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**ENDORSED
FILED
ALAMEDA COUNTY**

JUN 20 2013

**CLERK OF THE SUPERIOR COURT
By Angela Yamsuen**

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 DIONO, L.L.C.; and DOES 1-150, inclusive,

20 Defendants.

21 Case No. AG - 13 - 684497

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code section 25249.6 *et seq.*)

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NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff LAURENCE VINOCUR in the public interest of the citizens of the State of California to enforce the People's right to be informed of the presence of tris(1,3-dichloroisopropyl) phosphate ("TDCPP"), a toxic chemical found in upholstered children's car seats sold in California. TDCPP is a toxic chemical that is used to treat polyurethane foam, which is used as padding or cushioning in a variety of products.

2. By this Complaint, plaintiff seeks to remedy Defendants' continuing failures to warn California citizens about the risk of exposure to TDCPP present in and on upholstered children's car seats manufactured, distributed, and offered for sale or use to consumers throughout the State of California.

3. Detectable levels of TDCPP are commonly found in and on upholstered children's car seats that Defendants manufacture, distribute, and offer for sale to consumers, many of whom are infants and children, throughout the State of California. Individuals in California, including infants and children, are exposed to TDCPP in the products through various routes of exposure: (i) through inhalation when TDCPP is released from upholstered children's car seats; (ii) through dermal exposure when TDCPP from upholstered children's car seats accumulates in ambient particles that are subsequently touched by such individuals; and (iii) through ingestion when such particles are brought into contact with the mouth.

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

5. TDCPP has been used in consumer products as an additive flame retardant since the 1960s. In the late 1970s, based on findings that exposure to TDCPP could have mutagenic

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(b); Health & Safety Code §§ 25249.8 & 25249.10(b).) TDCPP is referred
7 to hereinafter as the "LISTED CHEMICAL."

8 7. Defendants manufacture, distribute, import, sell, and/or offer for sale in California
9 without a warning:

10 a. Upholstered children's car seats containing TDCPP; and

11 b. *The Radian R120 Convertible Car Seat, #16700.*

12 All such upholstered children's car seats containing TDCPP shall hereinafter be referred to as the
13 "PRODUCTS."

14 8. Although Defendants expose infants, children, and other people to TDCPP in the
15 PRODUCTS, Defendants provide no warnings about the carcinogenic hazards associated with
16 these TDCPP exposures. Defendants' failures to warn consumers and other individuals in the
17 State of California not covered by California's Occupational Health Act, Labor Code section
18 6300 et seq. about their exposures to the LISTED CHEMICAL in conjunction with Defendants'
19 sales of the PRODUCTS, is a violation of Proposition 65, and subjects Defendants to
20 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
21 § 25249.7(a) & (b)(1).

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

26 10. Pursuant to Health and Safety Code section 25249.7(b), PLAINTIFF also seeks
27 civil penalties against Defendants for their violations of Proposition 65.
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1 **PARTIES**

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

6 12. Defendants DIONO, L.L.C. (“DIONO”) is a person in the course of doing
7 business within the meaning of Health and Safety Code section 25249.11.

8 13. DIONO 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 14. 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), which 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 15. DIONO and Defendants DOES 1-150 are collectively referred to herein as
20 “DEFENDANTS.”

21 **VENUE AND JURISDICTION**

22 16. Venue is proper in the 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
25 instances of wrongful conduct occurred, and continue to occur, in Alameda County, and/or
26 because Defendants conducted, and continue to conduct, business in this county with respect to
27 the PRODUCTS.
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1 17. The California Superior Court has jurisdiction over this action pursuant to
2 California Constitution, article VI, section 10, which grants the Superior Court “original
3 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
4 which this action is brought does not specify any other basis of subject matter jurisdiction.

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

12 **FIRST CAUSE OF ACTION**

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

14 19. PLAINTIFF realleges and incorporates by reference, as if fully set forth herein,
15 Paragraphs 1 through 18, inclusive.

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

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

24 22. On April 3, 2013, PLAINTIFF’s sixty-day notice of violation, together with the
25 requisite certificate of merit, was provided to DIONO and certain public enforcement agencies
26 stating that, as a result of DIONO’s sales of the PRODUCTS containing the LISTED
27 CHEMICAL, purchasers and users in the State of California were being exposed to the LISTED
28

1 CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS, without the
2 individual purchasers and users first having been provided with a “clear and reasonable
3 warning” regarding such toxic exposures, as required by Proposition 65.

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

9 24. 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 25. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
13 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require
14 a “clear and reasonable” warning under Proposition 65.

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

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

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

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

1 offering the PRODUCTS for sale or use in California without first providing a “clear and
2 reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et*
3 *seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

4 3. That the Court grant PLAINTIFF his reasonable attorneys’ fees and costs of suit;
5 and

6 4. That the Court grant such other and further relief as may be just and proper.
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8 Dated: June 17, 2013

THE CHANLER GROUP

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10 By: 

11 Rachel S. Doughty
12 Attorneys for Plaintiff
13 LAURENCE VINOCUR
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