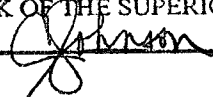


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ENDORSED
FILED
ALAMEDA COUNTY

JAN 30 2014

CLERK OF THE SUPERIOR COURT
By  Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION

12 LAURENCE VINOUCUR,
13 Plaintiff,

14 v.

15 FOURSTAR GROUP USA INC.; and DOES
16 1-150, inclusive,
17 Defendants.

) Case No. — **RG 14712013**

) **COMPLAINT FOR CIVIL PENALTIES**
) **AND INJUNCTIVE RELIEF**

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

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

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

12 3. Detectable levels of TDCPP and TCEP are commonly found in and on
13 upholstered chairs with foam padding that Defendants manufacture, distribute, sell, and/or offer
14 for sale to consumers throughout the State of California. Individuals in California, including
15 infants and children, are exposed to TDCPP and TCEP in the products through various routes of
16 exposure: (i) through inhalation when TDCPP and TCEP are released from upholstered chairs
17 with foam padding; (ii) through dermal exposure when TDCPP and TCEP from upholstered
18 chairs with foam padding accumulates in ambient particles that are subsequently touched by
19 such individuals; and (iii) through ingestion when such particles are brought into contact with
20 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
23 of doing business shall knowingly and intentionally expose any individual to a chemical known
24 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
25 warning to such individual . . .” (Health & Safety Code § 25249.6.)

26 5. TDCPP and TCEP have been used in consumer products as additive flame
27 retardants since the 1960s. In the late 1970s, based on findings that exposure to TDCPP could
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1 have mutagenic effects, the United States Consumer Product Safety Commission banned the use
2 of TDCPP in children's pajamas.

3 6. Pursuant to Proposition 65, on April 1, 1992, California identified and listed
4 TCEP as a chemical known to cause cancer. TCEP became subject to the "clear and reasonable
5 warning" requirements of Proposition 65 beginning April 1, 1993.

6 7. Pursuant to Proposition 65, on October 28, 2011, California identified and listed
7 TDCPP as a chemical known to cause cancer. TDCPP became subject to the "clear and
8 reasonable warning" requirements of the Act one year later on October 28, 2012.

9 8. TDCPP and TCEP are hereinafter collectively referred to as the "LISTED
10 CHEMICALS."

11 9. Defendant Fourstar Group USA Inc. ("FOURSTAR") manufactures, distributes,
12 imports, sells and/or offers for sale in California upholstered chairs with foam padding
13 containing the LISTED CHEMICALS without a warning including, but not limited to, the
14 *Interiors by Design Mesh Back Desk Chair, Style No. 11225134A, SKU 0626129 V-80842 (#0*
15 *32251 04725 1).*

16 10. All such upholstered chairs with foam padding containing the LISTED
17 CHEMICALS, as listed in paragraph 9 above, shall hereinafter be referred to as the
18 "PRODUCTS."

19 11. Although Defendants expose infants, children, and other people to the LISTED
20 CHEMICALS in the PRODUCTS, Defendants provide no warnings about the carcinogenic
21 hazards associated with exposures to the LISTED CHEMICALS. Defendants' failures to warn
22 consumers and other individuals in the State of California about their exposures to the LISTED
23 CHEMICALS in conjunction with Defendants' sales of the PRODUCTS, is a violation of
24 Proposition 65, and subjects Defendants to enjoinder of such conduct as well as civil penalties
25 for each violation. (Health & Safety Code § 25249.7(a) & (b)(1).)

26 12. As a result of Defendants' violations of Proposition 65, Plaintiff seeks preliminary
27 and permanent injunctive relief to compel Defendants to provide purchasers or users of the
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1 PRODUCTS with the required warning regarding the health hazards of the LISTED
2 CHEMICALS. (Health & Safety Code § 25249.7(a).)

3 13. Pursuant to Health and Safety Code Section 25249.7(b), Plaintiff also seeks civil
4 penalties against Defendants for their violations of Proposition 65.

5 **PARTIES**

6 14. Plaintiff LAURENCE VINOCUR is a citizen of the State of California who is
7 dedicated to protecting the health of California citizens through the elimination or reduction of
8 toxic exposures from consumer products and he brings this action in the public interest pursuant
9 to Health and Safety Code Section 25249.7(d).

10 15. Defendant FOURSTAR is a person in the course of doing business within the
11 meaning of Health and Safety Code Section 25249.11.

12 16. FOURSTAR manufactures, imports, distributes, sells, and/or offers the
13 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
14 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
15 State of California.

16 17. Defendant DOES 1-150 are each persons in the course of doing business within
17 the meaning of Health and Safety Code Section 25249.11(b), that manufacture, distribute, sell,
18 and/or offer the PRODUCTS for sale in the State of California. At this time, the true names and
19 capacities of defendants DOES 1 through 150, inclusive, are unknown to Plaintiff, who,
20 therefore, sues said defendants by their fictitious names pursuant to Code of Civil Procedure
21 Section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the
22 fictitiously named defendants is responsible for the acts and occurrences alleged herein. When
23 ascertained, their true names and capacities shall be reflected in an amended complaint.

24 18. FOURSTAR and Defendants DOES 1-150 are collectively referred to herein as
25 “DEFENDANTS.”

1 VENUE AND JURISDICTION

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

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

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

19 FIRST CAUSE OF ACTION

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

21 22. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
22 Paragraphs 1 through 22, inclusive.

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

1 24. 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 25. On July 5, 2013, Plaintiff’s sixty-day notice of violation, together with the
6 requisite certificate of merit, was provided to FOURSTAR and certain public enforcement
7 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
8 LISTED CHEMICALS, purchasers and users in the State of California were being exposed to
9 the LISTED CHEMICALS resulting from their reasonably foreseeable uses of the PRODUCTS,
10 without the individual purchasers and users first having been provided with a “clear and
11 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

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

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

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

23 29. DEFENDANTS knew or should have known that the PRODUCTS they
24 manufacture, import, distribute, sell, and/or offer for sale or use in the State of California
25 contain the LISTED CHEMICALS.

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1 30. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
2 to expose individuals to the LISTED CHEMICALS through dermal contact, ingestion, and/or
3 inhalation during reasonably foreseeable uses of the PRODUCTS.

4 31. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
5 continue to cause, consumer exposures and workplace exposures to the LISTED CHEMICALS;
6 as such exposures are defined by Title 27 of the California Code of Regulations, Section
7 25602(b).

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

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

15 34. DEFENDANTS failed to provide a "clear and reasonable warning" to those
16 consumers and other individuals in the State of California who were or who would become
17 exposed to the LISTED CHEMICALS through dermal contact, ingestion, and/or inhalation
18 during the reasonably foreseeable uses of the PRODUCTS.

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

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

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