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**ENDORSED
FILED
ALAMEDA COUNTY**

AUG 01 2013

**CLERK OF THE SUPERIOR COURT
By Angela Yamsuan**

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

LAURENCE VINO CUR,

Plaintiff,

v.

EVENFLO COMPANY, INC., TARGET
CORPORATION, AMAZON.COM, INC.,
QUIDSI, INC., WAYFAIR LLC, WAL-
MART STORES, INC.; and DOES 1-150,
inclusive,

Defendants.

Case No. RG13673019

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

(Health & Safety Code section 25249.6 *et seq.*)

VIA FAX

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-dichloroisopropyl) phosphate (“TDCPP”) and
5 tris(2-chlorethyl) phosphate (“TCEP”) toxic chemicals found in and on car seats with padding
6 sold in California. TDCPP and TCEP are toxic chemicals that are used to treat polyurethane
7 foam, which is used as padding or cushioning in a variety of products.

8 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failures to
9 warn California citizens about the risk of exposure to TDCPP and TCEP present in and on car
10 seats with padding manufactured, distributed, and offered for sale or use to consumers
11 throughout the State of California.

12 3. Detectable levels of TDCPP are commonly found in and on car seats with
13 padding that Defendants manufacture, distribute, and offer for sale to consumers, many of
14 whom are infants and children, throughout the State of California. Individuals in California,
15 including infants and children, are exposed to TDCPP and TCEP in the products through
16 various routes of exposure: (i) through inhalation when TDCPP and TCEP are released from car
17 seats with padding; (ii) through dermal exposure when TDCPP and TCEP from car seats with
18 padding accumulates in ambient particles that are subsequently touched by such individuals;
19 and (iii) through ingestion when such particles are brought into contact with the mouth.

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

25 5. TDCPP and TCEP have been used in consumer products as additive flame
26 retardants since the 1960s. In the late 1970s, based on findings that exposure to TDCPP could
27 have mutagenic effects, the United States Consumer Product Safety Commission banned the use
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1 of TDCPP in children's pajamas. TCEP is currently banned in children's products in certain
2 states, and several other states have proposed a ban on TDCPP in children's products as well.

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

7 7. Pursuant to Proposition 65, on April 1, 1992, California identified and listed
8 TCEP as a chemical known to cause cancer. TCEP became subject to the "clear and reasonable
9 warning" requirements of the Act one year later on April 1, 1993. *Id.*

10 8. Defendant EVENFLO COMPANY, INC. manufactures, distributes, imports,
11 sells, and/or offers for sale in California car seats with padding containing TDCPP, including
12 the *Evenflo AMP LX No-Black Booster, Style: Red Splat, Item 2176, #34111336, #25803764 (#0*
13 *32884 17645 8)*.

14 9. Defendant EVENFLO COMPANY, INC. manufactures, distributes, imports,
15 sells, and/or offers for sale in California car seats with padding containing TCEP, including:

16 a. *The Evenflo AMP LX No-Black Booster, Style: Red Splat, Item 2176,*
17 *#34111336, #25803764 (#0 32884 17645 8);*

18 b. *The Evenflo AMP LX Belt-Positioning Booster, Paintbrush Pink,*
19 *#34111424, #25803861 (#0 32884 17937 4);*

20 c. *The Evenflo AMP Graphics No Back Booster Car Seat, Retro Flowers,*
21 *#34111220, CPL-25802977 (#0 32884 17338 9);*

22 d. *The Evenflo AMP Graphics No-Back Booster Car Seat, Red Music,*
23 *#34111221, CPL-25802976 (#0 32884 17339 6); and*

24 e. *The Evenflo AMP Limited No Back Booster Car Seat, Blue Flames,*
25 *#34121296, CPL-25803326 (#0 32884 17500 0).*

1 10. Defendant TARGET CORPORATION manufactures, distributes, imports, sells,
2 and/or offers for sale in California products containing TDCPP including the *Evenflo AMP LX*
3 *No-Black Booster, Style: Red Splat, Item 2176, #34111336, #25803764 (#0 32884 17645 8).*

