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ENDORSED
FILED
ALAMEDA COUNTY

JAN 22 2014

CLERK OF THE SUPERIOR COURT
By Rosa-Angela Snock
Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

LAURENCE VINOCUR and PETER
ENGLANDER,

Plaintiffs,

v.

ABAD FOAM, INC.; POMONA QUALITY
FOAM, INC.; FOAM & FIBRE COMPANY
INC.; FOAMCO INDUSTRIES
CORPORATION; TALMOLDER, INC.;
VALLE FOAM INDUSTRIES, INC.; FUTURE
FOAM, INC.; UREBLOCK, S.A. de C.V; and
DOES 1-150, inclusive,

Defendants.

Case No. PC 14-710984

COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF

(Health & Safety Code § 25249.5, *et seq.*)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiffs Laurence Vinocur and
3 Peter Englander (collectively, "plaintiffs") in the public interest of the citizens of the State of
4 California to enforce the People's right to be informed of the presence of tris(1,3-dichloro-2-propyl)
5 phosphate ("TDCPP"), a toxic chemical found in foam and foam-containing products, including
6 padded, upholstered chairs, seat cushions, bedding, and other furniture products sold in the State of
7 California. TDCPP is a toxic chemical that is used to treat polyurethane foam, which is used as
8 padding or cushioning in a variety of consumer products.

9 2. By this Complaint, plaintiffs seek to remedy defendants' continuing failure to warn
10 California citizens about the risks of exposures to TDCPP present in and on foam and foam-
11 containing products, including, without limitation, padding in chairs, ottomans, seat cushions,
12 bedding, and furniture manufactured, shaped, brokered, distributed, sold, and offered for sale or use
13 to consumers throughout the State of California.

14 3. Detectable levels of TDCPP are commonly found in and on foam and foam-
15 containing products that defendants manufacture, shape, broker, distribute, and offer for sale to
16 consumers throughout the State of California. Workers, consumers and other individuals in
17 California, including infants and children, are exposed to TDCPP from defendants products through
18 various routes of exposure, including: (i) through inhalation when TDCPP is released from the
19 foam component of the separately sold seat cushions; (ii) through dermal exposure when TDCPP in
20 the foam component of the separately sold seat cushions accumulates in ambient particles that are
21 subsequently touched by such individuals; and (iii) through ingestion when such particles are
22 brought into contact with the mouth.

23 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
24 Health and Safety Code section 25249.5, *et seq.* ("Proposition 65"), "[n]o person in the course of
25 doing business shall knowingly and intentionally expose any individual to a chemical known to the
26 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
27 such individual . . ." (Health & Safety Code § 25249.6.)
28

1 5. TDCPP has been used in consumer products as an additive flame retardant since the
2 1960s. In 1977, based on findings that exposures to TDCPP could have mutagenic effects, the
3 United States Consumer Product Safety Commission banned the use of TDCPP in children's
4 pajamas.

5 6. On October 28, 2011, California listed TDCPP pursuant to Proposition 65 as a
6 chemical known to cause cancer. TDCPP became subject to the "clear and reasonable warning"
7 requirements of the Proposition 65 one year later on October 28, 2012. (Cal. Code Regs. tit. 27,
8 § 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b).)

9 7. Defendants manufacture, shape, broker, distribute, import, sell and/or offer for sale
10 without a warning in California, TDCPP-containing foam, and consumer products manufactured
11 with TDCPP-containing foam, including, without limitation, padding in chairs, ottomans, seat
12 cushions, bedding, and furniture, as follows:

13 a. Defendants Abad Foam, Inc. and Pomona Quality Foam, Inc. manufacture,
14 shape, broker, distribute, import, sell and/or offer for sale foam-containing TDCPP used as
15 padding in chairs including, but not limited to, the *Virco Stack Chair, #8915, M-8915,*
16 *CB/OLY/DST, #89155E51G3 (#4 62314 55998 6)* identified as an exemplar of the type of
17 products Defendants Abad Foam, Inc. and Pomona Quality Foam, Inc. manufacture, shape,
18 broker, distribute, import, sell and/or offer for sale on Plaintiff Laurence Vinocur's 60-Notice
19 of Violation of Proposition 65;

