

1 Josh Voorhees, State Bar No. 241436
2 Troy C. Bailey, State Bar No. 277424
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118
9 Josh@chanler.com
10 Troy@chanler.com

11 Attorneys for Plaintiff
12 PAUL WOZNIAK

FILED

FEB - 7 2018

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MARIN

11 UNLIMITED CIVIL JURISDICTION

13 PAUL WOZNIAK,

14 Plaintiff,

15 v.

16 DESCO CORPORATION; MUELLER
17 ELECTRIC COMPANY, INC.; and DOES 1-150,
18 inclusive,

19 Defendants.

Case No. CIV 1800451

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

BY FAX

28 COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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7. Defendants manufacture, distribute, import, sell, and/or offer for sale without health hazard warnings in California, vinyl/PVC clip grips containing DEHP and/or lead including, but not limited to, the *Famous Mueller Quality Hippo Clips*. All vinyl/PVC clip grips containing DEHP and/or lead that are manufactured, distributed, sold and/or offered for sale by defendants in the State of California are referred to collectively hereinafter as “PRODUCTS.”

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

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

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

PARTIES

11. Plaintiff PAUL WOZNIAK 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).

12. Defendant DESCO CORPORATION ("DESCO") is a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

13. DESCO 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 14. Defendant MUELLER ELECTRIC COMPANY, INC. ("MUELLER") is a person
2 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
3 and 25249.11.

4 15. MUELLER manufactures, imports, distributes, sells, and/or offers the
5 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 16. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
9 person in the course of doing business within the meaning of Health and Safety Code sections
10 25249.6 and 25249.11.

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

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

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

21 20. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in
22 the course of doing business within the meaning of Health and Safety Code sections 25249.6
23 and 25249.11.

24 21. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
25 State of California.

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

4 23. DESCO, MUELLER, MANUFACTURER DEFENDANTS, DISTRIBUTOR
5 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
6 referred to as "DEFENDANTS."

7 **VENUE AND JURISDICTION**

8 24. Venue is proper in Marin County Superior Court, pursuant to Code of Civil
9 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
10 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
11 wrongful conduct occurred, and continue to occur, in this county, and/or because
12 DEFENDANTS conducted, and continue to conduct, business in Marin County with respect to
13 the PRODUCTS.

14 25. The California Superior Court has jurisdiction over this action pursuant to
15 California Constitution Article VI, section 10, which grants the Superior Court "original
16 jurisdiction in all causes except those given by statute to other trial courts." The statute under
17 which this action is brought does not specify any other basis of subject matter jurisdiction.

18 26. The California Superior Court has jurisdiction over DEFENDANTS based on
19 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
20 association that is a citizen of the State of California, has sufficient minimum contacts in the
21 State of California, and/or otherwise purposefully avails itself of the California market.
22 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
23 California courts consistent with traditional notions of fair play and substantial justice.

1 FIRST CAUSE OF ACTION

2 (Violation of Proposition 65 - Against All Defendants)

3 27. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 26, inclusive.

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

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

13 30. On February 23, 2017, plaintiff served a 60-day Notice of Violation (the
14 "Notice"), together with the requisite certificate of merit, on DESCO, MUELLER and certain
15 public enforcement agencies alleging that, as a result of DEFENDANTS' sales of the
16 PRODUCTS containing DEHP and lead, purchasers and users in the State of California were
17 being exposed to DEHP and lead resulting from their reasonably foreseeable use of the
18 PRODUCTS, without the individual purchasers and users first having been provided with a
19 "clear and reasonable warning" regarding the harms associated with such exposures, as required
20 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 Notice. DEFENDANTS' violations
24 are ongoing and continuous in nature, and, as such, will continue in the future.

25 32. After receiving plaintiff's Notice, none of the appropriate public enforcement
26 agencies have commenced and diligently prosecuted a cause of action against DEFENDANTS
27 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff's Notice.
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1 33. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
2 offer for sale or use in California cause exposures to DEHP and lead as a result of the
3 reasonably foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and
4 endured by consumers and other individuals in California are not exempt from the "clear and
5 reasonable" warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

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

9 35. DEHP and lead are present in or on the PRODUCTS in such a way as to expose
10 individuals to DEHP and lead through dermal contact and/or ingestion during reasonably
11 foreseeable use.

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

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

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

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

26 40. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
27 directly by California voters, individuals exposed to DEHP and lead through dermal contact
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1 and/or ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a
2 "clear and reasonable" health hazard warning, have suffered, and continue to suffer, irreparable
3 harm 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 to DEHP and lead;

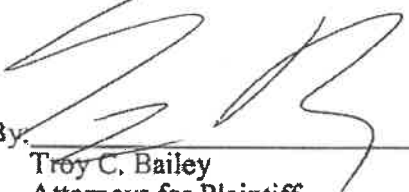
20 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
21 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
22 currently in the chain of commerce in California without a "clear and reasonable warning" as
23 defined by California Code of Regulations 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: February 7, 2018

Respectfully Submitted,
THE CHANLER GROUP

By: 
Troy C. Bailey
Attorneys for Plaintiff
PAUL WOZNIAK