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ALAMEDA COUNTY
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CLERK OF
THE SUPERIOR COURT
By Alicia Espinoza, Deputy

CASE NUMBER:
RG13673697

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

12 LAURENCE VINOUCUR,

13 Plaintiff,

14 vs.

15 ACE BAYOU CORP., MARCO GROUP, INC.,
16 MECO CORPORATION, MICHAELS
17 STORES, INC., OFFICE DEPOT, INC., THE
18 FAIRFIELD PROCESSING CORPORATION,
19 UNAKA COMPANY, INCORPORATED and
20 DOES 1-150,

21 Defendants.

Case No. RG13673697

**FIRST AMENDED 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 d. Defendants The Fairfield Processing Corporation and Michaels Stores, Inc.
2 each manufactures, causes to be manufactured, distributes, causes to be distributed,
3 imports, causes to be imported, sells and/or otherwise offers for sale in California foam
4 containing TDCPP. Defendants The Fairfield Processing Corporation and Michaels Stores,
5 Inc. each also manufactures, causes to be manufactured, distributes, causes to be distributed,
6 imports, causes to be imported, sells and/or otherwise offers for sale in California the Poly-
7 Fil Tru-Foam Bio-Based Foam Roll, Item TF24721 containing TDCPP.

8 e. Defendants Unaka Company, Incorporated, Meco Corporation and Office
9 Depot, Inc. each manufactures, causes to be manufactured, distributes, causes to be
10 distributed, imports, causes to be imported, sells and/or otherwise offers for sale in
11 California chairs with padded seats and foam padding containing TDCPP. Defendants
12 Unaka Company, Incorporated, Meco Corporation and Office Depot, Inc. each also
13 manufactures, causes to be manufactured, distributes, causes to be distributed, imports,
14 causes to be imported, sells and/or otherwise offers for sale in California the Sudden
15 Comfort by Meco chair, WS01C4S021, with foam padding containing TDCPP.

16 7. All such padded, upholstered furniture, including ottomans, stool and chairs, made
17 with foam padding or cushion materials containing TDCPP and identified in paragraphs 6(a)
18 through 6(d) above, shall hereinafter be referred to as "PRODUCTS." However, as to each
19 defendant, PRODUCTS shall only mean or reference only those specific products or types of
20 products listed for each specific defendant in paragraphs 6(a) through 6(g).

21 8. Although Defendants expose infants, children, and other California consumers to
22 TDCPP through the reasonably foreseeable use of the PRODUCTS, Defendants provide no
23 warnings about the carcinogenic hazards associated with these TDCPP exposures. Defendants'
24 failure to warn consumers and/or other individuals in the State of California about their
25 exposures to TDCPP in conjunction with defendants' sale of the PRODUCTS is a violation of
26 Proposition 65.

27 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
28 permanent injunctive relief to compel defendants to provide purchasers or users of any and all of

1 the PRODUCTS with the required warning regarding the health hazards of TDCPP in the
2 PRODUCTS. (*Cal. Health & Safety Code § 25249.7(a).*)

3 10. Plaintiff also seeks civil penalties against defendants for their violations of
4 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

5 **PARTIES**

6 11. Plaintiff LAURENCE VINOCUR is a citizen of the State of California who is
7 experienced in protecting the health of California citizens through the elimination or reduction of
8 toxic exposures from consumer products, and brings this action in the public interest pursuant to
9 California Health & Safety Code Section 25249.7.

10 12. Each defendant Ace Bayou Corp. ("ACE"), Marco Group, Inc. ("MARCO"), Meco
11 Corporation ("MECO"), Michales Stores, Inc. ("MICHAELS"), Office Depot, Inc. ("OFFICE
12 DEPOT"), The Fairfield Processing Corporation ("FAIRFIELD") and Unaka Company,
13 Incorporated ("UNAKA") is a person doing business within the meaning of California Health &
14 Safety Code Section 25249.11.

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

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

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

1 FIRST CAUSE OF ACTION

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

3 22. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 21, inclusive.

5 23. 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 informed
7 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

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

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

18 26. On January 2, 2013, VINOCUR served a 60-Day Notice, supported by the requisite
19 Certificate of Merit, upon MARCO, OFFICE DEPOT and various public enforcement agencies
20 stating that as a result of the such defendants’ sales of the PRODUCTS, purchasers and users in the
21 State of California are being exposed to TDCPP resulting from the reasonably foreseeable uses of
22 the PRODUCTS, without the individual purchasers and users first having been provided with a
23 “clear and reasonable warning” regarding such toxic exposures.

24 27. On January 8, 2013, VINOCUR served a 60-Day Notice, supported by the requisite
25 Certificate of Merit, upon UNAKA, MECO, OFFICE DEPOT and various public enforcement
26 agencies stating that as a result of the such defendants’ sales of the PRODUCTS, purchasers and
27 users in the State of California are being exposed to TDCPP resulting from the reasonably
28

1 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been
2 provided with a “clear and reasonable warning” regarding such toxic exposures.

3 28. On January 30, 2013, VINOCUR served a 60-Day Notice, supported by the requisite
4 Certificate of Merit, upon FAIRFIELD, MICHAELS and various public enforcement agencies
5 stating that as a result of the such defendants’ sales of the PRODUCTS, purchasers and users in the
6 State of California are being exposed to TDCPP resulting from the reasonably foreseeable uses of
7 the PRODUCTS, without the individual purchasers and users first having been provided with a
8 “clear and reasonable warning” regarding such toxic exposures.

9 29. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
10 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
11 plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or offering
12 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
13 has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notice. Plaintiff
14 further alleges and believes that such violations are reasonably likely to occur into the future
15 absent express injunctive relief.

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

19 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
20 California by DEFENDANTS contain TDCPP.

21 32. DEFENDANTS knew or should have known that the PRODUCTS contain TDCPP.

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

25 34. DEFENDANTS knew or should have known that the reasonably foreseeable use of
26 the PRODUCTS exposes individuals to TDCPP through dermal contact, inhalation and/or
27 ingestion.

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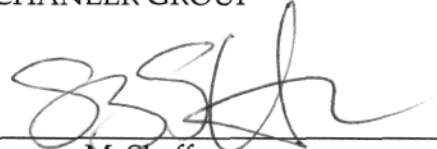
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: April 10, 2013

Respectfully submitted,

THE CHANLER GROUP

By: 

Gregory M. Sheffer
Attorneys for Plaintiff
LAURENCE VINO CUR