20 b. Defendants Foam & Fibre Company, Inc., Foamco Industries Corporation,
21 Talmolder, Inc., and Valle Foam Industries, Inc. manufacture, shape, broker, distribute,
22 import, sell and/or offer for sale foam-containing TDCPP used as padding in upholstered
23 chairs including, but not limited to, the *Sonic Armless Stacking Chair, SKU 6509-1* and the
24 *Offices To Go Leather Task Chair, Model #OTG11655B (#0 66158 59689 5)* identified as
25 exemplars of the type of products Defendants Foam & Fibre Company, Inc., Foamco
26 Industries Corporation, Talmolder, Inc., and Valle Foam Industries, Inc. manufacture, shape,
27 broker, distribute, import, sell and/or offer for sale on Plaintiff Laurence Vinocur's 60-Notice
28 of Violation of Proposition 65; and,

1 c. Defendants Future Foam, Inc. and Ureblock, S.A. de C.V manufacture, shape,
2 broker, distribute, import, sell and/or offer for sale foam-containing TDCPP used as padding
3 in upholstered ottomans including, but not limited to, the *Tulare Accent Ottoman*, #12076-
4 106, #62654 identified as an exemplar of the type of products Future Foam, Inc. and
5 Ureblock, S.A. de C.V manufacture, shape, broker, distribute, import, sell and/or offer for
6 sale on Plaintiff Peter Englander's 60-Notice of Violation of Proposition 65.

7 All such TDCPP-containing foam, and consumer products manufactured with TDCPP-containing
8 foam are collectively referred to hereinafter as "Products."

9 8. Although defendants expose consumers, workers, infants, children, and other
10 individuals in California to TDCPP in the Products, defendants provide no warnings about the
11 carcinogenic hazards associated with exposures to this chemical. Defendants' failure to warn
12 consumers, workers, and other individuals in the State of California about the health hazards
13 associated with exposures to TDCPP in conjunction with defendants' manufacture and sales of the
14 Products is a violation of Proposition 65, and subjects defendants to enjoinder of such conduct as
15 well as civil penalties for each violation. (Health & Safety Code § 25249.7(a) & (b)(1).)

16 9. As a result of defendants' violations of Proposition 65, plaintiffs seek preliminary and
17 permanent injunctive relief to compel defendants to provide purchasers and/or users of the Products
18 with the required warning regarding the health hazards of TDCPP. (Health & Safety Code
19 § 25249.7(a).)

20 10. Pursuant to Health and Safety Code section 25249.7(b), plaintiffs also seek civil
21 penalties against defendants for their violations of Proposition 65.

22
23 **PARTIES**

24 11. Plaintiffs Laurence Vinocur and Peter Englander are citizens of the State of California
25 who are dedicated to protecting the health of California consumers and other individuals in
26 California through the elimination or reduction of toxic exposures from consumer products, and
27 they bring this action in the public interest pursuant to Health and Safety Code section 25249.7(d).

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1 12. Defendant Abad Foam, Inc. ("Abad") is a person in the course of doing business
2 within the meaning of Health and Safety Code section 25249.11.

3 13. Defendant Pomona Quality Foam, Inc. ("Pomona") is a person in the course of doing
4 business within the meaning of Health and Safety Code section 25249.11.

5 14. Defendant Foam & Fibre Company, Inc. ("Foam & Fibre") is a person in the course
6 of doing business within the meaning of Health and Safety Code section 25249.11.

7 15. Defendant Foamco Industries Corporation ("Foamco") is a person in the course of
8 doing business within the meaning of Health and Safety Code section 25249.11.

9 16. Defendant Talmolder, Inc. ("Talmolder") is a person in the course of doing business
10 within the meaning of Health and Safety Code section 25249.11.

