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ENDORSED  
FILED  
ALAMEDA COUNTY

MAY 07 2013

CLERK OF THE SUPERIOR COURT

By ~~PILIPINO TUNGOHAN~~ Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 UNLIMITED CIVIL JURISDICTION

12 LAURENCE VINOCUR,

13 Plaintiff,

14 v.

15 JESPER OFFICE LLC; BERKSHIRE  
16 HATHAWAY INC.; R.C. WILLEY HOME  
17 FURNISHINGS; WILD SALES, LLC;  
18 ROSS STORES, INC.; and DOES 1-150,  
19 inclusive,

20 Defendants.

) Case No. 13CG0078547

) **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 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 chemical found in padded upholstered chairs sold in the State of California. TDCPP is a  
6 toxic chemical that is used to treat polyurethane foam, which is used as padding or cushioning  
7 in a variety of 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 padded  
10 upholstered chairs manufactured, distributed, sold, 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 padded upholstered  
13 chairs that Defendants manufacture, distribute, sell, and offer for sale to consumers throughout  
14 the State of California. Individuals in California, including infants and children, are exposed to  
15 TDCPP in the products through various routes of exposure: (i) through inhalation when TDCPP  
16 is released from padded upholstered chairs; (ii) through dermal exposure when TDCPP from  
17 padded upholstered chairs accumulates in ambient particles that are subsequently touched by  
18 such individuals; and (iii) through ingestion when such particles are brought into contact with  
19 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  
22 of doing business shall knowingly and intentionally expose any individual to a chemical known  
23 to 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 has been used in consumer products as an additive flame retardant since  
26 the 1960s. In the late 1970s, based on findings that exposure to TDCPP could have mutagenic  
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1 effects, the United States Consumer Product Safety Commission banned the use of TDCPP in  
2 children's pajamas.

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(c); Health & Safety Code §§ 25249.8 & 25249.10(b).)

7 7. Defendants manufacture, distribute, import, sell, and/or offer for sale in the State  
8 of California products containing TDCPP as follows:

9 a. Defendants Jesper Office LLC ("JESPER"), Berkshire Hathaway Inc.  
10 ("BERKSHIRE"), and R.C. Willey Home Furnishings ("R.C. Willey") manufacture,  
11 distribute, import, sell and/or offer for sale in California padded upholstered office chairs  
12 containing TDCPP without a warning including, but not limited to, the *Kaja Chair*,  
13 #5323;

14 b. Defendants Wild Sales, LLC ("WILD SALES") and Ross Stores, Inc.  
15 ("ROSS") manufacture, distribute, import, sell and/or offer for sale in California padded  
16 upholstered chairs containing TDCPP without a warning including, but not limited to, the  
17 *NFL Contemporary Task Chair, Item/Model #SC02-122 (#8 97149 00974 8)*.

18 8. All padded upholstered chairs containing TDCPP, as listed in paragraphs 7(a) and  
19 (b) above, shall hereinafter be referred to as the "PRODUCTS." As to each specific Defendant,  
20 however, PRODUCTS shall refer only to those specific products listed for each specific  
21 Defendant in paragraphs 7(a) and (b) above.

22 9. Although Defendants expose infants, children, and other people to TDCPP in the  
23 PRODUCTS, Defendants provide no warnings about the carcinogenic hazards associated with  
24 these TDCPP exposures. Defendants' failures to warn consumers and other individuals in the  
25 State of California not covered by California's Occupational Health Act, Labor Code § 6300 et  
26 seq. about their exposures to TDCPP in conjunction with Defendants' sales of the PRODUCTS,  
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1 is a violation of Proposition 65, and subjects Defendants to enjoinder of such conduct as well  
2 as civil penalties for each violation. (Health & Safety Code § 25249.7(a) & (b)(1).)

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

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

9 **PARTIES**

10 12. Plaintiff LAURENCE VINO CUR is a citizen of the State of California who is  
11 dedicated to protecting the health of California citizens through the elimination or reduction of  
12 toxic exposures from consumer products and he brings this action in the public interest pursuant  
13 to Health and Safety Code Section 25249.7(d).

14 13. Defendant JESPER is a person in the course of doing business within the meaning  
15 of Health and Safety Code Section 25249.11.

