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ENDORSED  
FILED  
ALAMEDA COUNTY

MAY 15 2014

CLERK OF THE SUPERIOR COURT  
By Glenn Barbero

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

14 UNLIMITED CIVIL JURISDICTION

15 LAURENCE VINOCUR,

16 Plaintiff,

17 v.

18 INMUSIC BRANDS, INC.; NUMARK  
19 INTERNATIONAL, INC., ION AUDIO, LLC;  
20 and DOES 1-150, inclusive,

21 Defendants.

Case No.

**RG 14725569**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Cal. 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  
4 People’s right to be informed of the presence of Tris(1,3-dichloro-2-propyl) phosphate  
5 (“TDCPP”), a toxic chemical found in upholstered drum thrones with foam padding sold in the  
6 State of California. TDCPP is a toxic chemical that is used to treat polyurethane foam, which is  
7 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 present in and on upholstered  
10 drum thrones with foam padding manufactured, imported, distributed, sold, and/or offered for  
11 sale or use to consumers throughout the State of California.

12 3. Detectable levels of TDCPP are commonly found in and on upholstered drum  
13 thrones with foam padding that defendants manufacture, import, distribute, sell, and/or offer for  
14 sale or use to consumers 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 upholstered drum thrones with foam  
17 padding; (ii) through dermal exposure when TDCPP from upholstered drum thrones with foam  
18 padding accumulates in ambient particles that are subsequently touched by such individuals;  
19 and (iii) through ingestion when such particles are brought into contact with the mouth.

20 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,  
21 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the  
22 course of doing business shall knowingly and intentionally expose any individual to a chemical  
23 known to the State to cause cancer or reproductive toxicity without first giving clear and  
24 reasonable warning to such individual...” (Cal. 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(c); Health & Safety Code §§ 25249.8 & 25249.10(b).) TDCPP is  
7 hereinafter referred to as the "LISTED CHEMICAL."

8 7. Defendants manufacture, import, distribute, sell, and/or offer for sale upholstered  
9 drum thrones with foam padding containing excessive levels of the LISTED CHEMICAL,  
10 including, but not limited to, the *Drum Throne, ION-IDT001*. All upholstered drum thrones with  
11 foam padding containing the LISTED CHEMICAL shall hereinafter be referred to as the  
12 "PRODUCTS."

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

21 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive  
22 and permanent injunctive relief to compel defendants to provide purchasers or users of the  
23 PRODUCTS with the required warning regarding the health hazards of the LISTED  
24 CHEMICAL. (Cal. Health & Safety Code § 25249.7(a).)

25 10. Plaintiff also seeks civil penalties against defendants for their violations of  
26 Proposition 65, as provided by California Health & Safety Code § 25249.7(b).

**PARTIES**

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

6           12. Defendant, INMUSIC BRANDS, INC. (“INMUSIC”) is a person in the course of  
7 doing business within the meaning of California Health and Safety Code § 25249.11.

8           13. INMUSIC manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
9 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
10 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

11           14. Defendant, NUMARK INTERNATIONAL, INC. (“NUMARK”) is a person in  
12 the course of doing business within the meaning of California Health and Safety Code §  
13 25249.11.

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

17           16. Defendant, ION AUDIO, LLC (“ION”) is a person in the course of doing  
18 business within the meaning of California Health and Safety Code § 25249.11.

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

22           18. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each  
23 persons in the course of doing business within the meaning of California Health & Safety Code  
24 § 25249.11.

25           19. MANUFACTURER DEFENDANTS engage in the process of researching,  
26 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that  
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1 they engage in the process of researching, testing, designing, assembling, fabricating, and/or  
2 manufacturing, one or more of the PRODUCTS offered for sale or use in the State of California.

3 20. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
4 in the course of doing business within the meaning of California Health & Safety Code §  
5 25249.11.

6 21. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
7 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
8 in the State of California.

9 22. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in  
10 the course of doing business within the meaning of California Health & Safety Code §  
11 25249.11.

12 23. RETAILER DEFENDANTS offer the PRODUCTS for sale or use to individuals  
13 in the State of California.

14 24. At this time, the true names of Defendants DOES 1 through 150, inclusive, are  
15 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to  
16 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that  
17 each of the fictitiously named defendants is responsible for the acts and occurrences alleged  
18 herein. When ascertained, their true names shall be reflected in an amended complaint.

19 25. INMUSIC, NUMARK, ION, MANUFACTURER DEFENDANTS,  
20 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,  
21 collectively be referred to as “DEFENDANTS.”

22 **VENUE AND JURISDICTION**

23 26. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil  
24 Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
25 because one or more instances of wrongful conduct occurred, and continue to occur, in the  
26 County of Alameda, and/or because DEFENDANTS conducted, and continue to conduct,  
27 business in this County with respect to the PRODUCTS.



1 purchasers and users first having been provided with a “clear and reasonable warning”  
2 regarding such toxic exposures.

3 33. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
4 and/or offering of the PRODUCTS for sale in violation of California Health and Safety Code §  
5 25249.6, and DEFENDANTS’ manufacture, importation, distribution, sales, and/or offering of  
6 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has  
7 continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation.  
8 As such, DEFENDANTS’ violations are ongoing and continuous in nature, and will continue to  
9 occur in the future.

10 34. After receiving plaintiff’s sixty-day notice of violation, the appropriate public  
11 enforcement agencies have failed to commence and diligently prosecute a cause of action  
12 against DEFENDANTS under Proposition 65.

13 35. The PRODUCTS manufactured, imported, distributed, sold, and/or offered for  
14 sale or use in the State of California by DEFENDANTS contain the LISTED CHEMICAL such  
15 that they require a “clear and reasonable” warning under Proposition 65.

16 36. DEFENDANTS knew or should have known that the PRODUCTS they  
17 manufacture, import, distribute, sell, and/or offer for sale or use in the State of California  
18 contain the LISTED CHEMICAL.

19 37. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
20 expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or  
21 inhalation during reasonably foreseeable uses of the PRODUCTS.

22 38. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
23 continue to cause, consumer exposures and workplace exposures to the LISTED CHEMICAL,  
24 as such exposures are defined by Title 27 CCR § 25602(b).

25 39. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
26 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact,  
27 ingestion, and/or inhalation.

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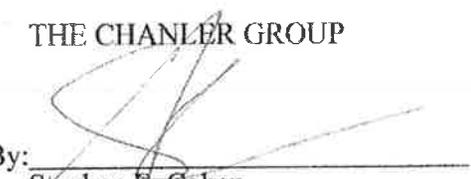
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distributing, selling, and/or offering the PRODUCTS for sale or use in the State of California without first providing a “clear and reasonable warning” as defined by Title 27 of the California Code of Regulations, § 25601 et seq., as to the harms associated with exposures the LISTED CHEMICAL;

- 3. That the Court grant plaintiff 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: May 15, 2014

THE CHANLER GROUP

By:   
\_\_\_\_\_  
Stephen E. Cohen  
Attorneys for Plaintiff  
LAURENCE VINOCUR