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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 ALAMEDA COUNTY

11 UNLIMITED CIVIL JURISDICTION

RG13673027

12 LAURENCE VINOCUR,

13 Plaintiff,

14 v.

15 TRUE DESIGN, INC.; STAKMORE
16 COMPANY; THE MUSIC PEOPLE, INC.;
17 COSTCO WHOLESALE CORPORATION;
18 GUITAR CENTER, INC.; and DOES 1-150,
inclusive,

19 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

NATURE OF THE ACTION

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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”), a
5 toxic chemicals found in products sold in California. TDCPP is a toxic chemical that is used to
6 treat polyurethane foam, which is used as padding or cushioning in a variety of products,
7 including upholstered furniture.

8 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failure to
9 warn citizens, consumers, and other individuals throughout California about the health hazard
10 risks associated with exposures to TDCPP present in and on the products manufactured,
11 distributed, sold, and offered for sale by Defendants.

12 3. Detectable levels of TDCPP are commonly found in and on the products
13 Defendants manufacture, distribute, sell, and offer for sale or use without warning in California.
14 Citizens, consumers, and other individuals in California, including infants and children, are
15 exposed to TDCPP in the following ways: (i) by inhalation when they inhale TDCPP present in
16 ambient particles released from upholstered furniture and other products containing TDCPP-
17 treated foam; (ii) by dermal exposure when they touch TDCPP-treated foam directly or contact
18 ambient particles containing TDCPP that are released from upholstered furniture and other
19 products that use TDCPP-treated foam; and (iii) by route of ingestion as a result of hand-to-
20 mouth contact with TDCPP-treated foam or with ambient particles released from upholstered
21 furniture and other products that use TDCPP-treated foam.

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

1 5. TDCPP has been used in consumer products as an additive flame retardant since
2 the 1960s. In the late 1970s, based on findings that exposures to TDCPP could have mutagenic
3 effects, the United States Consumer Product Safety Commission banned the use of TDCPP in
4 children’s pajamas.

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

9 7. Defendants manufacture, distribute, import, sell, and/or offer for sale in California
10 products containing TDCPP as follows:

11 a. Defendants True Design, Inc. manufacture, distribute, import, sell, and/or
12 offer for sale without a warning in California, padded upholstered furniture, including
13 office/task chairs, that contains TDCPP. Defendants’ products include, but are not
14 limited to, the *True Innovations Task Office Chair, Model 41832, Itm./Art. 633882, (#6*
15 *56292 41832 2)* sold by, inter alia, Costco Wholesale Corporation.

16 b. Defendant True Design., Inc. manufactures, distributes, imports, sells,
17 and/or offers for sale without a warning in California padded upholstered furniture,
18 including benches, that contain TDCPP. Defendants’ products include, but are not
19 limited to, the *On Stage Stands Flip-Top Style Keyboard & Piano Bench, OSS KB8902B,*
20 *Item No. 54787 (#6 59814 40746 0)* sold by, inter alia, The Guitar Center, Inc.

21 c. Defendant Stakmore Company manufactures, distributes, imports, sells,
22 and/or offers for sale without a warning in California chairs with padded seats that
23 contain TDCPP. Defendants’ products include, but are not limited to, *Stakmore Folding*
24 *Chair Itm./Art. 536366, (#7 92790 46258 7)* sold by, inter alia, Costco Wholesale
25 Corporation.

26 9. All such padded upholstered furniture, including office/task chairs and benches,
27 and chairs with padded seats, that contains TDCPP, described in Paragraphs 8(a) and (c) above,
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1 shall hereinafter be collectively be referred to as “PRODUCTS.” As to each specific
2 defendant, however, PRODUCTS shall refer only to those categories of products listed for the
3 defendant in Paragraphs 8(a) and (c) above.