16 14. JESPER manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
17 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
18 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

19 15. Defendant BERKSHIRE is a person in the course of doing business within the  
20 meaning of Health and Safety Code Section 25249.11.

21 16. BERKSHIRE manufactures, imports, distributes, sells, and/or offers the  
22 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
23 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
24 State of California.

25 17. Defendant R.C. WILLEY is a person in the course of doing business within the  
26 meaning of Health and Safety Code Section 25249.11.

1           18. R.C. WILLEY manufactures, imports, distributes, sells, and/or offers the  
2 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
3 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
4 State of California.

5           19. Defendant WILD SALES is a person in the course of doing business within the  
6 meaning of Health and Safety Code Section 25249.11.

7           20. WILD SALES manufactures, imports, distributes, sells, and/or offers the  
8 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
9 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
10 State of California.

11           21. Defendant ROSS is a person in the course of doing business within the meaning  
12 of Health and Safety Code Section 25249.11.

13           22. ROSS manufactures, imports, distributes, sells, and/or offers the PRODUCTS for  
14 sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
15 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

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

24           24. JESPER, BERKSHIRE, R.C. WILLEY, WILD SALES, ROSS and Defendants  
25 DOES 1-150 are collectively referred to herein as "DEFENDANTS."

1 VENUE AND JURISDICTION

2 25. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil  
3 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
4 because Plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
5 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because  
6 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the  
7 PRODUCTS.

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

12 27. The California Superior Court has jurisdiction over DEFENDANTS based on  
13 Plaintiff’s information and good faith belief that each Defendant is a person, firm, corporation  
14 or association that is a citizen of the State of California, has sufficient minimum contacts in the  
15 State of California, and/or otherwise purposefully avails itself of the California market.  
16 DEFENDANTS’ purposeful availment of California as a marketplace for the PRODUCTS  
17 renders the exercise of personal jurisdiction by California courts over DEFENDANTS  
18 consistent with traditional notions of fair play and substantial justice.

19 FIRST CAUSE OF ACTION

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

21 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
22 Paragraphs 1 through 27, inclusive.

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

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

5           31. On February 22, 2013, Plaintiff’s sixty-day notices of violation, together with the  
6 requisite certificates of merit, were provided to DEFENDANTS and certain public enforcement  
7 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing  
8 TDCPP, purchasers and users in the State of California were being exposed to TDCPP resulting  
9 from their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers  
10 and users first having been provided with a “clear and reasonable warning” regarding such toxic  
11 exposures, as required by Proposition 65.

12           32. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
13 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code Section  
14 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
15 Plaintiff’s sixty-day notices of violation. As such, DEFENDANTS’ violations are ongoing and  
16 continuous in nature, and will continue to occur in the future.

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

20           34. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
21 or use in the State of California by DEFENDANTS contain TDCPP such that they require a  
22 “clear and reasonable” warning under Proposition 65.

23           35. DEFENDANTS knew or should have known that the PRODUCTS they  
24 manufacture, import, distribute, sell, and offer for sale or use in the State of California contain  
25 TDCPP.

1           36. TDCPP is present in or on the PRODUCTS in such a way as to expose  
2 individuals to TDCPP through dermal contact, ingestion, and/or inhalation during reasonably  
3 foreseeable uses of the PRODUCTS.

4           37. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
5 continue to cause, consumer exposures and workplace exposures to TDCPP, as such exposures  
6 are defined by Title 27 of the California Code of Regulations, Section 25602(b).

7           38. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
8 of the PRODUCTS expose individuals to TDCPP through dermal contact, ingestion, and/or  
9 inhalation.

10          39. DEFENDANTS intended that such exposures to TDCPP from the reasonably  
11 foreseeable uses of the PRODUCTS would occur by DEFENDANTS' deliberate, non-  
12 accidental participation in the manufacture, importation, distribution, sale, and offering of the  
13 PRODUCTS for sale or use to individuals in the State of California.

14          40. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
15 consumers and other individuals in the State of California who were or who would become  
16 exposed to TDCPP through dermal contact, ingestion, and/or inhalation during the reasonably  
17 foreseeable uses of the PRODUCTS.

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

23          42. Pursuant to Health and Safety Code Section 25249.7(b), as a consequence of the  
24 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day  
25 for each violation.



