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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
BY: JUDITH DE JESUS

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

RG13698459

14 LAURENCE VINOCUR,

15 Plaintiff,

16 v.

17 THE BOPPY COMPANY, LLC; TOYS "R"
18 US, INC.; and DOES 1-150, inclusive,

19 Defendants.

Case No. _____

**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 pregnancy pillows/cushions 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 pregnancy pillows/cushions 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 pregnancy pillows/cushions 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 high chair cushions; (ii) through dermal exposure when TDCPP from pregnancy pillows/cushions 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 pregnancy
9 pillows/cushions containing TDCPP without a warning, including, but not limited to, *The*
10 *Original Boppy Pregnancy Wedge – Sea Spray, #5200100C (#7 69662 52100 0)*. All such
11 pregnancy pillows/cushions containing TDCPP shall hereinafter be referred to as the
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 not covered by California's Occupational Health Act, Labor Code section
17 6300 et seq., about their exposures to the LISTED CHEMICAL in conjunction with defendants'
18 sales of the PRODUCTS, is a violation of Proposition 65, and subjects defendants to enjoinder
19 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)
20 & (b)(1).

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

25 10. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
26 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 THE BOPPY COMPANY, LLC ("BOPPY") and TOYS "R" US,
7 INC. ("TOYS "R" US") are each a person in the course of doing business within the meaning of
8 Health and Safety Code section 25249.11.

9 13. BOPPY and TOYS "R" US each manufactures, imports, distributes, sells, and/or
10 offers the 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 section 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 section 474. PLAINTIFF is informed and believes, and on that basis alleges, that each of the
19 fictitiously named defendants is responsible for the acts and occurrences alleged herein. When
20 ascertained, their true names and capacities shall be reflected in an amended complaint.

21 15. BOPPY, TOYS "R" US, and defendants DOES 1-150 are collectively referred to
22 herein as "DEFENDANTS."

23 **VENUE AND JURISDICTION**

24 16. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
25 Procedure sections 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
27 instances of wrongful conduct occurred, and continue to occur, in Alameda County, and/or
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1 because DEFENDANTS conducted, and continue to conduct, business in this county with
2 respect to the PRODUCTS.

3 17. The California Superior Court has jurisdiction over this action pursuant to
4 California Constitution, article VI, section 10, which grants the Superior Court "original
5 jurisdiction in all causes except those given by statute to other trial courts." The statute under
6 which this 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,
9 corporation or association that is a citizen of the State of California, has sufficient minimum
10 contacts in the State of California, and/or otherwise purposefully avails itself of the California
11 market. DEFENDANTS' purposeful availment of California as a marketplace for the
12 PRODUCTS renders the exercise of personal jurisdiction by California courts over
13 DEFENDANTS consistent with traditional notions of fair play and substantial justice.

14 **FIRST CAUSE OF ACTION**

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

16 19. PLAINTIFF realleges 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 April 11, 2013, PLAINTIFF's sixty-day notice of violation, together with the
27 requisite certificate of merit, was provided to BOPPY, TOYS "R" US, and certain public
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1 enforcement agencies stating that, as a result of BOPPY's and TOYS "R" US' sales of the
2 PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State of
3 California were being exposed to the LISTED CHEMICAL resulting from their reasonably
4 foreseeable use of the PRODUCTS, without the individual purchasers and users first having
5 been provided with a "clear and reasonable warning" regarding such toxic exposures, as
6 required by Proposition 65.

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

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

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

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

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

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

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1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

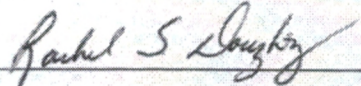
2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a "clear and reasonable warning" as defined by California Code of Regulations title 27, section 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: October 8, 2013

THE CHANLER GROUP

By: 
Rachel S. Doughty
Attorneys for Plaintiff
LAURENCE VINO CUR