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**ENDORSED  
FILED  
ALAMEDA COUNTY**

**AUG 09 2013**

CLERK OF THE SUPERIOR COURT  
By R. De Jesus  
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 KIDS II, INC.; TOYS "R" US, INC.; and  
18 DOES 1-150, inclusive,

19 Defendants.

Case No. **RG 13691256**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

VIA FAX

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COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

**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  
5 toxic chemical found in nursing pillows sold in California. TDCPP is a toxic chemical that is  
6 used to treat polyurethane foam, which is used as padding or cushioning in a variety of  
7 products.

8           2.     By this Complaint, plaintiff seeks to remedy Defendants’ continuing failures to  
9 warn California citizens about the risk of exposure to TDCPP present in and on nursing pillows  
10 manufactured, distributed, and offered for sale or use to consumers throughout the State of  
11 California.

12           3.     Detectable levels of TDCPP are commonly found in and on nursing pillows that  
13 Defendants manufacture, distribute, and offer for sale to consumers, many of whom are infants  
14 and children, throughout the State of California. Individuals in California, including infants and  
15 children, are exposed to TDCPP in the products through various routes of exposure: (i) through  
16 inhalation when TDCPP is released from nursing pillows; (ii) through dermal exposure when  
17 TDCPP from nursing pillows 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 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(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  
9 California:

10 a. Nursing pillows containing the LISTED CHEMICAL;

11 b. *The Mombo Deluxe Pillow, #7091, O2472 (#0 74451 07091 2).*

12 All such nursing pillows containing the LISTED CHEMICAL shall hereinafter be referred to as  
13 the "PRODUCTS."

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

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2           11. Plaintiff LAURENCE VINOCUR 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. Defendants KIDS II, INC. (“KIDS II”) and TOYS “R” US, INC. (“TOYS “R”  
7 US”) each is a person in the course of doing business within the meaning of Health and Safety  
8 Code section 25249.11.

9           13. KIDS II 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 each is a person in the course of doing business within  
14 the meaning of Health and Safety Code section 25249.11(b), which manufactures, distributes,  
15 sells, and/or offers the PRODUCTS for sale in the State of California. At this time, the true  
16 names and capacities of defendants DOES 1 through 150, inclusive, are unknown to  
17 PLAINTIFF, who, therefore, sues said defendants by their fictitious names pursuant to Code of  
18 Civil Procedure section 474. PLAINTIFF is informed and believes, and on that basis alleges,  
19 that each of the fictitiously named defendants is responsible for the acts and occurrences alleged  
20 herein. When ascertained, their true names and capacities shall be reflected in an amended  
21 complaint.

22           15. KIDS II, TOYS “R” US, and Defendants DOES 1-150 are collectively referred to  
23 herein as “DEFENDANTS.”  
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**VENUE AND JURISDICTION**

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

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

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

**FIRST CAUSE OF ACTION**

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

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

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

1           21. 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           22. On April 10, 2013, PLAINTIFF’s sixty-day notice of violation, together with the  
6 requisite certificate of merit, was provided to KIDS II, TOYS “R” US, and certain public  
7 enforcement agencies stating that, as a result of KIDS II’s and TOYS “R” US’s sales of the  
8 PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State of  
9 California were being exposed to the LISTED CHEMICAL resulting from their reasonably  
10 foreseeable use of the PRODUCTS, without the individual purchasers and users first having  
11 been provided with a “clear and reasonable warning” regarding such toxic exposures, as  
12 required by Proposition 65.

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

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

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

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

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

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

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

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

14          31. 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 the LISTED CHEMICAL through dermal contact, ingestion, and/or inhalation  
17 during the reasonably foreseeable uses of the PRODUCTS.

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

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

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