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ENDORSED
FILED
ALAMEDA COUNTY

APR 30 2013

CLERK OF THE SUPERIOR COURT
By S. IYAMU Deputy

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
15

16 LAURENCE VINO CUR,

17 Plaintiff,

18 v.

19 BOJER, INC.; STANISLAUS FUNDING,
20 INC.; PATIO WORLD, INC.; and DOES 1-
21 150, inclusive,

22 Defendants.

Case No. RG 13 6 7 7 6 1 8

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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BY FAX

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 toxic
5 chemical found in seat cushions sold in California. TDCPP is a toxic chemical that is used to treat
6 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 seat cushions
9 manufactured, distributed, sold, and offered for sale or use to consumers throughout the State of
10 California.

11 3. Detectable levels of TDCPP are commonly found in and on seat cushions that
12 Defendants manufacture, distribute, sell, and offer for sale to consumers throughout the State of
13 California. Individuals in California, including infants and children, are exposed to TDCPP when
14 they inhale TDCPP released from seat cushions, and also when TDCPP from seat cushions
15 accumulates in ambient particles that are subsequently touched by such individuals and brought into
16 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 seat cushions
4 containing TDCPP without a warning including, but not limited to, *Patioworld Classics Seat*
5 *Cushion, 101/J171-U257*. All such seat cushions containing TDCPP, are hereinafter collectively
6 referred to as the “PRODUCTS.”

7 8. Although Defendants expose infants, children, and other people to TDCPP in the
8 PRODUCTS, Defendants provide no warnings about the carcinogenic hazards associated with these
9 TDCPP exposures. Defendants’ failures to warn consumers and other individuals in the State of
10 California about their exposures to the LISTED CHEMICAL in conjunction with Defendants’ sales
11 of the PRODUCTS, is a violation of Proposition 65, and subjects Defendants to enjoinder of such
12 conduct as well as civil penalties for each violation. (Health & Safety Code § 25249.7(a) & (b)(1).)

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

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

19 **PARTIES**

20 11. 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 toxic
22 exposures from consumer products; and he brings this action in the public interest pursuant to
23 Health and Safety Code § 25249.7(d).

24 12. Defendant BOJER, INC. is a person in the course of doing business within the
25 meaning of Health and Safety Code § 25249.11.

26 13. Defendant BOJER, INC. manufactures, imports, distributes, sells, and/or offers the
27 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,
28 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

1 except those given by statute to other trial courts.” The statute under which this action is brought
2 does not specify any other basis of subject matter jurisdiction.

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

10 **FIRST CAUSE OF ACTION**

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

12 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
13 Paragraphs 1 through 22, inclusive.

14 24. 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 informed
16 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

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

21 26. On February 8, 2013, Plaintiff’s sixty-day notice of violation, together with the
22 requisite certificate of merit, was provided to BOJER, INC., STANISLAUS FUNDING, INC.,
23 PATIO WORLD, INC., and certain public enforcement agencies stating that, as a result of
24 Defendants’ sales of the PRODUCTS containing the LISTED CHEMICAL, purchasers and users in
25 the State of California were being exposed to the LISTED CHEMICAL resulting from their
26 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
27 having been provided with a “clear and reasonable warning” regarding such toxic exposures, as
28 required by Proposition 65.

1 27. Defendants have engaged in the manufacture, importation, distribution, sale, and
2 offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6, and
3 Defendants' violations have continued to occur beyond their receipt of Plaintiff's sixty-day notice
4 of violation. As such, Defendants' violations are ongoing and continuous in nature, and will
5 continue to occur in the future.

6 28. After receiving Plaintiff's sixty-day notice of violation, the appropriate public
7 enforcement agencies have not commenced and are not diligently prosecuted a cause of action
8 against Defendants under Proposition 65.

9 29. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or
10 use in California by Defendants contain the LISTED CHEMICAL such that they require a "clear
11 and reasonable" warning under Proposition 65.

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

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

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

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

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

27 35. Defendants failed to provide a "clear and reasonable warning" to those consumers
28 and other individuals in the State of California who were or who would become exposed to the

1 LISTED CHEMICAL through dermal contact, ingestion, and/or inhalation during the reasonably
2 foreseeable uses of the PRODUCTS.

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

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

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


13 **PRAYER FOR RELIEF**

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

- 15 1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil
16 penalties against Defendants in the amount of \$2,500 per day for each violation;
- 17 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
18 permanently enjoin Defendants from manufacturing, distributing, selling, or offering the
19 PRODUCTS for sale or use in California without first providing a "clear and reasonable warning"
20 as defined by Title 27 of the California Code of Regulations, § 25601 *et seq.*, as to the harms
21 associated with exposures the LISTED CHEMICAL;
- 22 3. That the Court grant Plaintiff his reasonable attorneys' fees and costs of suit; and
23 4. That the Court grant such other and further relief as may be just and proper.

24 Dated: April 29, 2013

THE CHANLER GROUP

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26 By: 
27 Rafael S. Paras
28 Attorneys for Plaintiff
LAURENCE VINO CUR