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ENDORSED
FILED
ALAMEDA COUNTY
SEP 24 2014
CLERK OF THE SUPERIOR COURT
By MARGARET J. DOWNIE
Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION

14 LAURENCE VINO CUR,

15 Plaintiff,

16 v.

17 AMTECH MANAGEMENT LTD.; ARTS
18 AND CRAFTS INDUSTRIES LTD.; and
19 DOES 1-150, inclusive,

20 Defendants.

21 Case No. RG 14741858

22 **COMPLAINT FOR CIVIL PENALTIES
23 AND INJUNCTIVE RELIEF**

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

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

13 3. Detectable levels of TDCPP and TCEP are commonly found in and on the foam
14 padding of upholstered chairs that defendants import, manufacture, distribute, ship, sell and/or
15 offer for sale to consumers throughout the State of California.

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

21 5. Pursuant to Proposition 65, on October 28, 2011, California identified and listed
22 TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
23 reasonable warning” requirements of the Act one year later on October 28, 2012. (Cal. Code
24 Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).) Pursuant to
25 Proposition 65, on April 1, 1992, California identified and listed TCEP as a chemical known to
26 cause cancer. TCEP became subject to the “clear and reasonable warning” requirements of
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1 Proposition 65 one year later on April 1, 1993. Cal. Code Regs., tit. 27, § 27001(c); Health &
2 Safety Code §§ 25249.8 and 25249.10(b).

3 6. Defendants manufacture, distribute, import, sell, and offer for sale without
4 warning in California, upholstered chairs with foam padding containing TDCPP and TCEP,
5 including, but not limited to, the *Chair*, identified on plaintiff's 60-day notice. All such
6 upholstered chairs with foam padding containing TDCPP and TCEP are referred to collectively
7 hereinafter as the "PRODUCTS." TDCPP and TCEP are referred to collectively hereinafter as
8 the "LISTED CHEMICALS."

9 7. Defendants' failure to warn workers, consumers, and other individuals in
10 California of the harms associated with exposures to the LISTED CHEMICALS in conjunction
11 with defendants' sales of the PRODUCTS containing the LISTED CHEMICALS constitute
12 violations of Proposition 65, and subject defendants to enjoinder of such conduct, as well as
13 civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

14 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
15 permanent injunctive relief to compel defendants to provide purchasers or users of the
16 PRODUCTS with the required warning regarding the health hazards associated with exposures
17 to the LISTED CHEMICALS. Health & Safety Code § 25249.7(a).

18 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
19 penalties against defendants, and each of them, for each violation of Proposition 65.

20 PARTIES

21 10. Plaintiff LAURENCE VINOCUR is a citizen of the State of California who is
22 dedicated to protecting the health of California citizens through the elimination or reduction of
23 harmful exposures to toxic chemicals from consumer products. He brings this action in the
24 public interest pursuant to Health and Safety Code section 25249.7(d).

25 11. Defendant AMTECH MANAGEMENT LTD. ("AMTECH") is a person in the
26 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
27 25249.11.

1 12. AMTECH manufactures, imports, distributes, sells, and/or offers the PRODUCTS
2 for sale or use in the State of California, or it implies by its conduct that it manufactures, imports,
3 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

4 13. Defendant ARTS AND CRAFTS INDUSTRIES LTD. (“A & C”) is a person in
5 the course of doing business within the meaning of Health and Safety Code sections 25249.6
6 and 25249.11.

7 14. A & C manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
8 sale or use in the State of California, or it implies by its conduct that it manufactures, imports,
9 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

10 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
11 person in the course of doing business within the meaning of Health and Safety Code sections
12 25249.6 and 25249.11.

13 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
14 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
15 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
16 California.

17 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
18 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
19 and 25249.11.

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

23 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
24 the course of doing business within the meaning of Health and Safety Code sections 25249.6
25 and 25249.11.

26 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
27 State of California.

1 **FIRST CAUSE OF ACTION**

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

3 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 23, inclusive.

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

9 28. Proposition 65 states, “[n]o person in the course of doing business shall
10 knowingly and intentionally expose any individual to a chemical known to the state to cause
11 cancer or reproductive toxicity without first giving clear and reasonable warning to such
12 individual” Health & Safety Code § 25249.6.

13 29. On July 11, 2014, plaintiff’s sixty-day notice of violation, together with the
14 requisite certificate of merit, was provided to AMTECH, A & C, and certain public enforcement
15 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
16 LISTED CHEMICALS, workers, consumers, and other individuals in the State of California
17 were being exposed to the LISTED CHEMICALS resulting from their reasonably foreseeable
18 use of the PRODUCTS, without the individual purchasers and users first having received a
19 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

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

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

1 32. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
2 or use in California by DEFENDANTS contain the LISTED CHEMICALS in such a way that
3 the reasonably foreseeable uses of these products result in exposures that require a “clear and
4 reasonable” warning under Proposition 65.

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

8 34. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
9 to expose individuals through dermal contact and/or ingestion during reasonably foreseeable
10 use.

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

14 36. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
15 of the PRODUCTS expose individuals to the LISTED CHEMICALS through dermal contact
16 and/or ingestion.

17 37. DEFENDANTS intend for such exposures to the LISTED CHEMICALS from the
18 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental
19 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or
20 use to individuals in the State of California.

21 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
22 workers, consumers and other individuals in California not covered by California’s
23 Occupational Safety Health Act, Labor Code section 6300 *et seq.* who have been, or will be,
24 exposed to the LISTED CHEMICALS.

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

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

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

10 **PRAYER FOR RELIEF**

11 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

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


20 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

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

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Dated: September 24, 2014

Respectfully Submitted,
THE CHANLER GROUP

By: 

Christopher Tuttle, Esq.
Attorneys for Plaintiff
LAURENCE VINO CUR