4 11. Defendant TARGET CORPORATION manufactures, distributes, imports, sells,
5 and/or offers for sale in California car seats with padding containing TCEP including the
6 *Evenflo AMP LX No-Black Booster, Style: Red Splat, Item 2176, #34111336, #25803764 (#0*
7 *32884 17645 8).*

8 12. Defendant AMAZON.COM, INC. manufactures, distributes, imports, sells, and/or
9 offers for sale in California car seats with padding containing TCEP including:

10 a. The *Evenflo AMP Graphics No Back Booster Car Seat, Retro Flowers,*
11 *#34111220, CPL-25802977 (#0 32884 17338 9); and*

12 b. The *Evenflo AMP LX Belt-Positioning Booster, Paintbrush Pink,*
13 *#34111424, #25803861 (#0 32884 17937 4).*

14 13. Defendant QUIDSI, INC. manufactures, distributes, imports, sells, and/or offers
15 for sale in California car seats with padding containing TCEP including the *Evenflo AMP LX*
16 *Belt-Positioning Booster, Paintbrush Pink, #34111424, #25803861 (#0 32884 17937 4).*

17 14. Defendant WAYFAIR LLC manufactures, distributes, imports, sells, and/or offers
18 for sale in California car seats with padding containing TCEP including the *Evenflo AMP*
19 *Graphics No-Back Booster Car Seat, Red Music, #34111221, CPL-25802976 (#0 32884 17339*
20 *6).*

21 15. Defendant WAL-MART STORES, INC. manufactures, distributes, imports, sells,
22 and/or offers for sale in California car seats with padding containing TCEP including the
23 *Evenflo AMP Limited No Back Booster Car Seat, Blue Flames, #34121296, CPL-25803326 (#0*
24 *32884 17500 0).*

25 16. All car seats with padding containing TDCPP and/or TCEP, as listed in
26 paragraphs 8 through 15 above, shall hereinafter be referred to as the "PRODUCTS." As to
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1 each specific defendant, however, PRODUCTS shall refer only to those products listed for each
2 specific defendant in paragraphs 8 through 15 above.

3 17. Although Defendants expose infants, children, and other people to TDCPP and
4 TCEP in the PRODUCTS, Defendants provide no warnings about the carcinogenic hazards
5 associated with these TDCPP and TCEP exposures. Defendants' failures to warn consumers
6 and other individuals in the State of California not covered by California's Occupational Health
7 Act, Labor Code sections 6300 through 6719 about their exposures to TDCPP and TCEP in
8 conjunction with Defendants' sales of the PRODUCTS, is a violation of Proposition 65, and
9 subjects Defendants to enjoinder of such conduct as well as civil penalties for each violation.
10 Health & Safety Code § 25249.7(a) & (b)(1).

11 18. As a result of Defendants' violations of Proposition 65, PLAINTIFF seeks
12 preliminary and permanent injunctive relief to compel Defendants to provide purchasers or
13 users of the PRODUCTS with the required warning regarding the health hazards of TDCPP and
14 TCEP in the PRODUCTS. Health & Safety Code § 25249.7(a).

15 19. Pursuant to Health and Safety Code section 25249.7(b), PLAINTIFF also seeks
16 civil penalties against Defendants for their violations of Proposition 65.

17 **PARTIES**

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

22 21. Defendants EVENFLO COMPANY, INC. ("EVENFLO"), TARGET
23 CORPORATION ("TARGET"), AMAZON.COM, INC. ("AMAZON"), QUIDSI, INC.
24 ("QUIDSI"), WAYFAIR LLC ("WAYFAIR"), and WAL-MART STORES, INC. ("WAL-
25 MART") each is a person in the course of doing business within the meaning of Health and
26 Safety Code section 25249.11.

1 32. On February 26, 2013, PLAINTIFF's sixty-day notice of violation, together with
2 the requisite certificate of merit, was provided to EVENFLO, TARGET, and certain public
3 enforcement agencies stating that, as a result of EVENFLO's and TARGET's sales of the
4 PRODUCTS containing TCEP, purchasers and users in the State of California were being
5 exposed to TCEP resulting from their reasonably foreseeable use of the PRODUCTS, without
6 the individual purchasers and users first having been provided with a "clear and reasonable
7 warning" regarding such toxic exposures, as required by Proposition 65.

