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ENDORSED
FILED
ALAMEDA COUNTY

JUN 10 2013

CLERK OF THE SUPERIOR COURT
By _____ Deputy

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

14 LAURENCE VINO CUR,

15 Plaintiff,

16 v.

17 ERGO CRAFT CONTRACT SOLUTIONS:
18 and DOES 1-150, inclusive,

19 Defendants.

20 Case No. RG 13684335

21 **COMPLAINT FOR CIVIL PENALTIES
22 AND INJUNCTIVE RELIEF**

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

24 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 furniture sold in California. TDCPP is a toxic
6 chemical that is used to treat polyurethane foam, which is used as padding or cushioning in a
7 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 the padded
10 upholstered furniture, including office chairs, manufactured, distributed, and offered for sale or
11 use to consumers throughout the State of California.

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

20 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
21 Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of
22 doing business shall knowingly and intentionally expose any individual to a chemical known to
23 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).) TDCPP is
7 hereinafter referred to as the "LISTED CHEMICAL."

8 7. Defendants manufacture, distribute, import, sell, and/or offer for sale padded
9 upholstered furniture, including office chairs, containing TDCPP without a warning, including,
10 but not limited to, the *Lakeport Chair, E-18520-HD*. All such padded upholstered furniture,
11 including office chairs, containing TDCPP, are hereinafter collectively referred to as
12 "PRODUCTS."

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

20 9. As a result of Defendants' violations of Proposition 65, plaintiff seeks preliminary
21 and permanent injunctive relief to compel Defendants to provide purchasers or users of the
22 PRODUCTS with the required warning regarding the health hazards of the LISTED
23 CHEMICAL. (Health & Safety Code § 25249.7(a).)

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

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1 **PARTIES**

2 11. Plaintiff LAURENCE VINO CUR 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 12. Defendant ERGOCRAFT CONTRACT SOLUTIONS (“ERGOCRAFT”) is a
7 person in the course of doing business within the meaning of Health and Safety Code §
8 25249.11.

9 13. ERGOCRAFT manufactures, imports, distributes, sells, and/or offers the
10 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
11 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
12 State of California.

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

21 15. ERGOCRAFT and Defendants DOES 1-150 are collectively referred to herein as
22 “Defendants.”

23 **VENUE AND JURISDICTION**

24 16. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
25 Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
26 because plaintiff seeks civil penalties against Defendants, because one or more instances of
27 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because
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1 Defendants conducted, and continue to conduct, business in this County with respect to the
2 PRODUCTS.

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

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

14 **FIRST CAUSE OF ACTION**

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

16 19. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
17 Paragraphs 1 through 18, inclusive.

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

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

26 22. On March 27, 2013, plaintiff’s sixty-day notice of violation of Proposition 65,
27 together with the requisite certificate of merit, was provided to ERGOCRAFT and certain
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1 public enforcement agencies stating that, as a result of Defendants' sales of the PRODUCTS
2 containing the LISTED CHEMICAL, purchasers and users in the State of California were being
3 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the
4 PRODUCTS, without the individual purchasers and users first having been provided with a
5 "clear and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

6 23. Defendants have engaged in the manufacture, importation, distribution, sale, and
7 offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6,
8 and Defendants' violations have continued to occur beyond their receipt of plaintiff's sixty-day
9 notice of violation. As such, Defendants' violations are ongoing and continuous in nature, and
10 will continue to occur in the future.

11 24. After receiving plaintiff's sixty-day notice of violation, the appropriate public
12 enforcement agencies have failed to commence and diligently prosecute a cause of action
13 against Defendants under Proposition 65.

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

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

19 27. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
20 expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or
21 inhalation during reasonably foreseeable uses of the PRODUCTS.

22 28. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
23 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
24 defined by Title 27 of the California Code of Regulations, § 25602(b).

25 29. Defendants had knowledge that the normal and reasonably foreseeable uses of the
26 PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact, ingestion,
27 and/or inhalation.

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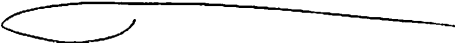
1 warning” as defined by Title 27 of the California Code of Regulations, § 25601 *et seq.*, as to the
2 harms associated with exposures the LISTED CHEMICAL;

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

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Dated: June 17, 2013

THE CHANLER GROUP

By: 
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LAURENCE VINOUCUR