

SAN FRANCISCO COUNTY  
SUPERIOR COURT

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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

20 ANTHONY E. HELD, PhD., P.E.,  
21 Plaintiff,  
22 v.  
23 BLU DOT DESIGN &  
24 MANUFACTURING, INC.; TARGET  
25 CORPORATION; and DOES 1 -100,  
26 inclusive,  
27 Defendants.

Case No. ~~CGC-14-537568~~

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**BY FAX**

**NATURE OF THE ACTION**

1. This Complaint is a representative action brought by plaintiff ANTHONY E. HELD., PhD., P.E. ("PLAINTIFF") in the public interest of the citizens of the State of California to enforce the People's right to be informed of the presence of Tris(1,3-dichloro-2-propyl) phosphate ("TDCPP") and tris(2-chloroethyl) phosphate ("TCEP"), toxic chemicals found in padded upholstered furniture sold in California. TDCPP and TCEP are toxic chemicals used to treat polyurethane foam, which is used as padding or cushioning in a variety of products.

1           2.     By this Complaint, PLAINTIFF seeks to remedy Defendants' continuing failures  
2 to warn California citizens about the risk of exposure to TDCPP and TCEP present in and on  
3 the chairs with foam padding manufactured, distributed, and offered for sale or use to  
4 consumers throughout the State of California.

5           3.     Detectable levels of TDCPP and TCEP are commonly found in and on chairs  
6 with foam padding that Defendants manufacture, distribute, and offer for sale to consumers  
7 throughout the State of California. Individuals in California, including infants and children,  
8 are exposed to TDCPP and TCEP in the products through various routes of exposure: (i)  
9 through inhalation when TDCPP and TCEP are released from chairs with foam padding; (ii)  
10 through dermal exposure when TDCPP and TCEP from chairs with foam padding accumulate  
11 in ambient particles that are subsequently touched by such individuals; and (iii) through  
12 ingestion when such particles are brought into contact with the mouth.

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

18           5.     TDCPP and TCEP have been used in consumer products as an additive flame  
19 retardant since the 1960s. In the late 1970s, based on findings that exposure to TDCPP could  
20 have mutagenic effects, the United States Consumer Product Safety Commission banned the  
21 use of TDCPP in children's pajamas.

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

26           7.     Pursuant to Proposition 65, on April 1, 1992, California identified and listed  
27 TCEP as a chemical known to cause cancer. TCEP became subject to the "clear and  
28

1 reasonable warning” requirements of the Act one year later on April 1, 1993. Cal. Code Regs.,  
2 Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

5 9. Defendant BLU DOT DESIGN & MANUFACTURING, INC. (“BLU DOT”)  
6 manufactures, distributes, imports, sells and/or offers for sale in California chairs with foam  
7 padding containing TDCPP and TCEP without a warning including, but not limited to, TOO by  
8 Blu Dot Hipper Office Chair – Ash, *Item No. 14129564*.

9 10. Defendant TARGET CORPORATION (“TARGET”) manufactures, distributes,  
10 imports, sells and/or offers for sale in California chairs with foam padding containing TDCPP  
11 and TCEP without a warning including, but not limited to, TOO by Blu Dot Hipper Office  
12 Chair – Ash, *Item No. 14129564*.

13 11. All products containing the LISTED CHEMICALS, as listed in paragraphs 9 and  
14 10 above, shall hereinafter be referred to as the “PRODUCTS.”

15 12. Although Defendants expose infants, children, and other people to the LISTED  
16 CHEMICALS in the PRODUCTS, Defendants provide no warnings about the carcinogenic  
17 hazards associated with exposures to the LISTED CHEMICALS. Defendants’ failures to warn  
18 consumers and other individuals and workers (specifically those not subject to California's  
19 Occupational Health Act, Labor Code section 6300 et seq. or exempted under the out-of-state  
20 manufacturer rule) in the State of California about their exposures to the LISTED  
21 CHEMICALS in conjunction with Defendant’s sales of the PRODUCTS, is a violation of  
22 Proposition 65, and subjects Defendants to enjoinder of such conduct as well as civil  
23 penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

24 13. As a result of Defendants’ violations of Proposition 65, PLAINTIFF seeks  
25 preliminary and permanent injunctive relief to compel Defendants to provide purchasers or  
26 users of the PRODUCTS with the required warning regarding the health hazards of the  
27 LISTED CHEMICALS in the PRODUCTS. Health & Safety Code § 25249.7(a).

1 14. Pursuant to Health and Safety Code section 25249.7(b), PLAINTIFF also seeks  
2 civil penalties against Defendants for their violations of Proposition 65.

3 **PARTIES**

4 15. Plaintiff ANTHONY E. HELD., PhD., P.E. ("PLAINTIFF"), is a citizen of the  
5 State of California who is dedicated to protecting the health of California citizens through the  
6 elimination or reduction of toxic exposures from consumer products; and he brings this action  
7 in the public interest pursuant to Health and Safety Code section 25249.7(d).

8 16. Defendant BLU DOT DESIGN & MANUFACTURING, INC. ("BLU DOT") is  
9 a person in the course of doing business within the meaning of Health and Safety Code  
10 sections 25249.6 and 25249.11.

