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ENDORSED
FILED
ALAMEDA COUNTY

NOV 21 2014

CLERK OF THE SUPERIOR COURT
By Cicell Johnson Deputy

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

PAUL WOZNIAK,

Plaintiff,

v.

JOHNSON OUTDOORS INC.; JOHNSON
OUTDOORS GEAR, INC.; and DOES 1-150,
inclusive,

Defendants.

) Case No. RG14740779
)
) **FIRST AMENDED COMPLAINT FOR**
) **CIVIL PENALTIES AND INJUNCTIVE**
) **RELIEF**
)
) (Health & Safety Code § 25249.5 *et seq.*)
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1 **NATURE OF THE ACTION**

2 1. This *First Amended* Complaint is a representative action brought by plaintiff
3 PAUL WOZNIAK in the public interest of the citizens of the State of California to enforce the
4 People’s right to be informed of the health hazards caused by exposures to lead, a toxic
5 chemical found in tools with vinyl/PVC grips sold by defendants in California.

6 2. By this *First Amended* Complaint, plaintiff seeks to remedy defendants’
7 continuing failure to warn California citizens and other individuals about the risks of exposure
8 to lead present in and on tools with vinyl/PVC grips manufactured, distributed, and offered for
9 sale or use to consumers and other individuals throughout the State of California.

10 3. Detectable levels of lead are found in and on the tools with vinyl/PVC grips that
11 defendants manufacture, distribute, and offer for sale to consumers and other individuals
12 throughout the State of California.

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

18 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed
19 lead as a chemical known to cause birth defects and other reproductive harm. Lead became
20 subject to the “clear and reasonable warning” requirements of the act one year later on February
21 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b).

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
24 hazard warnings in California, tools with vinyl/PVC grips containing lead. Defendants also
25 manufacture, distribute, import, sell and/or offer for sale without health hazard warnings in
26 California, the *Eureka! Tent Mallet Accessory*, UPC #0 83826 60115 6. All such tools with
27 vinyl/PVC grips containing lead are referred to collectively hereinafter as “PRODUCTS.”
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1 14. JOHNSON GEAR manufactures, imports, distributes, sells, and/or offers the
2 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
3 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
4 State of California.

5 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
6 person in the course of doing business within the meaning of Health and Safety Code sections
7 25249.6 and 25249.11.

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

12 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
13 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
14 and 25249.11.

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

18 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
19 the course of doing business within the meaning of Health and Safety Code sections 25249.6
20 and 25249.11.

21 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
22 State of California.

23 21. At this time, the true names of defendants DOES 1 through 150, inclusive, are
24 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
25 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
26 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
27 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.
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1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
2 harm.”

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

7 29. On February 7, 2014, plaintiff served a sixty-day notice of violation, together with
8 the requisite certificate of merit, on JOHNSON and certain public enforcement agencies
9 alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing lead,
10 purchasers and users in the State of California were being exposed to lead resulting from their
11 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
12 having been provided with a “clear and reasonable warning” regarding the harms associated
13 with such exposures, as required by Proposition 65.

14 30. On May 21, 2014, plaintiff served a sixty-day notice of violation, together with
15 the requisite certificate of merit, on JOHNSON GEAR and certain public enforcement agencies
16 alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing lead,
17 purchasers and users in the State of California were being exposed to lead resulting from their
18 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
19 having been provided with a “clear and reasonable warning” regarding the harms associated
20 with such exposures, as required by Proposition 65.

21 31. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
22 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
23 violations have continued beyond their receipt of plaintiff’s sixty-day notices of violation.
24 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in
25 the future.

26 32. After receiving plaintiff’s sixty-day notices of violation, none of the appropriate
27 public enforcement agencies have commenced and diligently prosecuted a cause of action
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1 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
2 subject of plaintiff's notices of violation.

3 33. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
4 offer for sale or use in California cause exposures to lead as a result of the reasonably
5 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
6 consumers and other individuals in California are not exempt from the "clear and reasonable"
7 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

8 34. DEFENDANTS knew or should have known that the PRODUCTS they
9 manufactured, imported, distributed, sold, and offered for sale or use in California contained
10 lead.

11 35. Lead is present in or on the PRODUCTS in such a way as to expose individuals to
12 lead through dermal contact and/or ingestion during reasonably foreseeable use of the Products
13 including through workplace exposure to the Products.

14 36. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
15 continues to cause, consumer exposures and workplace exposures to lead, as defined by title 27
16 of the California Code of Regulations, section 25602(b).

17 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
18 the PRODUCTS exposed individuals to lead through dermal contact and/or ingestion.

19 38. DEFENDANTS intended that exposures to lead from the reasonably foreseeable
20 use of the PRODUCTS would occur by their deliberate, non-accidental participation in the
21 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
22 consumers and other individuals in California.

23 39. DEFENDANTS failed to provide a "clear and reasonable warning" to those
24 consumers and other individuals in California who were or who would become exposed to lead
25 through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

26 40. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
27 directly by California voters, individuals exposed to lead through dermal contact and/or
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1 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear
2 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm
3 for which they have no plain, speedy, or adequate remedy at law.

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

7 42. As a consequence of the above-described acts, Health and Safety Code
8 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
9 DEFENDANTS.

10 **PRAYER FOR RELIEF**

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

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

15 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
16 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
17 offering the PRODUCTS for sale or use in California without first providing a “clear and
18 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
19 25601 *et seq.*, regarding the harms associated with exposures lead;

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

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- 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: November 21, 2014

Respectfully Submitted,
THE CHANLER GROUP

By: 
Troy C. Bailey
Attorneys for Plaintiff
PAUL WOZNIAK