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CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY S. Alvarez DEPUTY

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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SANTA CLARA

14 UNLIMITED CIVIL JURISDICTION

15 17CV316047

16 PAUL WOZNIAK,

17 Plaintiff,

18 v.

19 AMERICAN D.J. SUPPLY, INC.; and DOES 1-
20 150, inclusive,

21 Defendants.

Case No. _____

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

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COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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1 for sale by defendants in the State of California are referred to collectively hereinafter as
2 “PRODUCTS.”

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

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

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

14 **PARTIES**

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

19 11. Defendant AMERICAN D.J. SUPPLY, INC. (“AMERICAN D.J.”) is a person in
20 the course of doing business within the meaning of Health and Safety Code sections 25249.6
21 and 25249.11.

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

1 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each 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 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
5 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
6 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
7 California.

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

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

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

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

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

24 20. AMERICAN D.J., MANUFACTURER DEFENDANTS, DISTRIBUTOR
25 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
26 referred to as “DEFENDANTS.”
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1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual . . .” Health & Safety Code § 25249.6.

3 27. On June 29, 2017, plaintiff served a 60-day Notice of Violation (the “Notice”),
4 together with the requisite certificate of merit, on AMERCIAN D.J. and certain public
5 enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS
6 containing DEHP, purchasers and users in the State of California were being exposed to DEHP
7 resulting from their reasonably foreseeable use of the PRODUCTS, without the individual
8 purchasers and users first having been provided with a “clear and reasonable warning”
9 regarding the harms associated with such exposures, as required by Proposition 65.

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

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

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

22 31. DEFENDANTS knew or should have known that the PRODUCTS they
23 manufactured, imported, distributed, sold, and offered for sale or use in California contained
24 DEHP.

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

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

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

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

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

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

18 38. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
19 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
20 for each violation.

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

1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
8 offering the PRODUCTS for sale or use in California without first providing a "clear and
9 reasonable warning" in accordance with title 27 of the California Code of Regulations, section
10 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

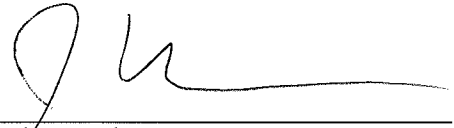
11 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
13 currently in the chain of commerce in California without a "clear and reasonable warning" as
14 defined by California Code of Regulations title 27, section 25601 *et seq.*;

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

16 5. That the Court grant such other and further relief as may be just and proper.
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18 Dated: September 18, 2017

Respectfully Submitted,
THE CHANLER GROUP

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21 By: 

22 Josh Voorhees
23 Attorneys for Plaintiff
24 PAUL WOZNIAK
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