4 10. Although Defendants expose infants, children, and other people to TDCPP in
5 their PRODUCTS, Defendants provide no warnings about the carcinogenic or teratogenic health
6 hazards associated with exposures to these Proposition 65-listed chemicals. Defendants’ failure
7 to warn consumers and other individuals in the State of California not covered by California’s
8 Occupational Safety Health Act, Labor Code section 6300 et seq. about their the health hazards
9 associated with exposures to TDCPP in conjunction with Defendants’ distribution, importation,
10 manufacture, and/or sales of the PRODUCTS, are violations of Proposition 65, and subject
11 Defendants to enjoinder of such conduct as well as civil penalties for each violation. Health &
12 Safety Code § 25249.7(a) & (b)(1).

13 11. Pursuant to Health and Safety Code section 25249.7(a), Plaintiff seeks
14 preliminary and permanent injunctive relief to compel each of the Defendants to provide
15 purchasers or users of the PRODUCTS with the required health hazard warning regarding the
16 risks of exposures TDCPP in the PRODUCTS.

17 12. Pursuant to Health and Safety Code Section 25249.7(b), Plaintiff also seeks civil
18 penalties against each Defendant for its violations of Proposition 65.

19 **PARTIES**

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

24 14. Defendants True Design, Inc. (“TRUE DESIGN”), The Music People, Inc.
25 (“MUSIC PEOPLE”), Stakmore Company (“STAKMORE”), Costco Wholesale Incorporated
26 (“COSTCO”), and The Guitar Center, Inc. (“GUITAR CENTER”) is each a person in the
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1 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
2 25249.11.

3 15. TRUE DESIGN, MUSIC PEOPLE, STAKMORE, COSTCO, and GUITAR
4 CENTER each manufacture, import, distribute, sell, and/or offer the PRODUCTS for sale or use
5 in the State of California, or implies by its conduct that it manufactures, imports, distributes,
6 sells, and/or offers the PRODUCTS for sale or use in the State of California.

7 16. Defendants DOES 1-150 are each a person in the course of doing business within
8 the meaning of Health and Safety Code sections 25249.6 and 25249.11. DOES 1 – 150 import,
9 manufacture, distribute, sell, and/or offer the PRODUCTS for sale or use in the State of
10 California. At this time, the true names and capacities of defendants DOES 1 – 150, inclusive,
11 are unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant
12 to Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
13 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
14 alleged herein. When ascertained, the true name and capacity of each such Defendant shall be
15 reflected in an amended complaint.

16 17. TRUE DESIGN, MUSIC PEOPLE, STAKMORE, COSTCO, GUITAR
17 CENTER, and Defendants DOES 1-150 are collectively referred to hereinafter as
18 “DEFENDANTS.”

19 **VENUE AND JURISDICTION**

20 18. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil
21 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
22 because Plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
23 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because
24 Defendants conducted, and continue to conduct, business in this county with respect to the
25 PRODUCTS.

26 19. The California Superior Court has jurisdiction over this action pursuant to
27 California Constitution Article VI, section 10, which grants the Superior Court “original
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1 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
2 which this action is brought does not specify any other basis of subject matter jurisdiction.

3 20. The California Superior Court has jurisdiction over DEFENDANTS based on
4 Plaintiff’s information and good faith belief that each defendant is a person, firm, corporation,
5 or association that is a citizen of the State of California, has sufficient minimum contacts in the
6 State of California, and/or otherwise purposefully avails itself of the California market.
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
8 California courts consistent with traditional notions of fair play and substantial justice.

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10 **FIRST CAUSE OF ACTION**

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

12 21. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
13 Paragraphs 1 through 20, inclusive.

14 22. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
15 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
16 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
17 harm.”

18 23. Health and Safety Code section 25249.6 states, “[n]o person in the course of
19 doing business shall knowingly and intentionally expose any individual to a chemical known to
20 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
21 warning to such individual . . . ”

22 24. On January 10, 2013, LAURENCE VINOCUR provided a sixty-day notice of
23 violation of Proposition 65, together with the requisite certificate of merit, to TRUE DESIGN
24 and certain required public enforcement agencies, stating that as a result of TRUE DESIGN’s
25 sales of the PRODUCTS, purchasers and users in California were being exposed to TDCPP
26 resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual
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1 purchasers and users first having been provided with a “clear and reasonable warning”
2 regarding the health hazards of such toxic exposures, as required by Proposition 65.

