

1 Laralei S. Paras, State Bar No. 203319  
2 Josh Voorhees, State Bar No. 241436  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff  
10 LAURENCE VINO CUR

**ENDORSED  
FILED  
ALAMEDA COUNTY**

MAY - 2 2013

CLERK OF THE SUPERIOR COURT  
By **MARGARET J. DOWNL**  
Deputy

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF ALAMEDA  
14 UNLIMITED CIVIL JURISDICTION

15 LAURENCE VINO CUR,

16 Plaintiff,

17 v.

18 COHESION PRODUCTS, LLC; FRY'S  
19 ELECTRONICS, INC.; and DOES 1-150,  
20 inclusive,

21 Defendants.

22 Case No. **RG13678011**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

23  
24  
25  
26  
27  
28  
**BY 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-dichloro-2-propyl) phosphate (“TDCPP”), a toxic  
5 chemical found in padded upholstered furniture sold in California. TDCPP is a toxic chemical that  
6 is used to treat polyurethane foam, which is used as padding or cushioning in a variety of products.

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

11 3. Detectable levels of TDCPP are commonly found in and on the padded upholstered  
12 gaming chairs that Defendants manufacture, distribute, sell, and offer for sale to consumers  
13 throughout the State of California. Individuals in California, including infants and children, are  
14 exposed to TDCPP when they inhale TDCPP released from padded upholstered gaming chairs, and  
15 also when TDCPP from padded upholstered gaming chairs accumulates in ambient particles that are  
16 subsequently touched by such individuals and brought into contact with the mouth.

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

22 5. TDCPP has been used in consumer products as an additive flame retardant since the  
23 1960s. In the late 1970s, based on findings that exposure to TDCPP could have mutagenic effects,  
24 the United States Consumer Product Safety Commission banned the use of TDCPP in children’s  
25 pajamas.

26 6. Pursuant to Proposition 65, on October 28, 2011, California identified and listed  
27 TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and reasonable  
28 warning” requirements of the Act one year later on October 28, 2012. (Cal. Code Regs., Title 27,

1 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).) TDCPP is hereinafter referred to as  
2 the “LISTED CHEMICAL.”

3 7. Defendants manufacture, distribute, import, sell, and/or offer for sale padded  
4 upholstered gaming chairs containing TDCPP without a warning including, but not limited to,  
5 *XP11.2 Gaming Chair, Item No. 5600018 (#4 894088 000603)*. All such padded upholstered  
6 gaming chairs containing TDCPP, are hereinafter collectively referred to as the “PRODUCTS.”

7 8. Although Defendants expose infants, children, and other people to TDCPP in the  
8 PRODUCTS, Defendants failed to provide warnings about the carcinogenic hazards associated with  
9 these TDCPP exposures. Defendants’ failures to warn consumers and other individuals in the State  
10 of California about their exposures to the LISTED CHEMICAL in conjunction with Defendants’  
11 sales of the PRODUCTS, is a violation of Proposition 65, and subjects Defendants to enjoinder of  
12 such conduct as well as civil penalties for each violation. (Health & Safety Code § 25249.7(a) &  
13 (b)(1).)

14 9. As a result of Defendants’ violations of Proposition 65, Plaintiff seeks preliminary  
15 and permanent injunctive relief to compel Defendants to provide purchasers and users of the  
16 PRODUCTS with the required warning regarding the health hazards of the LISTED CHEMICAL.  
17 (Health & Safety Code § 25249.7(a).)

18 10. Pursuant to Health and Safety Code § 25249.7(b), Plaintiff also seeks civil penalties  
19 against Defendants for their violations of Proposition 65.

20 **PARTIES**

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

25 12. Defendant COHESION PRODUCTS, LLC (“COHESION”) is a person in the course  
26 of doing business within the meaning of Health and Safety Code § 25249.11.

27 ///

28 ///



1 information and good faith belief that each Defendant is a person, firm, corporation or association  
2 that is a citizen of the State of California, has sufficient minimum contacts in the State of California,  
3 and/or otherwise purposefully avails itself of the California market. Defendants' purposeful  
4 availment of California as a marketplace for the PRODUCTS renders the exercise of personal  
5 jurisdiction by California courts over Defendants consistent with traditional notions of fair play and  
6 substantial justice.

7 **FIRST CAUSE OF ACTION**

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

9 21. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
10 Paragraphs 1 through 20, inclusive.

