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ENDORSED
FILED
ALAMEDA COUNTY

JAN - 8 2015

CLERK OF THE SUPERIOR COURT
By Alex Moyle

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

LAURENCE VINOCUR,

Plaintiff,

v.

WESTFIELD OUTDOOR, INC.; THE
SPORTS AUTHORITY, INC.; SEARS
HOLDINGS CORPORATION; KMART
CORPORATION and DOES 1-150,
inclusive,

Defendants.

) Case No. RG15754189
)
) **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 the fabric of tents and shelters 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 tent and/or shelter fabrics manufactured, distributed, sold, and/or
10 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 tent and/or
12 shelter fabrics that defendants manufacture, import, distribute, sell, and/or offer for sale or use
13 to consumers throughout California. Individuals in California, including infants and children,
14 are exposed to TDCPP in the products through, inter alia, inhalation, dermal exposure, and/or
15 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 offer for sale tents and
4 shelters that utilize fabric containing excessive levels of the LISTED CHEMICAL which cause
5 exposures that require a warning under Proposition 65. All such tent and/or shelter fabrics
6 containing the LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

7 8. Defendants manufacture, import, sell and/or distribute for sale in California
8 PRODUCTS containing the LISTED CHEMICAL more specifically, as follows:

9 a. Defendants Westfield Outdoor, Inc. and The Sports Authority, Inc.
10 manufacture distribute, import, sell, and/or offer for sale without a warning in
11 California, tent and/or shelter fabrics that contain TDCPP including, but not limited to,
12 the *Alpine Design Solitude Tent, SKU: 34405891, Style: TSA-8532, UPC #8 44093*
13 *01961 3*, as alleged in plaintiff’s July 30, 2014 notice of violation of Proposition 65
14 served on Westfield Outdoor, Inc. and The Sports Authority, Inc.

15 b. Defendants Sears Holdings Corporation and Kmart Corporation
16 manufacture distribute, import, sell, and/or offer for sale without a warning in
17 California, tent and/or shelter fabrics that contain TDCPP including, but not limited to,
18 the *Northwest Territory Sierra Dome Tent, Style #KMT120907-3, KSN #0-05734934-*
19 *2/180057349342, UPC #8 18655 00644 1*, as alleged in plaintiff’s October 24, 2014
20 notice of violation of Proposition 65 served on Sears Holdings Corporation and Kmart
21 Corporation.

22 9. Defendants’ failure to warn consumers and other individuals in California of the
23 harms associated with exposures to the LISTED CHEMICAL in conjunction with defendants’
24 sales of the PRODUCTS containing the LISTED CHEMICAL constitute violations of
25 Proposition 65, and subject defendants to enjoinder of such conduct, as well as civil penalties
26 for each violation. Health & Safety Code § 25249.7(a) & (b)(1).
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1 18. SEARS imports, distributes, sells, and/or offers the PRODUCTS for sale or use in
2 the State of California, or implies by its conduct that it imports, distributes, sells, and/or offers
3 the PRODUCTS for sale or use in the State of California.

4 19. Defendant Kmart Corporation (“KMART”) is a person in the course of doing
5 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

6 20. KMART imports, distributes, sells, and/or offers the PRODUCTS for sale or use in
7 the State of California, or implies by its conduct that it imports, distributes, sells, and/or offers
8 the PRODUCTS for sale or use in the State of California.

9 21. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
10 person in the course of doing business within the meaning of California Health & Safety Code §
11 25249.11.

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

15 23. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
16 in the course of doing business within the meaning of California Health & Safety Code §
17 25249.11.

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

21 25. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
22 the course of doing business within the meaning of California Health & Safety Code §
23 25249.11.

24 26. RETAILER DEFENDANTS offer one or more of the PRODUCTS for sale or use
25 to consumers and other individual in California.

26 27. At this time, the true names of defendants DOES 1 through 150, inclusive, are
27 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
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1 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
2 each of the fictitiously named defendants is responsible for the acts and occurrences alleged.

3 When ascertained, their true names shall be reflected in an amendment to the complaint.

4 28. WESTFIELD, SPORTS AUTHORITY, SEARS, KMART, MANUFACTURER
5 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall
6 hereinafter collectively be referred to as “DEFENDANTS.”

7 **VENUE AND JURISDICTION**

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

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

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

24 **FIRST CAUSE OF ACTION**

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

26 32. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
27 Paragraphs 1 through 31 inclusive.
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1 33. 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 34. 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” *Id.*

9 35. On July 30, 2014, plaintiff served a sixty-day notice of violation, together with the
10 accompanying certificate of merit on WESTFIELD, SPORTS, the California Attorney General,
11 and all other requisite public enforcement agencies stating that, as a result of DEFENDANTS’
12 sales of the PRODUCTS containing the LISTED CHEMICAL, consumers, and other
13 individuals in the State of California are being exposed to the LISTED CHEMICAL as a result
14 of their reasonably foreseeable use of the PRODUCTS without first receiving a “clear and
15 reasonable warning” regarding the health hazards associated with such exposures as required by
16 Proposition 65.

17 36. On October 24, 2014, plaintiff also served a sixty-day notice of violation, together
18 with the accompanying certificate of merit on SEARS, KMART, the California Attorney
19 General, and all other requisite public enforcement agencies stating that, as a result of
20 DEFENDANTS’ sales of PRODUCTS containing the LISTED CHEMICAL, consumers and
21 other individuals in the State of California are being exposed to the LISTED CHEMICAL as a
22 result of their reasonably foreseeable use of the PRODUCTS without first receiving a “clear and
23 reasonable warning” regarding the health hazards associated with such exposures as required by
24 Proposition 65.

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

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

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

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

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

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

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

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

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

Dated: January 7th, 2015

THE CHANLER GROUP

By: Brian C. Johnson
Attorneys for Plaintiff
LAURENCE VINOCUR