

1 Christopher M. Martin, State Bar No. 186021  
Josh Voorhees, State Bar No. 241436  
2 Stephen E. Cohen, State Bar No. 288416  
THE CHANLER GROUP  
3 2560 Ninth Street  
Parker Plaza, Suite 214  
4 Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff  
LAURENCE VINOCUR  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
11

12 LAURENCE VINOCUR,  
13 Plaintiff,  
14  
15 v.  
16 CORT BUSINESS SERVICES  
CORPORATION; and DOES 1-150, inclusive,  
17 Defendants.

Case No. **RG15769810**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code. § 25249.6, *et seq.*)

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**MAY 11 2015**

CLERK OF THE SUPERIOR COURT  
By MARISOL DIAZ Deputy

VIA FAX

**NATURE OF THE ACTION**

1  
2           1.     This Complaint is a representative action brought by plaintiff LAURENCE  
3 VINO CUR 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 furniture with foam padding sold in the State  
6 of 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 furniture with foam padding manufactured, distributed,  
10 sold, 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 furniture with foam padding that defendants manufacture, import, distribute, sell, and/or offer  
13 for sale or use to consumers throughout California. Individuals in California, including infants  
14 and children, are exposed to TDCPP in the products through, inter alia, inhalation, dermal  
15 exposure, 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, §  
27  
28

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 furniture with foam padding containing excessive levels of the LISTED  
5 CHEMICAL which cause exposures that require a warning under Proposition 65. All such  
6 upholstered furniture with foam padding containing the LISTED CHEMICAL shall hereinafter  
7 be referred to as the "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 *Godiva Dining Chair*, #938641149, #4035037.

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

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

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

22 **PARTIES**

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

1           13. Defendant CORT BUSINESS SERVICES CORPORATION (“CORT”) is a  
2 person in the course of doing business within the meaning of Health and Safety Code sections  
3 25249.6 and 25249.11.

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

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

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

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

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

19          19. 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          20. RETAILER DEFENDANTS offer one or more of the PRODUCTS for sale or use  
23 to consumers and other individual in California.

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

3 22. COURT, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,  
4 and RETAILER DEFENDANTS shall hereinafter collectively be referred to as  
5 "DEFENDANTS."

### 6 VENUE AND JURISDICTION

7 23. Venue is proper in Alameda County, pursuant to the Code of Civil Procedure  
8 sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because  
9 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 24. 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 25. 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 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
26 Paragraphs 1 through 25 inclusive.

1           27. 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           28. 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           29. On February 27, 2015, plaintiff served a supplemental sixty-day notice of  
10 violation, together with the accompanying certificate of merit on CORT, the California Attorney  
11 General, and all other requisite public enforcement agencies stating that, as a result of  
12 DEFENDANTS’ sales of the PRODUCTS containing the LISTED CHEMICAL, consumers,  
13 and other individuals in the State of California are being exposed to the LISTED CHEMICAL  
14 as a result of their reasonably foreseeable use of the PRODUCTS without first receiving a “clear  
15 and reasonable warning” regarding the health hazards associated with such exposures as  
16 required by Proposition 65.

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

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

25           32. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
26 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the  
27  
28

1 reasonably foreseeable uses of these products result in exposures that require a “clear and  
2 reasonable” warning under Proposition 65.

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

6 34. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
7 expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or  
8 inhalation during reasonably foreseeable use.

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

12 36. DEFENDANTS know that the normal and reasonably foreseeable use of the  
13 PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact, ingestion,  
14 and/or inhalation.

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

19 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
20 consumers and other individuals in who have been, or will be, exposed to the LISTED  
21 CHEMICAL.

22 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
23 directly by California voters, consumers and other individuals exposed to the LISTED  
24 CHEMICAL through dermal contact, ingestion, and/or inhalation resulting from their  
25 reasonably foreseeable use of the PRODUCTS sold by DEFENDANTS without a “clear and  
26 reasonable warning” have suffered, and continue to suffer, irreparable harm for which they have  
27 no plain, speedy, or adequate remedy at law.  
28

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

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

7 **PRAYER FOR RELIEF**

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

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

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

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

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

19  
20 Dated: May 11, 2015

THE CHANLER GROUP

21  
22 By: \_\_\_\_\_  
23 Stephen E. Cohen  
24 Attorneys for Plaintiff  
25 LAURENCE VINOCUR  
26  
27  
28