

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Josh Voorhees, State Bar No. 241436  
Troy C. Bailey, State Bar No. 277424  
THE CHANLER GROUP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
Facsimile: (510) 848-8118  
Josh@chanler.com  
Troy@chanler.com

Attorneys for Plaintiff  
PAUL WOZNIAK

**FILED**

JUN 21 2017

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

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

PAUL WOZNIAK,  
  
Plaintiff,  
  
v.  
  
SERVICE TOOL COMPANY, L.L.C.; and  
DOES 1-150, inclusive,  
  
Defendants.

Case No. CIV 1702263  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
*(Health & Safety Code § 25249.5 et seq.)*

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 electrical test kits with vinyl/PVC wires and vinyl/PVC electrical tape  
6 sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
8 warn California citizens and other individuals about the risks of exposure to DEHP present in  
9 and on: (i) electrical test kits with vinyl/PVC wires manufactured, distributed, and offered for  
10 sale or use to consumers and other individuals throughout the State of California; and (ii)  
11 vinyl/PVC electrical tape manufactured, distributed, and offered for sale or use to consumers  
12 and other individuals throughout the State of California.

13 3. Detectable levels of DEHP are found in and on the electrical test kits with  
14 vinyl/PVC wires and vinyl/PVC electrical tape that defendants manufacture, distribute, and  
15 offer for sale to consumers and other individuals throughout the State of California.

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

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

1           6.       Defendants manufacture, distribute, import, sell, and/or offer for sale without  
2 health hazard warnings in California, electrical test kits with vinyl/PVC wires containing DEHP  
3 including, but not limited to, the *REGAL 3pc Electrical Test Kit, #39850, UPC #0 82021 39850*  
4 *2* and vinyl/PVC electrical tape containing DEHP including, but not limited to, the *Tool Cache*  
5 *Electrical Tape Set, 3PC, Model No. 19846, UPC #0 82021 19846 1*. All electrical test kits  
6 with vinyl/PVC wires and vinyl/PVC electrical tape containing DEHP that are manufactured,  
7 distributed, sold and/or offered for sale by defendants in the State of California are referred to  
8 collectively hereinafter as “PRODUCTS.”

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

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

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

20                               **PARTIES**

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

25           11.      Defendant SERVICE TOOL COMPANY, L.L.C. (“STC”) is a person in the  
26 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
27 25249.11.  
28

1           12.   STC manufactures, imports, distributes, sells, and/or offers the PRODUCTS for  
2 sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
3 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

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

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

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

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

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

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

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

27  
28

1           20.    STC, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,  
2 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as  
3 “DEFENDANTS.”

4                                   **VENUE AND JURISDICTION**

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

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

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

21  
22  
23  
24  
25  
26  
27  
28

1 **FIRST CAUSE OF ACTION**

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

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

5 25. 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 26. 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 27. On February 23, 2017, plaintiff served a 60-day Notice of Violation (the  
14 “Notice”), together with the requisite certificate of merit, on STC and certain public  
15 enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS  
16 containing DEHP, purchasers and users in the State of California were being exposed to DEHP  
17 resulting from their reasonably foreseeable use of the PRODUCTS, without the individual  
18 purchasers and users first having been provided with a “clear and reasonable warning”  
19 regarding the harms associated with such exposures, as required by Proposition 65.

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

24 29. After receiving plaintiff’s Notice, none of the appropriate public enforcement  
25 agencies have commenced and diligently prosecuted a cause of action against DEFENDANTS  
26 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s Notice.

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

6           31.    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.

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

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

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

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

20          36.    DEFENDANTS failed to provide a “clear and reasonable warning” to those  
21 consumers and other individuals in California who were or who would become exposed to  
22 DEHP through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

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

28






1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 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: June 21, 2017

Respectfully Submitted,  
**THE CHANLER GROUP**

By:   
\_\_\_\_\_  
Troy C. Bailey  
Attorneys for Plaintiff  
PAUL WOZNIAK