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ENDORSED  
FILED  
ALAMEDA COUNTY

DEC 14 2016

CLERK OF THE SUPERIOR COURT  
By A. Chao Deputy

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

11 LAURENCE VINOCUR,  
12 Plaintiff,

13 v.

14 HOUSTON'S, INC.; and DOES 1-150,  
15 inclusive,  
16 Defendants.

Case No.

RG16842416

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

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6. Defendants manufacture, distribute, import, sell, and offer for sale without health hazard warnings in California, chairs with vinyl/PVC upholstery and foam padding that contain DEHP and/or TDCPP including, but not limited to, the *Attco Quality Chair Product*, #27032. All such chairs with vinyl/PVC upholstery and foam padding containing DEHP and/or TDCPP are referred to collectively hereinafter as “PRODUCTS.”

7. Defendants' failure to warn consumers in the State of California of the health hazards associated with exposures to DEHP and TDCPP in conjunction with defendants' sales of the PRODUCTS are violations of Proposition 65, and subject defendants to enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with the required warning regarding the health hazards associated with exposures to DEHP and TDCPP. Health & Safety Code § 25249.7(a).

9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil penalties against defendants for their violations of Proposition 65.

## **PARTIES**

10. Plaintiff Laurence Vinocur is a citizen of the State of California who is dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposures from consumer products; and he brings this action in the public interest pursuant to Health and Safety Code section 25249.7(d).

11. Defendant HOUSTON'S, INC. ("HOUSTON'S") is a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

12. HOUSTON'S manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

1           13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each 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. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
5 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
6 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
7 California.

8           15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person  
9 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
10 and 25249.11.

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

14           17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in  
15 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
16 and 25249.11.

17           18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
18 State of California.

19           19. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
20 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
21 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
22 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
23 alleged herein. When ascertained, their true names shall be reflected in an amended Complaint.

24           20. HOUSTON'S, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
25 DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively referred to as  
26 "DEFENDANTS."  
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1 **VENUE AND JURISDICTION**

2 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
3 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
4 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
5 wrongful conduct occurred, and continue to occur, in this county, and/or because  
6 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the  
7 PRODUCTS.

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

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

18 **FIRST CAUSE OF ACTION**

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

20 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
21 Paragraphs 1 through 23, inclusive.

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

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

3 27. On September 29, 2016, a Supplemental 60-Day Notice of Violation (“Notice”)  
4 was provided to HOUSTON’S and certain public enforcement agencies stating that, as a result  
5 of DEFENDANTS’ sales of the PRODUCTS containing DEHP and TDCPP, purchasers and  
6 users in the State of California were being exposed to DEHP and TDCPP resulting from the  
7 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users  
8 first having been provided with a “clear and reasonable warning” regarding such toxic  
9 exposures, as required by Proposition 65.

10 28. DEFENDANTS have engaged in the manufacture, distribution, and offering of  
11 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and  
12 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s Notice.  
13 As such, DEFENDANTS’ violations are ongoing and continuous in nature, and will continue to  
14 occur in the future.

15 29. After receiving the claims asserted in the Notice, the appropriate public  
16 enforcement agencies have failed to commence and diligently prosecute a cause of action  
17 against DEFENDANTS under Proposition 65.

18 30. The PRODUCTS manufactured, distributed, and offered for sale or use in  
19 California by DEFENDANTS contain DEHP and TDCPP in amounts above the allowable state  
20 limits, such that they require a “clear and reasonable” warning under Proposition 65.

21 31. DEFENDANTS knew or should have known that the PRODUCTS they  
22 manufactured, distributed, and offered for sale or use in California contained DEHP and  
23 TDCPP.

24 32. DEHP and TDCPP are present in or on the PRODUCTS in such a way as to  
25 expose individuals through dermal contact, ingestion, and/or inhalation during reasonably  
26 foreseeable use.

1           33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
2 continue to cause, consumer exposures to DEHP and TDCPP, as such exposures are defined by  
3 California Code of Regulations title 27, section 25602(b).

4           34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
5 of the PRODUCTS exposed individuals to DEHP and TDCPP through dermal contact,  
6 ingestion, and/or inhalation.

7           35. DEFENDANTS intended that such exposures to DEHP and TDCPP from the  
8 reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental  
9 participation in the manufacture, distribution, and offering of the PRODUCTS for sale or use to  
10 individuals in the State of California.

11           36. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
12 consumers and other individuals in the State of California who were or who would become  
13 exposed to DEHP and TDCPP through dermal contact, ingestion, and/or inhalation during the  
14 reasonably foreseeable uses of the PRODUCTS.

15           37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
16 directly by California voters, individuals exposed to DEHP and TDCPP through dermal contact,  
17 ingestion, and/or inhalation resulting from the reasonably foreseeable use of the PRODUCTS  
18 sold by DEFENDANTS without a "clear and reasonable warning," have suffered, and continue  
19 to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

23           39. As a consequence of the above-described acts, Health and Safety Code  
24 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
25 DEFENDANTS.

1 **PRAYER FOR RELIEF**

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

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

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
8 offering the PRODUCTS for sale or use in California without first providing a "clear and  
9 reasonable warning" in accordance with title 27 of the California Code of Regulations, section  
10 25601 *et seq.*, regarding the harms associated with exposures to DEHP and TDCPP;


11 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue  
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS  
13 currently in the chain of commerce in California without a "clear and reasonable warning" as  
14 defined by California Code of Regulations title 27, section 25601 *et seq.*;

15 4. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

16 5. That the Court grant such other and further relief as may be just and proper.  
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18 Dated: December 14, 2016

Respectfully submitted,  
THE CHANLER GROUP

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21 By:   
22 Ryan Oca  
23 Attorneys for Plaintiff  
24 Laurence Vinocur  
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