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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION

11
12 PAUL WOZNIAK,

13 Plaintiff,

14 v.

15 CHAPIN MANUFACTURING, INC.

16 Defendant.

Case No. **RG17863655**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

ENDORSED
FILED
ALAMEDA COUNTY
JUN 12 2017
CLERK OF THE SUPERIOR COURT
By **MARGARET J. DOWNI**
Deputy

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1 63337 0. All vinyl/PVC shoulder strap pads containing lead and DEHP that are manufactured,
2 distributed, sold and/or offered for sale by defendant in the State of California are referred to
3 collectively hereinafter as "PRODUCTS."

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

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

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

15 **PARTIES**

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

20 12. Defendant CHAPIN MANUFACTURING, INC. ("CHAPIN") is a person in the
21 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
22 25249.11.

23 13. CHAPIN manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
24 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
25 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

26 14. CHAPIN shall, where appropriate, collectively be referred to as "DEFENDANT."

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1 **VENUE AND JURISDICTION**

2 15. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil
3 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
4 because plaintiff seeks civil penalties against DEFENDANT, because one or more instances of
5 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANT
6 conducted, and continue to conduct, business in Alameda County with respect to the PRODUCTS.

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

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

17 **FIRST CAUSE OF ACTION**

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

19 18. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 17, inclusive.

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

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

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1 21. On March 30, 2017, plaintiff served a 60-day Notice of Violation (the "Notice"),
2 together with the requisite certificate of merit, on CHAPIN and certain public enforcement agencies
3 alleging that, as a result of DEFENDANT's sales of the PRODUCTS containing lead and DEHP,
4 purchasers and users in the State of California were being exposed to lead and DEHP resulting from
5 their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users
6 first having been provided with a "clear and reasonable warning" regarding the harms associated
7 with such exposures, as required by Proposition 65.

8 22. DEFENDANT manufactures, imports, distributes, sells, and offers the PRODUCTS
9 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANT's
10 violations have continued beyond its receipt of plaintiff's Notice. DEFENDANT's violations are
11 ongoing and continuous in nature, and, as such, will continue in the future.

12 23. After receiving plaintiff's Notice, none of the appropriate public enforcement
13 agencies have commenced and diligently prosecuted a cause of action against DEFENDANT under
14 Proposition 65 to enforce the alleged violations that are the subject of plaintiff's Notice.

15 24. The PRODUCTS that DEFENDANT manufactures, imports, distributes, sells, and
16 offers for sale or use in California cause exposures to lead and DEHP as a result of the reasonably
17 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANT and endured by
18 consumers and other individuals in California are not exempt from the "clear and reasonable"
19 warning requirements of Proposition 65, yet DEFENDANT provides no warning.

20 25. DEFENDANT knew or should have known that the PRODUCTS it manufactured,
21 imported, distributed, sold, and offered for sale or use in California contained lead and DEHP.

22 26. Lead and DEHP are present in or on the PRODUCTS in such a way as to expose
23 individuals to lead and DEHP through dermal contact and/or ingestion during reasonably
24 foreseeable use.

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

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28. DEFENDANT had knowledge that the normal and reasonably foreseeable use of the PRODUCTS exposed individuals to lead and DEHP through dermal contact and/or ingestion.

29. DEFENDANT intended that exposures to lead and DEHP from the reasonably foreseeable use of the PRODUCTS would occur by its deliberate, non-accidental participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers and other individuals in California.

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

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

32. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the above-described acts, DEFENDANT is liable for a maximum civil penalty of \$2,500 per day for each violation.

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

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANT from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning”

1 in accordance with title 27 of the California Code of Regulations, section 25601 *et seq.*, regarding
2 the harms associated with exposures to lead and DEHP;


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

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

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

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10 Dated: June 12, 2017

Respectfully Submitted,
THE CHANLER GROUP

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13 By: 
14 Laralei Paras
15 Attorneys for Plaintiff
16 PAUL WOZNIAK
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