



1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff PAUL WOZNIAK  
3 in the 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 products sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to  
7 warn California citizens and other individuals about the risks of exposure to DEHP present in  
8 and on stools with vinyl/PVC upholstery, earphones with vinyl/PVC cords, vinyl/PVC pet ties,  
9 tool grips, vinyl/PVC hoses, cases with vinyl/PVC shoulder strap pads and hearing protection  
10 with vinyl/PVC ear cushions manufactured, distributed, and offered for sale or use to consumers  
11 and other individuals throughout the State of California.

12 3. Detectable levels of DEHP are found in and on the aforementioned products that  
13 defendants manufacture, distribute, and offer for sale to consumers and other individuals  
14 throughout the State of California.

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

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

25 6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
26 hazard warning in California, stools with vinyl/PVC upholstery, earphones with vinyl/PVC  
27 cords, vinyl/PVC pet ties, tool grips, vinyl/PVC hoses, cases with vinyl/PVC shoulder strap  
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1 pads and hearing protection with vinyl/PVC ear cushions containing DEHP that require a  
2 warning under Proposition 65 including, but not limited to, the *Garage/Counter Swivel Stool*  
3 *with Flame Design, SKU#91200 UPC #7 92363 91200 6, Personal Sound Amplifier, Item*  
4 *66863, UPC #7 92363 66863 7, 15 Ft. Pet Tie, Item 96484, UPC #7 92363 96484 5, 7 Piece*  
5 *Tweezer Set, #96124, UPC #7 92363 96124 0, Central Pneumatic PVC Air Hose, Item 69709,*  
6 *UPC #7 92363 69709 5, Attache Case, #35233, UPC #7 92363 35233 8, Western Safety Ear*  
7 *Muffs, Item 94334, UPC #7 92363 94334 5 and Western Safety Industrial Ear Muffs, Item*  
8 *61372, UPC #7 92363 61372 9.* All such products containing DEHP are referred to collectively  
9 hereinafter as "PRODUCTS."

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

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

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

### 21 PARTIES

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

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1           11. Defendant CENTRAL PURCHASING LLC (“CENTRAL PURCHASING”) 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           12. CENTRAL PURCHASING manufactures, imports, distributes, sells, and/or offers  
5 the PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
6 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
7 State of California.

8           13. Defendant HARBOR FREIGHT TOOLS USA, INC. (“HARBOR”) is a person in  
9 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
10 and 25249.11.

11           14. HARBOR manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
12 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
13 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

14           15. Defendants DOES 51-100 (“MANUFACTURER DEFENDANTS”) are each a  
15 person in the course of doing business within the meaning of Health and Safety Code sections  
16 25249.6 and 25249.11.

17           16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
18 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
19 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
20 California.

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

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

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1 State of California, and/or otherwise purposefully avails itself of the California market.  
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
3 California courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

6 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
7 Paragraphs 1 through 25, inclusive.

8 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
9 Enforcement Act of 1986, the People of California expressly declared their right "[t]o be  
10 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
11 harm."

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

16 29. On March 26, 2014, September 12, 2014, and on November 25, 2014, plaintiff  
17 served sixty-day notices of violation, together with the requisite certificates of merit, on  
18 CENTRAL PURCHASING, HARBOR and certain public enforcement agencies alleging that,  
19 as a result of DEFENDANTS' sales of the PRODUCTS containing DEHP, purchasers and users  
20 in the State of California were being exposed to DEHP resulting from their reasonably  
21 foreseeable use of the PRODUCTS, without the individual purchasers and users first having  
22 been provided with a "clear and reasonable warning" regarding the harms associated with such  
23 exposures, as required by Proposition 65.

24 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
25 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS'  
26 violations have continued beyond their receipt of plaintiff's sixty-day notices of violation.

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1 DEFENDANTS' violations are ongoing and continuous in nature, and, as such, will continue in  
2 the future.

3 31. After receiving plaintiff's sixty-day notices of violation, none of the appropriate  
4 public enforcement agencies have commenced and diligently prosecuted a cause of action  
5 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the  
6 subject of plaintiff's notices of violation.

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

12 33. DEFENDANTS knew or should have known that the PRODUCTS they  
13 manufactured, imported, distributed, sold, and offered for sale or use in California contained  
14 DEHP.

15 34. DEHP is present in or on the PRODUCTS in such a way as to expose individuals  
16 to DEHP through dermal contact and/or ingestion during reasonably foreseeable use.

17 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
18 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code  
19 of Regulations, section 25602(b).

20 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
21 the PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

22 37. DEFENDANTS intended that exposures to DEHP from the reasonably  
23 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation  
24 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or  
25 use to consumers and other individuals in California.

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3. That the Court, Pursuant to Health and Safety Code section 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, section 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: April 27, 2015

Respectfully Submitted,  
THE CHANLER GROUP

By:   
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Attorneys for Plaintiff  
PAUL WOZNIAK