

ENDORSED  
FILED  
ALAMEDA COUNTY

NOV 18 2013

CLERK OF THE SUPERIOR COURT  
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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF ALAMEDA  
14 UNLIMITED CIVIL JURISDICTION  
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16 LAURENCE VINO CUR,

17 Plaintiff,

18 v.

19 JOOVY HOLDING CO.; JOOVY, LLC; BED  
20 BATH & BEYOND INC.; BUY BUY BABY,  
21 INC.; and DOES 1-150, inclusive,

22 Defendants.  
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Case No.

**RG13703590**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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-dichloroisopropyl) phosphate ("TDCPP"), a  
5 toxic chemical found in high chair cushions sold in California. TDCPP is a toxic chemical that  
6 is 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 high chair  
10 cushions manufactured, distributed, and offered for sale or use to consumers throughout the  
11 State of California.

12 3. Detectable levels of TDCPP are commonly found in and on high chair cushions  
13 that defendants manufacture, distribute, and offer for sale to consumers, many of whom are  
14 infants and children, throughout the State of California. Individuals in California, including  
15 infants and children, are exposed to TDCPP in the products through various routes of exposure:  
16 (i) through inhalation when TDCPP is released from high chair cushions; (ii) through dermal  
17 exposure when TDCPP from high chair cushions accumulates in ambient particles that are  
18 subsequently touched by such individuals; and (iii) through ingestion when such particles are  
19 brought into contact with 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).

7 7. Defendants manufacture, distribute, import, sell, and/or offer for sale high chair  
8 cushions containing TDCPP without a warning, including, but not limited to, the *Joovy Black*  
9 *Leatherette Nook Highchair, Style: 227 (#8 77408 00227 7)*. All such high chair cushions  
10 containing TDCPP shall hereinafter be referred to as the "PRODUCTS."

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

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

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

25 **PARTIES**

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

3 12. Defendants JOOVY HOLDING CO. (“JOOVY HOLDING”), JOOVY, LLC  
4 (“JOOVY”), BED BATH & BEYOND INC. (“BED BATH & BEYOND”), and BUY BUY  
5 BABY, INC. (“BUY BUY BABY”) each is a person in the course of doing business within the  
6 meaning of Health and Safety Code section 25249.11.

7 13. JOOVY HOLDING, JOOVY, BED BATH & BEYOND, and BUY BUY BABY  
8 each manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
9 State of California, or implies by its conduct that it manufactures, imports, distributes, sells,  
10 and/or offers the PRODUCTS for sale or use in the State of California.

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

20 15. JOOVY HOLDING, JOOVY, BED BATH & BEYOND, BUY BUY BABY, and  
21 Defendants DOES 1-150 are collectively referred to herein as “DEFENDANTS.”

### 22 VENUE AND JURISDICTION

23 16. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
24 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
25 because VINOCUR seeks civil penalties against DEFENDANTS, because one or more  
26 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 VINOCUR’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. VINOCUR 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, VINOCUR’s sixty-day notice of violation, together with the  
27 requisite certificate of merit, was provided to JOOVY HOLDING, JOOVY, BED BATH &  
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1 BEYOND, BUY BUY BABY, and certain public enforcement agencies stating that, as a result  
2 of JOOVY HOLDING's, JOOVY's, BED BATH & BEYOND's, and BUY BUY BABY's sales  
3 of the PRODUCTS containing TDCPP, purchasers and users in the State of California were  
4 being exposed to TDCPP resulting from their reasonably foreseeable use of the PRODUCTS,  
5 without the individual purchasers and users first having been provided with a "clear and  
6 reasonable warning" regarding such toxic exposures, as 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 VINOCUR's sixty-day notice of violation. As such, Defendants' violations are ongoing and  
11 continuous in nature, and will continue to occur in the future.

12 24. After receiving VINOCUR'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 TDCPP such that they require a "clear and  
17 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 TDCPP.

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

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

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1           29. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
2 of the PRODUCTS expose individuals to TDCPP through dermal contact, ingestion, and/or  
3 inhalation.

4           30. DEFENDANTS intended that such exposures to TDCPP from the reasonably  
5 foreseeable uses of the PRODUCTS would occur by DEFENDANTS' deliberate, non-  
6 accidental participation in the manufacture, importation, distribution, sale, and offering of the  
7 PRODUCTS for sale or use to individuals in the State of California.

8           31. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
9 consumers and other individuals in the State of California who were or who would become  
10 exposed to TDCPP through dermal contact, ingestion, and/or inhalation during the reasonably  
11 foreseeable uses of the PRODUCTS.

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

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

20           34. As a consequence of the above-described acts, Health and Safety Code  
21 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
22 Defendants.

23                           **PRAYER FOR RELIEF**

24           Wherefore, VINO CUR prays for judgment against DEFENDANTS, and each of them,  
25 as follows:

26           1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
27 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;  
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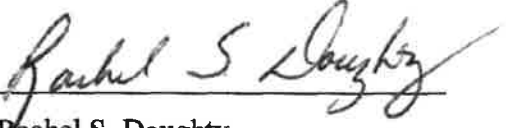
2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a "clear and reasonable warning" as defined by California Code of Regulations title 27, section 25601 *et seq.*, as to the harms associated with exposures TDCPP;

3. That the Court grant VINOCUR 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: November 19, 2013

THE CHANLER GROUP

By:   
Rachel S. Doughty  
Attorneys for Plaintiff  
LAURENCE VINOCUR