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

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

18 24. On February 5, 2013, Plaintiff's 60-Day Notice of Violation, together with the  
19 requisite certificate of merit, was provided to COHESION PRODUCTS, LLC and certain public  
20 enforcement agencies stating that, as a result of Defendants' sales of the PRODUCTS containing  
21 the LISTED CHEMICAL, purchasers and users in the State of California were being exposed to the  
22 LISTED CHEMICAL resulting from their reasonably foreseeable uses of the PRODUCTS, without  
23 the individual purchasers and users first having been provided with a "clear and reasonable  
24 warning" regarding such toxic exposures, as required by Proposition 65.

25 25. On February 25, 2013, Plaintiff's Supplemental 60-Day Notice of Violation, together  
26 with the requisite certificate of merit, was provided to COHESION PRODUCTS, LLC, FRY'S  
27 ELECTRONICS, INC., and certain public enforcement agencies stating that, as a result of  
28 Defendants' sales of the PRODUCTS containing the LISTED CHEMICAL, purchasers and users in

1 the State of California were being exposed to the LISTED CHEMICAL resulting from their  
2 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first  
3 having been provided with a “clear and reasonable warning” regarding such toxic exposures, as  
4 required by Proposition 65.

5 26. Defendants COHESION and DOES 1-150 have engaged in the manufacture,  
6 importation, distribution, sale, and offering of the PRODUCTS for sale or use in violation of Health  
7 and Safety Code § 25249.6, and Defendants’ violations have continued to occur beyond their  
8 receipt of Plaintiff’s 60-Day Notice of Violation. As such, the violations of Defendants  
9 COHESION and DOES 1-150 are ongoing and continuous in nature, and will continue to occur in  
10 the future.

11 27. Defendants FRY’S and DOES 1-150 have engaged in the importation, distribution,  
12 sale, and offering of the PRODUCTS for sale or use in violation of Health and Safety Code §  
13 25249.6, and Defendants’ violations have continued to occur beyond their receipt of Plaintiff’s  
14 Supplemental 60-Day Notice of Violation. As such, the violations of Defendants’ FRY’S and  
15 DOES 1-150 are ongoing and continuous in nature, and will continue to occur in the future.

16 28. After receiving Plaintiff’s 60-Day Notice of Violation and Plaintiff’s Supplemental  
17 60-Day Notice of Violation, the appropriate public enforcement agencies have not commenced and  
18 diligently prosecuted a cause of action against Defendants under Proposition 65.

19 29. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or  
20 use in California by Defendants contain the LISTED CHEMICAL such that they require a “clear  
21 and reasonable” warning under Proposition 65.

22 30. Defendants knew or should have known that the PRODUCTS they manufacture,  
23 import, distribute, sell, and offer for sale or use in California contain the LISTED CHEMICAL.

24 31. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
25 expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or  
26 inhalation during reasonably foreseeable uses of the PRODUCTS.

27 ///

28 ///

1           32. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
2 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are defined  
3 by Title 27 of the California Code of Regulations, section 25602(b).

4           33. Defendants have had knowledge that the normal and reasonably foreseeable uses of  
5 the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact, ingestion,  
6 and/or inhalation.

7           34. Defendants intended that such exposures to the LISTED CHEMICAL from the  
8 reasonably foreseeable uses of the PRODUCTS would occur by Defendants' deliberate, non-  
9 accidental participation in the manufacture, importation, distribution, sale, and offering of the  
10 PRODUCTS for sale or use to individuals in the State of California.

11           35. Defendants failed to provide a "clear and reasonable warning" to those consumers  
12 and other individuals in the State of California who were or who would become exposed to the  
13 LISTED CHEMICAL through dermal contact, ingestion, and/or inhalation during the reasonably  
14 foreseeable uses of the PRODUCTS.

15           36. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
16 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
17 contact, ingestion, and/or inhalation resulting from the reasonably foreseeable uses of the  
18 PRODUCTS sold by Defendants without a "clear and reasonable warning," have suffered, and  
19 continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at  
20 law.

21           37. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-  
22 described acts, Defendants are liable for a civil penalty of \$2,500 per day for each violation.

23           38. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)  
24 also specifically authorizes the Court to grant injunctive relief against Defendants.

25 ///

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28


**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 § 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 § 25249.7(a), preliminarily and permanently enjoin Defendants from manufacturing, distributing, selling, 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, § 25601 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;
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: May 2, 2013

THE CHANLER GROUP

By:   
Laralei S. Paras  
Attorneys for Plaintiff  
LAURENCE VINOUCR