11 17. Defendant Valle Foam Industries, Inc. ("Valle") is a person in the course of doing
12 business within the meaning of Health and Safety Code section 25249.11.

13 18. Defendant Future Foam, Inc. ("Future") is a person in the course of doing business
14 within the meaning of Health and Safety Code section 25249.11.

15 19. Defendant Ureblock, S.A. de C.V ("Ureblock") is a person in the course of doing
16 business within the meaning of Health and Safety Code section 25249.11.

17 20. Defendants Abad Foam, Inc., Pomona Quality Foam, Inc., Foam & Fibre Company,
18 Inc., Foamco Industries Corporation, Talmolder, Inc., Valle Foam Industries, Inc., Future Foam,
19 Inc., and Ureblock, S.A. de C.V manufacture, shape, broker, distribute, sell, and/or offer the
20 Products for sale or use in the State of California, or they imply by their conduct that they
21 manufacture, shape, broker, distribute, sell, and/or offer the Products for sale or use in the State of
22 California.

23 21. Defendant DOES 1-150 are each persons in the course of doing business within the
24 meaning of Health and Safety Code Section 25249.11(b), that manufacture, distribute, sell, and/or
25 offer the Products for sale in the State of California. At this time, the true names and capacities of
26 defendants DOES 1 through 150, inclusive, are unknown to plaintiffs, who, therefore, sue said
27 defendants by their fictitious names pursuant to Code of Civil Procedure section 474. Plaintiffs are
28 informed and believe, and on that basis allege, that each of the fictitiously named defendants is

1 responsible for the acts and occurrences alleged herein. When ascertained, their true names and
2 capacities shall be reflected in an amended complaint.

3 22. Defendants Abad Foam, Inc., Pomona Quality Foam, Inc., Foam & Fibre Company,
4 Inc., Foamco Industries Corporation, Talmolder, Inc., Valle Foam Industries, Inc., Future Foam,
5 Inc., and Ureblock, S.A. de C.V, and DOES 1-150 are collectively referred to herein as
6 "Defendants."

7 **VENUE AND JURISDICTION**

8 23. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil
9 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
10 because plaintiffs seek civil penalties against Defendants, because one or more instances of
11 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because Defendants
12 conducted, and continue to conduct, business in this county with respect to the Products.

13 24. The California Superior Court has jurisdiction over this action pursuant to California
14 Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all
15 causes except those given by statute to other trial courts." The statute under which this action is
16 brought does not specify any other basis of subject matter jurisdiction.

17 25. The California Superior Court has jurisdiction over Defendants based on plaintiffs'
18 information and good faith belief that each defendant is a person, firm, corporation or association
19 that is a citizen of the State of California, has sufficient minimum contacts in the State of California,
20 and/or otherwise purposefully avails itself of the California market. Defendants' purposeful
21 availment of California as a marketplace for the Products renders the exercise of personal
22 jurisdiction by California courts over Defendants consistent with traditional notions of fair play and
23 substantial justice.

24 **FIRST CAUSE OF ACTION**

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

26 26. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, Paragraphs
27 1 through 25, inclusive.

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

4 28. Proposition 65 states, “No person in the course of doing business shall knowingly and
5 intentionally expose any individual to a chemical known to the state to cause cancer or reproductive
6 toxicity without first giving clear and reasonable warning to such individual . . .” (Health & Safety
7 Code § 25249.6.)

8 29. On June 14, 2013, Plaintiff Laurence Vinocur served a 60-Day Notice of Violation
9 (“Notice”), together with the requisite certificate of merit, on Defendants Abad Foam, Inc., Pomona
10 Quality Foam, Inc., Foam & Fibre Company, Inc., Foamco Industries Corporation, Talmolder, Inc.,
11 Valle Foam Industries, Inc., and certain public enforcement agencies stating that, as a result of
12 Defendants’ sales of the Products containing TDCPP, purchasers and users in the State of
13 California are being exposed to this Proposition 65-listed chemical from reasonably foreseeable
14 uses of the Products, without the individual purchasers and users first having been provided with
15 the “clear and reasonable warning” required by Proposition 65.

