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ENDORSED
FILED
ALAMEDA COUNTY

NOV 25 2014

CLERK OF THE SUPERIOR COURT

By Louis Staley, Jr.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 UNLIMITED CIVIL JURISDICTION

11
12 LAURENCE VINOCUR,

13 Plaintiff,

14 v.

15 CM SCHOOL SUPPLY, INC.; and DOES 1-
16 150, inclusive,

17 Defendants.

Case No. **RG14749513**

**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 People’s
4 right to be informed about exposures to tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”), a
5 toxic chemical that is found in and on upholstered chairs with foam padding sold in the State of
6 California.

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

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

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

24 5. TDCPP has been used in consumer products as an additive flame retardant since
25 the 1960s. In 1977, based on findings that exposure to TDCPP could have mutagenic effects,
26 the use of TDCPP was discontinued in children’s pajamas.

1 12. Defendant CM SCHOOL SUPPLY, INC. ("CM") is a person in the course of
2 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

3 13. CM manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
4 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
5 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

6 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
7 persons in the course of doing business within the meaning of California Health & Safety Code
8 § 25249.11.

9 15. MANUFACTURER DEFENDANTS engage in the process of researching,
10 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
11 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
12 manufacturing, one or more of the PRODUCTS offered for sale or use in the State of California.

13 16. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
14 in the course of doing business within the meaning of California Health & Safety Code §
15 25249.11.

16 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
17 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
18 in the State of California.

19 18. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each persons in
20 the course of doing business within the meaning of California Health & Safety Code §
21 25249.11.

22 19. RETAILER DEFENDANTS offer one or more of the PRODUCTS for sale or use
23 to individuals in the State of California.

24 20. At this time, the true names of defendants DOES 1 through 150, inclusive, are
25 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
26 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
27
28

1 each of the fictitiously named defendants is responsible for the acts and occurrences alleged
2 herein. When ascertained, their true names shall be reflected in an amended complaint.

3 21. CM, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and
4 RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as
5 “DEFENDANTS.”

6 VENUE AND JURISDICTION

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

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

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

23 FIRST CAUSE OF ACTION

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

25 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
26 Paragraphs 1 through 24 inclusive.

1 26. 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
3 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
4 harm.” (Cal. Health & Safety Code § 25249.6.)

5 27. Proposition 65 states, “[n]o person in the course of doing business shall
6 knowingly and intentionally expose any individual to a chemical known to the state to cause
7 cancer or reproductive toxicity without first giving clear and reasonable warning to such
8 individual....” (*Ibid.*)

9 28. On June 20, 2014, plaintiff served a sixty-day notice of violation, together with
10 the accompanying certificate of merit on CM, and the requisite public enforcement agencies
11 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED
12 CHEMICAL, workers, consumers, and other individuals in the State of California are being
13 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the
14 PRODUCTS, without the individual purchasers and users first having received a “clear and
15 reasonable warning” regarding such toxic exposures as required by Proposition 65.

16 29. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
17 and/or offering of the PRODUCTS for sale or use in violation of Health and Safety Code
18 § 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
19 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
20 continuous in nature, and will continue to occur in the future.

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

24 31. The PRODUCTS manufactured, imported, distributed, sold, and/or offered for
25 sale or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way
26 that the reasonably foreseeable uses of these products result in exposures that require a “clear
27 and reasonable” warning under Proposition 65.
28

1 32. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufacture, import, distribute, sell, and/or offer for sale or use in California contain the
3 LISTED CHEMICAL.

4 33. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
5 expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or
6 inhalation during reasonably foreseeable uses of the PRODUCTS.

7 34. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
8 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
9 defined by title 27 of the California Code of Regulations, section 25602(b).

10 35. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
11 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact,
12 ingestion, and/or inhalation.

13 36. DEFENDANTS intend that such exposures to the LISTED CHEMICAL from the
14 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental
15 participation in the manufacture, distribution, sale, and/or offering of the PRODUCTS for sale
16 or use to individuals in the State of California.

17 37. DEFENDANTS failed to provide a “clear and reasonable warning” to those
18 workers, consumers and other individuals in California not covered by California’s
19 Occupational Safety Health Act, Labor Code section 6300 *et seq.* who have been, or will be,
20 exposed to the LISTED CHEMICAL.

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

