed to TDCPP resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been provided with a "clear and reasonable warning" regarding such toxic exposures.
- 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and plaintiff is informed and believes that DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6

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27 28 has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice. Plaintiff further alleges and believes that such violations are reasonably likely to occur into the future absent express injunctive relief.

- 29. After receipt of the claims asserted in the 60-Day Notice, the appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action against DEFENDANTS under Proposition 65.
- 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in California by DEFENDANTS contain TDCPP.
 - 31. DEFENDANTS knew or should have known that the PRODUCTS contain TDCPP.
- 32. TDCPP is present in or on each of the PRODUCTS in such a way as to expose (as such exposure is defined by 27 CCR Section 25602(b)) individuals to TDCPP through dermal contact, inhalation and/or ingestion during the reasonably foreseeable use of the PRODUCTS.
- 33. DEFENDANTS knew or should have known that the reasonably foreseeable use of the PRODUCTS exposes individuals to TDCPP through dermal contact, inhalation and/or ingestion.
- 34. DEFENDANTS' participation in the manufacture, distribution and/or offer for sale or use of PRODUCTS to individuals in the State of California was deliberate and non-accidental.
- 35. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers and/or other individuals in the State of California who were or who could become exposed to TDCPP during the reasonably foreseeable use of the PRODUCTS.
- 36. Contrary to the express policy and statutory prohibition of Proposition 65, individuals exposed to the TDCPP through dermal contact, inhalation and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS without a "clear and reasonable warning", have suffered, and continue to suffer, irreparable harm, for which harm they have no other plain, speedy or adequate remedy at law.
- 37. As a consequence of the above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to California Health & Safety Code Section 25249.7(b).

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As a consequence of the above-described acts, California Health & Safety Code 38. Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

THE CHANLER GROUP

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as follows:

- That the Court, pursuant to California Health & Safety Code Section 25249.7(b), 1. assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged herein;
- That the Court, pursuant to California Health & Safety Code Section 25249.7(a), 2. preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to the TDCPP;
 - That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and 3.
 - That the Court grant such other and further relief as may be just and proper. 4.

Dated: March 29, 2013

Respectfully submitted,

THE CHANLER GROUP

Gregory M. Sheffer-Attorneys for Plaintiff

LAURENCE VINOCUR