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

15 18. Defendant TARGET CORPORAION ("TARGET") is a person in the course of  
16 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

17 19. TARGET manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
18 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
19 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

20 20. Defendants DOES 1 -100 are each persons in the course of doing business within  
21 the meaning of Health and Safety Code section 25249.11(b), which manufacture, distribute,  
22 sell, and/or offer the PRODUCTS for sale in the State of California. At this time, the true  
23 names and capacities of defendants DOES 1 through 100, inclusive, are unknown to  
24 PLAINTIFF, who, therefore, sues said defendants by their fictitious names pursuant to Code of  
25 Civil Procedure section 474. PLAINTIFF is informed and believes, and on that basis alleges,  
26 that each of the fictitiously named defendants is responsible for the acts and occurrences  
27 alleged herein. When ascertained, their true names and capacities shall be reflected in an  
28 amended complaint.

1 21. BLU DOT, TARGET and Defendants DOES 1 -100 are collectively referred to  
2 herein as "DEFENDANTS."

3 **VENUE AND JURISDICTION**

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

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

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

21 **FIRST CAUSE OF ACTION**

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

23 25. PLAINTIFF re-alleges and incorporates by reference, as if fully set forth herein,  
24 Paragraphs 1 through 24, inclusive.

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

1           27. 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           28. On October 25, 2013, PLAINTIFF’s sixty-day notice of violation, together with  
6 the requisite certificate of merit, was provided to BLU DOT and TARGET and certain public  
7 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS  
8 containing TDCPP, purchasers and users in the State of California were being exposed to  
9 TDCPP resulting from their reasonably foreseeable use of the PRODUCTS, without the  
10 individual purchasers and users first having been provided with a “clear and reasonable  
11 warning” regarding such toxic exposures, as required by Proposition 65.

12           29. On October 25, 2013, PLAINTIFF’s sixty-day notice of violation, together with  
13 the requisite certificate of merit, was provided to BLU DOT and TARGET and certain public  
14 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS  
15 containing TCEP, purchasers and users in the State of California were being exposed to TCEP  
16 resulting from their reasonably foreseeable use of the PRODUCTS, without the individual  
17 purchasers and users first having been provided with a “clear and reasonable warning”  
18 regarding such toxic exposures, as required by Proposition 65.

19           30. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
20 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
21 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
22 plaintiff’s sixty-day notice of violation. As such, DEFENDANT’S violations are ongoing and  
23 continuous in nature, and will continue to occur in the future.

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

27           32. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
28 or use in California by DEFENDANT contain LISTED CHEMICALS such that they require a

1 “clear and reasonable” warning under Proposition 65.

2 33. DEFENDANTS knew or should have known that the PRODUCTS they  
3 manufacture, import, distribute, sell, and offer for sale or use in California contain LISTED  
4 CHEMICALS.

5 34. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way  
6 as to expose individuals to the LISTED CHEMICALS through dermal contact, ingestion,  
7 and/or inhalation during reasonably foreseeable use of the PRODUCTS including through  
8 workplace exposure to the PRODUCTS.

9 35. The normal and reasonably foreseeable uses of the PRODUCTS have caused,  
10 and continue to cause, consumer exposures to LISTED CHEMICALS, as such exposures are  
11 defined by the California Code of Regulations Title 27, section 25602(b).

12 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
13 of the PRODUCTS expose individuals to LISTED CHEMICALS through dermal contact,  
14 ingestion, and/or inhalation.

15 37. DEFENDANTS intended that such exposures to LISTED CHEMICALS from  
16 the reasonably foreseeable uses of the PRODUCTS would occur by DEFENDANTS’  
17 deliberate, non-accidental participation in the manufacture, importation, distribution, sale, and  
18 offering of the PRODUCTS for sale or use to individuals in the State of California.

19 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
20 consumers and other individuals in the State of California who were or who would become  
21 exposed to the LISTED CHEMICALS through dermal contact, ingestion, and/or inhalation  
22 during the reasonably foreseeable uses of the PRODUCTS including through workplace  
23 exposure to the PRODUCTS.

24 39. Contrary to the express policy and statutory prohibition of Proposition 65  
25 enacted directly by California voters, individuals exposed to the LISTED CHEMICALS  
26 through dermal contact, ingestion, and/or inhalation resulting from the reasonably foreseeable  
27 uses of the PRODUCTS including through workplace exposure to the PRODUCTS sold by  
28 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to

1 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

2 40. 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  
4 day for each violation.

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

8 **PRAYER FOR RELIEF**

9 Wherefore, plaintiffs pray for judgment against DEFENDANTS, and each of them, as  
10 follows:

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

13 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
14 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
15 offering the PRODUCTS for sale or use in California without first providing a “clear and  
16 reasonable warning” as defined by the California Code of Regulations title 27, section 25601 *et*  
17 *seq.*, as to the harms associated with exposures the LISTED CHEMICALS;

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

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- 1           4.     That the Court grant PLAINTIFF his reasonable attorneys' fees and costs of suit;  
2 and  
3           5.     That the Court grant such other and further relief as may be just and proper.  
4

5 Dated: February 18, 2014

Respectfully Submitted,

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By: 

Rachel J. Sater

Attorneys for Plaintiff

ANTHONY E. HELD., PhD., P.E.