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ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

JAN 17 2019

CLERK OF THE COURT  
BY: DAVID W. YUEN  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO  
11 UNLIMITED CIVIL JURISDICTION

13 LAURENCE VINOCUR,

14 Plaintiff,

15 v.

16 COLUMBIA TWO, INC.; and DOES 1-150,  
17 inclusive,

18 Defendants.

CGC - 19 - 572935  
Case No. \_\_\_\_\_

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

VIA FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff Laurence Vinocur the  
3 public interest of the citizens of the State of California to enforce the People’s right to be  
4 informed of the health hazards caused by exposures to di(2-ethylhexyl)phthalate (“DEHP”), a  
5 toxic chemical found in and on the portfolio cases with vinyl components sold by defendants in  
6 California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn  
8 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et*  
9 *seq.*, who purchase, use or handle defendants’ products, about the risks of exposure to DEHP  
10 present in and on the portfolio cases with vinyl components manufactured, imported, sold or  
11 distributed for sale or use throughout the State of California. Individuals not covered by  
12 California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*, who purchase, use or  
13 handle defendants’ products, are referred to hereinafter as “consumers.”

14 3. Detectable levels of DEHP are found in and on the portfolio cases with vinyl  
15 components that defendants manufacture, import, sell or distribute for sale to consumers  
16 throughout the State of California.

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

22 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed  
23 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became  
24 subject to the “clear and reasonable warning” requirements of the act one year later on October  
25 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

26 6. Defendants manufacture, import, sell and distribute for sale, without health hazard  
27 warnings in California, portfolio cases with vinyl components that contain DEHP including, but  
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1 not limited to, the *Tran by Columbia Two, Inc. Portfolio Marker Case, 1381T-PMC, #71658*  
2 *00809*, referred to, hereinafter, as the “PRODUCTS”.

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

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

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

14 **PARTIES**

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

19 11. Defendant COLUMBIA TWO, INC. (“COLUMBIA TWO”) is a person in the  
20 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

21 12. COLUMBIA TWO manufactures, imports, distributes, sells, and/or offers the  
22 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
23 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State  
24 of California.

25 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a person  
26 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
27 25249.11.

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1 jurisdiction, because Plaintiff seeks civil penalties against DEFENDANTS, because one or more  
2 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because  
3 DEFENDANTS conducted, and continue to conduct, business in San Francisco with respect to  
4 the PRODUCTS.

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

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

15 **FIRST CAUSE OF ACTION**

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

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

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

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

27 27. On September 26, 2018, Plaintiff served a sixty-day notice of violation, together  
28 with the accompanying certificate of merit, on COLUMBIA TWO, the California Attorney

1 General's Office, and the requisite public enforcement agencies alleging that, as a result of  
2 DEFENDANTS' sales of the PRODUCTS, consumers in the State of California are being  
3 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without the  
4 consumers first receiving a "clear and reasonable warning" regarding the harms associated with  
5 exposures to DEHP, as required by Proposition 65.

6 28. DEFENDANTS manufacture, import, sell and distribute the PRODUCTS for sale  
7 or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have  
8 continued beyond their receipt of plaintiff's sixty-day notice of violation. As such,  
9 DEFENDANTS' violations are ongoing and continuous in nature and, unless enjoined will  
10 continue in the future.

11 29. After receiving plaintiff's sixty-day notice of violation, no public enforcement  
12 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS under  
13 Proposition 65 to enforce the alleged violations that are the subject of Plaintiff's notice of  
14 violation.

15 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
16 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
17 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
18 consumers in California are not exempt from the "clear and reasonable" warning requirements of  
19 Proposition 65, yet DEFENDANTS provide no clear & reasonable warning.

20 31. DEFENDANTS knew or should have known that the PRODUCTS they  
21 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.

22 32. DEHP is present in or on the PRODUCTS in such a way as to expose consumers  
23 through dermal contact and/or ingestion during reasonably foreseeable use.

24 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
25 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code of  
26 Regulations, § 25600.1(e).

27 34. DEFENDANTS know that the normal and reasonably foreseeable use of the  
28 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

1           35.    DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable  
2 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the  
3 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to  
4 consumers in California.

5           36.    DEFENDANTS failed to provide a “clear and reasonable warning” to those  
6 consumers in California who have been, or who will be, exposed to DEHP through dermal contact  
7 and/or ingestion resulting from their use of the PRODUCTS.

8           37.    Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
9 directly by California voters, consumers exposed to DEHP through dermal contact and/or  
10 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear  
11 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm for  
12 which they have no plain, speedy, or adequate remedy at law.

13           38.    Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-  
14 described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of  
15 \$2,500 per day for each violation.

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

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**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;
2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” in accordance with title 27 of the California Code of Regulations, section 25600 *et seq.*, regarding the harms associated with exposures to DEHP;
3. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the chain of commerce in California without a “clear and reasonable warning” as defined by California Code of Regulations title 27, § 25601 *et seq.*;
4. That the Court grant Plaintiff his reasonable attorneys’ fees and costs of suit; and
5. That the Court grant such other and further relief as may be just and proper.

Dated: January 16, 2019

Respectfully submitted,  
THE CHANLER GROUP

By: Kimberly Gates  
Kimberly Gates  
Attorneys for Plaintiff  
LAURENCE VINO CUR