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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF ALAMEDA

15 UNLIMITED CIVIL JURISDICTION

16 PAUL WOZNIAK,

17 Plaintiff,

18 v.

19 RICE LAKE WEIGHING SYSTEMS, INC.;

20 Defendant.

Case No. RG18917818

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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

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

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

PARTIES

10. 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 § 25249.7(d).

11. Defendant RICE LAKE WEIGHING SYSTEMS, INC. ("RICE LAKE") is a person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

12. RICE LAKE 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.

VENUE AND JURISDICTION

13. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because plaintiff seeks civil penalties against RICE LAKE, because one or more instances of wrongful conduct occurred, and continue to occur, in this county, and/or because RICE LAKE conducted, and continues to conduct, business in Alameda County with respect to the PRODUCTS.

14. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, section 10, which grants the Superior Court “original jurisdiction in all

1 causes except those given by statute to other trial courts.” The statute under which this action is
2 brought does not specify any other basis of subject matter jurisdiction.

3 15. The California Superior Court has jurisdiction over RICE LAKE based on plaintiff’s
4 information and good faith belief that defendant is a person, firm, corporation or association that is a
5 citizen of the State of California, has sufficient minimum contacts in the State of California, and/or
6 otherwise purposefully avails itself of the California market. RICE LAKE’s purposeful availment
7 renders the exercise of personal jurisdiction by California courts consistent with traditional notions of
8 fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65)**

11 16. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs
12 1 through 15, inclusive.

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

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

20 19. On February 23, 2017, plaintiff served a 60-day Notice of Violation (the “Notice”),
21 together with the requisite certificate of merit, on RICE LAKE and certain public enforcement
22 agencies alleging that, as a result of RICE LAKE’s sales of the PRODUCTS containing DEHP,
23 purchasers and users in the State of California were being exposed to DEHP resulting from their
24 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
25 having been provided with a “clear and reasonable warning” regarding the harms associated with
26 such exposures, as required by Proposition 65.

27 20. RICE LAKE manufactures, imports, distributes, sells and offers the PRODUCTS for
28 sale or use in violation of Health and Safety Code § 25249.6, and RICE LAKE’s violations have

1 continued beyond its receipt of plaintiff's Notice. RICE LAKE's violations are ongoing and
2 continuous in nature, and, as such, will continue in the future.

3 21. After receiving plaintiff's Notice, none of the appropriate public enforcement agencies
4 have commenced and are diligently prosecuted a cause of action against RICE LAKE under
5 Proposition 65 to enforce the alleged violations that are the subject of plaintiff's Notice.

6 22. The PRODUCTS that RICE LAKE manufactures, imports, distributes, sells and offers
7 for sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable use of
8 the PRODUCTS. Such exposures caused by RICE LAKE and endured by consumers and other
9 individuals in California are not exempt from the "clear and reasonable" warning requirements of
10 Proposition 65, yet RICE LAKE provides no warning.

11 23. RICE LAKE knew or should have known that the PRODUCTS it manufactured,
12 imported, distributed, sold and offered for sale or use in California contained DEHP.

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

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

18 26. RICE LAKE had knowledge that the normal and reasonably foreseeable use of the
19 PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

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

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

27 29. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
28 directly by California voters, individuals exposed to DEHP through dermal contact and/or ingestion

1 as a result of their use of the PRODUCTS that RICE LAKE sold without a "clear and reasonable"
2 health hazard warning, have suffered, and continue to suffer, irreparable harm for which they have no
3 plain, speedy, or adequate remedy at law.

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

7 31. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
8 also specifically authorizes the Court to grant injunctive relief against RICE LAKE.

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against RICE LAKE as follows:

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

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


18 3. That the Court, Pursuant to Health and Safety Code § 25249.7(a), issue preliminary
19 and permanent injunctions mandating that RICE LAKE recalls all PRODUCTS currently in the chain
20 of commerce in California without a "clear and reasonable warning" as defined by California Code of
21 Regulations title 27, section 25601 *et seq.*;

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

23 5. That the Court grant such other and further relief as may be just and proper.

24 Dated: August 20, 2018

Respectfully Submitted,
THE CHANLER GROUP

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27 By: 
Laralei S. Paras
Attorneys for Plaintiff
PAUL WOZNIAK