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**ENDORSED
FILED
ALAMEDA COUNTY**

APR 12 2013

CLERK OF THE SUPERIOR COURT
By M Hayes Deputy

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 LAURENCE VINO CUR,

16 Plaintiff,

17 v.

18 Z-LINE DESIGNS, INC.; and DOES 1-150,
19 inclusive,

20 Defendants.

) Case No. **RG 13 67 533 7**

) **COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF**

) (Health & Safety Code. § 25249.6, *et seq.*)

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BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff LAURENCE
3 VINOCCUR (“Plaintiff”) in the public interest of the citizens of the State of California to enforce
4 the People’s right to be informed of the presence of Tris(1,3-dichloro-2-propyl) phosphate
5 (“TDCPP”), a toxic chemical found in products sold in California. TDCPP is a toxic chemical
6 that is used to treat polyurethane foam, which is used as padding or cushioning in a variety of
7 products.

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

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

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

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

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

5 7. Defendant Z-Line Designs, Inc. manufactures, distributes, imports, sells, and/or
6 offers for sale in California padded upholstered furniture, including office chairs containing
7 TDCPP including, but not limited to, *Z-Line ZL3006 Mgr. Chair, Item No. ZL3006-01MCU,*
8 *#846158003513.*

9 8. All padded upholstered furniture including office chairs containing TDCPP, as
10 listed above, shall hereinafter be referred to as the “PRODUCTS.”

11 9. Although Defendants expose infants, children, and other people to TDCPP in the
12 PRODUCTS, Defendants provide no warnings about the carcinogenic hazards associated with
13 these TDCPP exposures. Defendants’ failures to warn consumers and other individuals in the
14 State of California not covered by California’s Occupational Safety Health Act, Labor Code
15 § 6300 *et seq.* about their exposures to TDCPP in conjunction with Defendants’ distribution,
16 importation, manufacture, and/or sales of the PRODUCTS, is a violation of Proposition 65, and
17 subjects Defendants to enjoinder of such conduct as well as civil penalties for each violation.
18 (Health & Safety Code § 25249.7(a) & (b)(1).)

19 10. As a result of Defendants’ violations of Proposition 65, Plaintiff seeks preliminary
20 and permanent injunctive relief to compel Defendants to provide purchasers or users of the
21 PRODUCTS with the required warning regarding the health hazards of the TDCPP in the
22 PRODUCTS. (Health & Safety Code § 25249.7(a).)

23 11. Pursuant to Health and Safety Code Section 25249.7(b), Plaintiff also seeks civil
24 penalties against Defendants for their violations of Proposition 65.

1 **PARTIES**

2 12. Plaintiff LAURENCE VINOCUR is a citizen of the State of California who is
3 dedicated to protecting the health of California citizens through the elimination or reduction of
4 toxic exposures from consumer products; and he brings this action in the public interest
5 pursuant to Health and Safety Code Section 25249.7(d).

6 13. Defendant Z-Line Designs, Inc. (“Z-LINE”) is a person in the course of doing
7 business within the meaning of Health and Safety Code Section 25249.11.

8 14. Z-LINE manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
9 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
10 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

11 15. Defendants DOES 1-150 are each persons in the course of doing business within
12 the meaning of Health and Safety Code Section 25249.11(b), that manufacture, distribute, sell,
13 and/or offer the PRODUCTS for sale in the State of California. At this time, the true names and
14 capacities of Defendants DOES 1 through 150, inclusive, are unknown to Plaintiff, who,
15 therefore, sues said Defendants by their fictitious names pursuant to Code of Civil Procedure
16 Section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the
17 fictitiously named Defendants is responsible for the acts and occurrences alleged herein. When
18 ascertained, their true names and capacities shall be reflected in an amended complaint.

19 16. Z-LINE and Defendants DOES 1-150 are collectively referred to herein as
20 “DEFENDANTS.”

21 **VENUE AND JURISDICTION**

22 17. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil
23 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
24 because Plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
25 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because
26 Defendants conducted, and continue to conduct, business in this county with respect to the
27 PRODUCTS.
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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 such toxic
3 exposures, as required by Proposition 65.

4 24. 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 notice of violation. As such, DEFENDANTS’ violations are
8 ongoing and continuous in nature, and will continue to occur in the future.

9 25. After receiving Plaintiff’s sixty-day notice 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 26. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
13 or use in California by DEFENDANTS contain TDCPP such that they require a “clear and
14 reasonable” warning under Proposition 65.

15 27. 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 28. 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 29. 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 Title 27 of the California Code of Regulations, section 25602(b).

23 30. 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 31. 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 32. 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 33. 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 34. 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 35. 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.

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PRAYER FOR RELIEF

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

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


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

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 12, 2013

THE CHANLER GROUP

By: 

Troy C. Bailey
Attorneys for Plaintiff
LAURENCE VINOCUR