

ENDORSED  
FILED  
ALAMEDA COUNTY

OCT 24 2013

CLERK OF THE SUPERIOR COURT  
By Donna Harr  
Deputy

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 **RG13700786**

15 LAURENCE VINOUCUR,

) Case No. \_\_\_\_\_

16 Plaintiff,

)

17 v.

)

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

18 STUDIO DESIGNS, INC.; DICK BLICK  
19 HOLDINGS, INC.; ONTEL PRODUCTS  
20 CORPORATION and DOES 1-150, inclusive,

)

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

21 Defendants.

)

)

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”) and tris(2-  
5 chloroethyl)phosphate (“TCEP”), toxic chemicals found in upholstered drafting chairs with foam  
6 padding, and seat cushions with foam padding sold in California. TDCPP and TCEP are toxic  
7 chemicals that are used to treat polyurethane foam, which is used as padding or cushioning in a  
8 variety of products.

9 2. By this Complaint, plaintiff seeks to remedy defendants continuing failures to warn  
10 California citizens about the risks of exposures to TDCPP and TCEP present in and on upholstered  
11 drafting chairs and seat cushions with foam padding manufactured, distributed, sold, and offered for  
12 sale or use to consumers throughout the State of California.

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

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

26 5. Pursuant to Proposition 65, on October 28, 2011, California identified and listed  
27 TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and reasonable  
28

1 warning” requirements of the Act one year later on October 28, 2012. (Cal. Code Regs., Tit. 27,  
2 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).)

3 6. Pursuant to Proposition 65, on April 1, 1992, California identified and listed TCEP as  
4 a chemical known to cause cancer. TCEP became subject to the “clear and reasonable warning”  
5 requirements of the Act one year later on April 1, 1993. (Cal. Code Regs., Tit. 27, § 27001(c); Health  
6 & Safety Code §§ 25249.8 & 25249.10(b).)

7 7. TDCPP and TCEP are hereinafter collectively referred to as the “LISTED  
8 CHEMICALS.”

9 8. Defendants manufacture, distribute, import, sell and/or offer for sale products  
10 containing TDCPP and TCEP as follows:

11 a. Defendants Studio Designs Inc. and Dick Blick Holdings, Inc. manufacture,  
12 distribute, import, sell, and/or offer for sale in California upholstered drafting chairs with  
13 foam padding containing TDCPP. Defendants Studio Design Inc. and Dick Blick Holdings,  
14 Inc. also manufacture, cause to be manufactured, distribute, cause to be distributed, import,  
15 cause to be imported, sell and/or otherwise offer for sale in California the *Studio Designs Art*  
16 *Center Plus with Maxima II Drafting Chair, Model #32683, Model/Item #18622 (#0 17342*  
17 *32683 5; #0 17342 18622 4)* with foam padding containing TDCPP.

18 b. Defendant Ontel Products Corporation manufactures, distributes, imports,  
19 sells, and/or offers for sale in California seat cushions with foam padding containing TDCPP  
20 and TCEP. Defendant Ontel Products Corporation also manufactures, cause to be  
21 manufactured, distributes, cause to be distributed, imports, cause to be imported, sells and/or  
22 offers for sale in California the *Deluxe Seat Solution Orthopedic Seat Cushion SSPG11211*  
23 *(#7 35541 70912 8)* with foam padding containing TDCPP and TCEP.

24 9. All upholstered drafting chairs and seat cushions with foam padding containing  
25 TDCPP and/or TCEP, as listed in paragraph 8(a) and (b) above, shall hereinafter be referred to as  
26 the “PRODUCTS.” As to each specific defendant, however, PRODUCTS shall refer only to those  
27 specific products listed for each specific defendant in paragraphs 8(a) and (b) above.





1 of fair play and substantial justice.

2 **FIRST CAUSE OF ACTION**

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

4 21. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
5 Paragraphs 1 through 20, inclusive.

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

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

13 24. On May 31, 2013, plaintiff’s sixty-day notice of violation, together with the requisite  
14 certificate of merit, was provided to STUDIO DESIGNS, DICK BLICK and certain public  
15 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS  
16 containing TDCPP, purchasers and users in the State of California were being exposed to TDCPP  
17 resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual  
18 purchasers and users first having been provided with a “clear and reasonable warning” regarding  
19 such toxic exposures, as required by Proposition 65.

20 25. On June 10, 2013, plaintiff’s sixty-day notice of violation, together with the requisite  
21 certificate of merit, was provided to ONTEL and certain public enforcement agencies stating that,  
22 as a result of Defendants’ sales of the PRODUCTS containing TDCPP and/or TCEP, purchasers  
23 and users in the State of California were being exposed to TDCPP and/or TCEP resulting from their  
24 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first  
25 having been provided with a “clear and reasonable warning” regarding such toxic exposures, as  
26 required by Proposition 65.

27 26. DEFENDANTS have engaged in the manufacture, importation, distribution, sale, and  
28

1 offering of the PRODUCTS for sale or use in violation of Health and Safety Code Section 25249.6,  
2 and DEFENDANTS' violations have continued to occur beyond their receipt of plaintiff's sixty-day  
3 notice of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature, and  
4 will continue to occur in the future.

5 27. After receiving plaintiff's sixty-day notices of violation, the appropriate public  
6 enforcement agencies have failed to commence and diligently prosecute a cause of action against  
7 DEFENDANTS under Proposition 65.

8 28. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or  
9 use in California by DEFENDANTS contain TDCPP and/or TCEP such that they require a "clear  
10 and reasonable" warning under Proposition 65.

11 29. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,  
12 import, distribute, sell, and offer for sale or use in California contain LISTED CHEMICALS.

13 30. TDCPP and/or TCEP is present in or on the PRODUCTS in such a way as to expose  
14 individuals to LISTED CHEMICALS through dermal contact, ingestion, and/or inhalation during  
15 reasonably foreseeable uses of the PRODUCTS including through workplace exposure to the  
16 PRODUCTS.

17 31. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
18 continue to cause, consumer exposures and workplace exposures to LISTED CHEMICALS, as such  
19 exposures are defined by Title 27 of the California Code of Regulations, Section 25602(b).

20 32. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of  
21 the PRODUCTS expose individuals to TDCPP and/or TCEP through dermal contact, ingestion,  
22 and/or inhalation.

23 33. DEFENDANTS intended that such exposures to LISTED CHEMICALS from the  
24 reasonably foreseeable uses of the PRODUCTS would occur by DEFENDANTS' deliberate, non-  
25 accidental participation in the manufacture, importation, distribution, sale, and offering of the  
26 PRODUCTS for sale or use to individuals in the State of California.



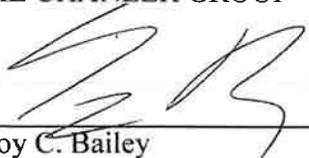
1           3.     That the Court, pursuant to Health and Safety Code section 25249.7(a), issue  
2 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS  
3 currently in the chain of commerce in California without a “clear and reasonable warning” as  
4 defined by California Code of Regulations title 27, section 25601 et seq.,

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

6           5.     That the Court grant such other and further relief as may be just and proper.  
7

8 Dated: October 25, 2013

THE CHANLER GROUP

9  
10 By: 

Troy C. Bailey  
Attorneys for Plaintiff  
LAURENCE VINOCUR