3 25. On January 10, 2013, LAURENCE VINOCUR provided a sixty-day notice of
4 violation of Proposition 65, together with the requisite certificate of merit, to MUSIC PEOPLE
5 and the required public enforcement agencies, stating that as a result of MUSIC PEOPLE’s
6 sales of the PRODUCTS, purchasers and users in California were being exposed to TDCPP and
7 DEHP resulting from their reasonably foreseeable uses of the PRODUCTS, without the
8 individual purchasers and users first having been provided with a “clear and reasonable
9 warning” regarding the health hazards of such toxic exposures, as required by Proposition 65.

10 26. On January 10, 2013, LAURENCE VINOCUR served a sixty-day notice of
11 violation of Proposition 65, together with the requisite certificate of merit, to STAKMORE and
12 the required public enforcement agencies, stating that as a result of STAKMORE’s sales of the
13 PRODUCTS, purchasers and users in California were being exposed to TDCPP resulting from
14 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
15 first having been provided with a “clear and reasonable warning” regarding the health hazards
16 of such toxic exposures, as required by Proposition 65.

17 27. On January 10, 2013, LAURENCE VINOCUR served a sixty-day notice of
18 violation, together with the requisite certificate of merit, to COSTCO, and the required public
19 enforcement agencies, stating that as a result COSTCO’s and of sales of the PRODUCTS,
20 purchasers and users in California were being exposed to TDCPP as a result of their reasonably
21 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
22 been provided with a “clear and reasonable warning” regarding the health hazards of such toxic
23 exposures, as required by Proposition 65.

24 28. On January 10, 2013, LAURENCE VINOCUR served a sixty-day notice of
25 violation, together with the requisite certificate of merit, GUITAR CENTER, and the required
26 public enforcement agencies, stating that as a result of GUITAR CENTER’s sales of the
27 PRODUCTS, purchasers and users in California were being exposed to TDCPP resulting from
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1 their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
2 users first having been provided with a “clear and reasonable warning” regarding the health
3 hazards of such toxic exposures, as required by Proposition 65.

4 29. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
5 and offering of the PRODUCTS for sale or use in California in violation of Health and Safety
6 Code section 25249.6, and DEFENDANTS’ violations have continued to occur beyond their
7 receipt of Plaintiff’s sixty-day notices of violation. As such, DEFENDANTS’ violations are
8 ongoing and continuous in nature, such that they will continue to occur in the future.

9 30. After receiving Plaintiff’s sixty-day notices of violation, the appropriate public
10 enforcement agencies have failed to commence and diligently prosecute a cause of action
11 against DEFENDANTS under Proposition 65.

12 31. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell and offer
13 for sale or use in California contain TDCPP such that they require a “clear and reasonable”
14 warning under Proposition 65.

15 32. DEFENDANTS knew or should have known that the PRODUCTS they
16 manufacture, import, distribute, sell, and offer for sale or use in California contain TDCPP.

17 33. TDCPP is present in or on the PRODUCTS in such a way as to expose
18 individuals to TDCPP through dermal contact, ingestion, and/or inhalation during reasonably
19 foreseeable uses of the PRODUCTS.

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

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

26 36. DEFENDANTS intended that such exposures to TDCPP from the reasonably
27 foreseeable uses of the PRODUCTS would occur by DEFENDANTS’ deliberate, non-
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1 accidental participation in the manufacture, importation, distribution, sale, and offering of the
2 PRODUCTS for sale or use to individuals in the State of California.

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

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

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

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

18 **PRAYER FOR RELIEF**

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

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

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

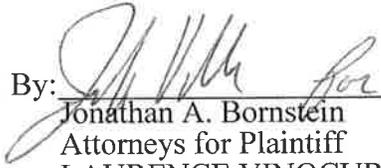
27 3. That the Court grant Plaintiff his reasonable attorneys’ fees and costs of suit; and
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4. That the Court grant such other and further relief as may be just and proper.

Dated: March 26, 2013

THE CHANLER GROUP

By: 
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LAURENCE VINO CUR