16 30. On June 14, 2013, Plaintiff Peter Englander served a Notice, together with the
17 requisite certificate of merit, on Defendants Future Foam, Inc., Ureblock, S.A. de C.V, and certain
18 public enforcement agencies stating that, as a result of Defendants’ sales of the Products containing
19 TDCPP, purchasers and users in the State of California are being exposed to this Proposition 65-
20 listed chemical from reasonably foreseeable uses of the Products, without the individual purchasers
21 and users first having been provided with the “clear and reasonable warning” required by
22 Proposition 65.

23 31. Defendants have engaged in the manufacture, shaping, importation, brokering,
24 distribution, sale, and offering of the Products for sale or use in violation of Health and Safety Code
25 section 25249.6, and Defendants’ violations have continued to occur beyond their receipt of
26 plaintiffs’ Notices. As such, Defendants’ violations are ongoing and continuous in nature, and will
27 continue to occur in the future.

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1 32. After receiving plaintiffs' Notices, the appropriate public enforcement agencies have
2 failed to commence and diligently prosecute a cause of action against Defendants under Proposition
3 65.

4 33. The Products manufactured, imported, shaped, brokered, distributed, sold, and
5 offered for sale or use in California by Defendants cause exposures to TDCPP that are not exempt
6 from the "clear and reasonable" warning requirements of Proposition 65.

7 34. Defendants knew or should have known that the Products they manufacture, import,
8 distribute, sell, and offer for sale or use in the State of California contain TDCPP.

9 35. TDCPP is present in or on the Products in such a way as to expose individuals to the
10 chemical through dermal contact, ingestion, and/or inhalation during reasonably foreseeable uses of
11 the Products.

12 36. The normal and reasonably foreseeable uses of the Products have caused, and
13 continue to cause, consumer exposures and workplace exposures to TDCPP, as such exposures are
14 defined by Title 27 of the California Code of Regulations, section 25602(b).

15 37. Defendants have knowledge that the normal and reasonably foreseeable uses of the
16 Products expose individuals to TDCPP through dermal contact, ingestion, and/or inhalation.

17 38. Defendants intended that such exposures to TDCPP from the reasonably foreseeable
18 uses of the Products would occur by Defendants' deliberate, non-accidental participation in the
19 manufacture, shaping, importation, brokering, distribution, sale, and offering of the Products for
20 sale or use to individuals in the State of California.

21 39. Defendants failed to provide a "clear and reasonable warning" to those consumers
22 and other individuals in the State of California who were or who would become exposed to TDCPP
23 through dermal contact, ingestion, and/or inhalation during the reasonably foreseeable uses of the
24 Products.

25 40. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
26 directly by California voters, individuals exposed to TDCPP through dermal contact, ingestion,
27 and/or inhalation resulting from the reasonably foreseeable uses of the Products sold by Defendants
28 without a "clear and reasonable warning" have suffered, and continue to suffer, irreparable harm for

1 which they have no plain, speedy, or adequate remedy at law.

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

5 42. As a consequence of the above-described acts, Health and Safety Code section
6 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

7 **PRAYER FOR RELIEF**

8 Wherefore, plaintiffs pray for judgment against Defendants, and each of them, as follows:

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

11 2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily
12 and permanently enjoin Defendants from manufacturing, distributing, or offering the Products for
13 sale or use in the State of California without first providing a "clear and reasonable warning" as
14 defined by Title 27 of the California Code of Regulations, section 25601, *et seq.*, as to the harms
15 associated with exposures TDCPP;

16 3. That the Court grant plaintiffs their reasonable attorneys' fees and costs of suit; and

17 4. That the Court grant such other and further relief as may be just and proper.

18 Dated: January 22, 2014

THE CHANLER GROUP

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By: Laurence D. Haveson
Laurence D. Haveson
Attorneys for Plaintiffs
LAURENCE VINOCUR and
PETER ENGLANDER

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