



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 consumers and other individuals in California about the risks of exposures to TDCPP  
9 present in and on certain upholstered chairs with foam padding manufactured, distributed, sold,  
10 and/or offered for sale or use to consumers throughout the State of California.

11 3. Detectable levels of TDCPP are commonly found in and on certain upholstered  
12 chairs with foam padding that defendants manufacture, import, distribute, sell, and/or offer for  
13 sale or use to consumers throughout California. Individuals in California, including infants and  
14 children, are exposed to TDCPP in the products through, inter alia, inhalation, dermal exposure,  
15 and/or ingestion during use and after use.

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

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

24 6. On October 28, 2011, California listed TDCPP pursuant to Proposition 65 as a  
25 chemical known to cause cancer. TDCPP became subject to the “clear and reasonable warning”  
26 requirements of the Act one year later on October 28, 2012. Cal. Code Regs., Tit. 27, §  
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1 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b). TDCCP is hereinafter referred to  
2 as the “LISTED CHEMICAL.”

3 7. Defendants manufacture, import, distribute, sell, and/or offers for sale or use  
4 upholstered chairs with foam padding containing excessive levels of the LISTED CHEMICAL  
5 which cause exposures that require a warning under Proposition 65. All such upholstered chairs  
6 with foam padding containing the LISTED CHEMICAL shall hereinafter be referred to as the  
7 “PRODUCTS.”

8 8. Defendants manufacture, import, distribute, sell, and/or offer for sale or use in  
9 California PRODUCTS containing the LISTED CHEMICAL including, but not limited to, the  
10 *Fabric Upholstered Premium Folding Chair with Double Hinges, Model: 2201, UPC #6 04747*  
11 *22011 2.*

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

17 10. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and  
18 permanent injunctive relief to compel defendants to provide purchasers or users of the  
19 PRODUCTS with the required warning regarding the health hazards associated with exposures  
20 to the LISTED CHEMICAL. Health & Safety Code § 25249.7(a).

21 11. Pursuant to Health & Safety Code § 25249.7(b), plaintiff also seeks civil penalties  
22 against defendants, and each of them, for each violation of Proposition 65.

23 **PARTIES**

24 12. Plaintiff LAURENCE VINOCUR is a citizen of the State of California who is  
25 dedicated to protecting the health of California citizens through the elimination or reduction of  
26 toxic exposures from consumer products. He brings this action in the public interest pursuant  
27 to California Health and Safety Code § 25249.7(d).

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1           13. Defendant NATIONAL PUBLIC SEATING CORP. (“NATIONAL PUBLIC”) is  
2 a person in the course of doing business within the meaning of Health and Safety Code sections  
3 25249.6 and 25249.11.

4           14. NATIONAL PUBLIC manufactures, imports, distributes, sells, and/or offers the  
5 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
6 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
7 State of California.

8           15. Defendant OKLAHOMA SOUND CORP. (“OKLAHOMA”) is a person in the  
9 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
10 25249.11.

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

14           17. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
15 person in the course of doing business within the meaning of California Health & Safety Code §  
16 25249.11.

17           18. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
18 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
19 and/or manufacture one or more of the PRODUCTS offered for sale or use in California.

20           19. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
21 in the course of doing business within the meaning of California Health & Safety Code §  
22 25249.11.

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

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1 State of California, and/or otherwise purposefully avails itself of the California market.  
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
3 California courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

6 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
7 Paragraphs 1 through 27 inclusive.

8 29. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
9 Enforcement Act of 1986, the people of California expressly declared their right "[t]o be  
10 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
11 harm." Cal. Health & Safety Code § 25249.6.

12 30. Proposition 65 states, "[n]o person in the course of doing business shall  
13 knowingly and intentionally expose any individual to a chemical known to the state to cause  
14 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
15 individual . . . ." *Id.*

16 31. On July 30, 2014, plaintiff served a sixty-day notice of violation, together with the  
17 accompanying certificate of merit on NATIONAL PUBLIC, OKLAHOMA, the California  
18 Attorney General, and all other requisite public enforcement agencies stating that, as a result of  
19 DEFENDANTS' sales of the PRODUCTS containing the LISTED CHEMICAL, consumers,  
20 and other individuals in the State of California are being exposed to the LISTED CHEMICAL  
21 as a result of their reasonably foreseeable use of the PRODUCTS without first receiving a "clear  
22 and reasonable warning" regarding the health hazards associated with such exposures as  
23 required by Proposition 65.

24 32. DEFENDANTS engage in the manufacture, importation, distribution, sale, and/or  
25 offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
26 25249.6, and DEFENDANTS' violations have continued to occur beyond their receipt of  
27 plaintiff's sixty-day notices of violation. As such, DEFENDANTS' violations are ongoing and  
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1 continuous in nature, and, unless enjoined, will continue to occur in the future.

2 33. After receiving plaintiff's sixty-day notices of violation, the appropriate public  
3 enforcement agencies have failed to commence and diligently prosecute a cause of action  
4 against DEFENDANTS under Proposition 65.

5 34. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
6 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the  
7 reasonably foreseeable uses of these products result in exposures that require a "clear and  
8 reasonable" warning under Proposition 65.

9 35. DEFENDANTS knew or should have known that the PRODUCTS they  
10 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
11 CHEMICAL.

12 36. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
13 expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or  
14 inhalation during reasonably foreseeable use.

15 37. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
16 continues to cause, consumer and workplace exposures to the LISTED CHEMICAL, as such  
17 exposures are defined by title 27 of the California Code of Regulations, section 25602(b).

18 38. DEFENDANTS know that the normal and reasonably foreseeable use of the  
19 PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact, ingestion,  
20 and/or inhalation.

21 39. DEFENDANTS intend that such exposures to the LISTED CHEMICAL from the  
22 reasonably foreseeable use of the PRODUCTS to occur by their deliberate, non-accidental  
23 participation in the manufacture, distribution, sale, and/or offering of the PRODUCTS for sale  
24 or use to individuals in the State of California.

25 40. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
26 consumers and other individuals in who have been, or will be, exposed to the LISTED  
27 CHEMICAL.

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Dated: April 9, 2015

THE CHANLER GROUP

  
By: \_\_\_\_\_  
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