8 33. On March 20, 2013, PLAINTIFF's supplemental sixty-day notice of violation,
9 together with the requisite certificate of merit, was provided to EVENFLO, TARGET, and
10 certain public enforcement agencies stating that, as a result of EVENFLO's and TARGET's
11 sales of the PRODUCTS containing TDCPP, purchasers and users in the State of California
12 were being exposed to TDCPP resulting from their reasonably foreseeable use of the
13 PRODUCTS, without the individual purchasers and users first having been provided with a
14 "clear and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

15 34. On April 11, 2013, PLAINTIFF's supplemental sixty-day notice of violation,
16 together with the requisite certificate of merit, was provided to EVENFLO, TARGET,
17 AMAZON, QUIDSI, WAYFAIR, WAL-MART, and certain public enforcement agencies
18 stating that, as a result of EVENFLO's, TARGET's, AMAZON's, QUIDSI's, WAYFAIR's,
19 and WAL-MART's sales of the PRODUCTS containing TCEP, purchasers and users in the
20 State of California were being exposed to TCEP resulting from their reasonably foreseeable use
21 of the PRODUCTS, without the individual purchasers and users first having been provided with
22 a "clear and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

23 35. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
24 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
25 25249.6, and DEFENDANTS' violations have continued to occur beyond their receipt of
26 PLAINTIFF's sixty-day notices of violation described in paragraphs 31 through 34, above
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1 (“Notices”). As such, Defendants’ violations are ongoing and continuous in nature, and will
2 continue to occur in the future.

3 36. After receiving PLAINTIFF’s Notices, the appropriate public enforcement
4 agencies have failed to commence and diligently prosecute a cause of action against
5 DEFENDANTS under Proposition 65.

6 37. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
7 or use in California by DEFENDANTS contain TDCPP and TCEP such that they require a
8 “clear and reasonable” warning under Proposition 65.

9 38. DEFENDANTS knew or should have known that the PRODUCTS they
10 manufacture, import, distribute, sell, and offer for sale or use in California contain TDCPP and
11 TCEP.

12 39. TDCPP and TCEP are present in or on the PRODUCTS in such a way as to
13 expose individuals to TDCPP and TCEP through dermal contact, ingestion, and/or inhalation
14 during reasonably foreseeable use of the PRODUCTS.

15 40. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
16 continue to cause, consumer exposures to TDCPP and TCEP, as such exposures are defined by
17 California Code of Regulations title 27, section 25602(b).

18 41. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
19 of the PRODUCTS expose individuals to TDCPP and TCEP through dermal contact, ingestion,
20 and/or inhalation.

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

25 43. DEFENDANTS failed to provide a “clear and reasonable warning” to those
26 consumers and other individuals in the State of California who were or who would become
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1 exposed to TDCPP and TCEP through dermal contact, ingestion, and/or inhalation during the
2 reasonably foreseeable uses of the PRODUCTS.

3 44. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
4 directly by California voters, individuals exposed to TDCPP and TCEP through dermal contact,
5 ingestion, and/or inhalation resulting from the reasonably foreseeable uses of the PRODUCTS
6 sold by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue
7 to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

11 46. As a consequence of the above-described acts, Health and Safety Code
12 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
13 Defendants.

14 **PRAYER FOR RELIEF**

15 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS, and each of them,
16 as follows:

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

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

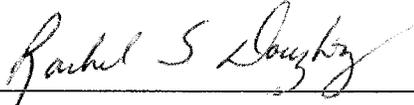
24 3. That the Court grant PLAINTIFF his reasonable attorneys’ fees and costs of suit;
25 and

26 4. That the Court grant such other and further relief as may be just and proper.
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Dated: August 1, 2013

THE CHANLER GROUP

By: 

Rachel S. Doughty
Attorneys for Plaintiff
LAURENCE VINOCUR