

1 Clifford A. Chanler, State Bar No. 135534
2 Christopher Tuttle, State Bar No. 264545
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118
9 ctuttle@chanler.com

10 Attorneys for Plaintiff
11 PAUL WOZNAK

FILED

DEC 20 2017

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

12 PAUL WOZNAK,

13 Plaintiff,

14 v.

15 NEWEGG INC.; and DOES 1-50, inclusive,

16 Defendants.

Case No. *CV* 1704653

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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2. By this Complaint, Wozniak seeks to remedy defendants' continuing failure to warn California citizens and other individuals about the risks of exposure to lead present in and on rain gauges with metal ornaments manufactured, distributed, and offered for sale or use to consumers and other individuals throughout the State of California.

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

5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed lead as a chemical known to cause birth defects and reproductive harm. Lead became subject to the “clear and reasonable warning” requirements of the act one year later on February 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

6. Defendants manufacture, distribute, import, sell and/or offer for sale without health hazard warnings in California rain gauges with metal ornaments including, but not limited to, the *Rain Gauge, Item #: RGHB, UPC #7 89683 02272 0*. All such rain gauges with metal ornaments containing lead are referred to collectively hereinafter as “PRODUCTS.”

7. Defendant's failure to warn consumers and other individuals in the State of California of the health hazards associated with exposures to lead in conjunction with defendant's sales of the PRODUCTS are violations of Proposition 65, and subject defendant, 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).

8. For defendant's violations of Proposition 65, Wozniak 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 lead. Health & Safety Code § 25249.7(a).

9. Pursuant to Health and Safety Code section 25249.7(b), Wozniak also seeks civil penalties against defendants for their 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 section 25249.7(d).

11. Defendant NEWEGG, INC. ("NEWEGG") is a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

12. NEWEGG 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.

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

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

15. At this time, the true names of defendants DOES 1 through 50, inclusive, are unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

16. NEWEGG and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as “DEFENDANTS.”

VENUE AND JURISDICTION

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

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

19. The California Superior Court has jurisdiction over NEWEGG based on Wozniak's information and good faith belief that each defendant is a person, firm, corporation or association that is a citizen of the State of California, has sufficient minimum contacts in the State of California, and/or otherwise purposefully avails itself of the California market. NEWEGG's purposeful availment renders the exercise of personal jurisdiction by 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 20. Wozniak realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 19, inclusive.

5 21. 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 informed
7 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

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

12 23. On September 28, 2017, Wozniak served a sixty-day notice of violation, together
13 with the requisite certificate of merit, on NEWEGG and certain public enforcement agencies
14 alleging that, as a result of NEWEGG’s sales of the PRODUCTS containing lead, purchasers and
15 users in the State of California were being exposed to lead resulting from their reasonably
16 foreseeable use of the PRODUCTS, without the individual purchasers and users first having been
17 provided with a “clear and reasonable warning” regarding the harms associated with such
18 exposures, as required by Proposition 65.

19 24. NEWEGG manufactures, imports, distributes, sells, and offers the PRODUCTS for
20 sale or use in violation of Health and Safety Code section 25249.6, and NEWEGG’s violations
21 have continued beyond its receipt of Wozniak’s sixty-day notice of violation. NEWEGG’s
22 violations are ongoing and continuous in nature, and, as such, will continue in the future.

23 25. After receiving Wozniak’s sixty-day notice of violation, none of the appropriate
24 public enforcement agencies have commenced and diligently prosecuted a cause of action against
25 NEWEGG under Proposition 65 to enforce the alleged violations that are the subject of Wozniak’s
26 notice of violation.

1 26. The PRODUCTS that NEWEGG manufactures, imports, distributes, sells, and offers
2 for sale or use in California cause exposures to lead as a result of the reasonably foreseeable use of
3 the PRODUCTS. Such exposures caused by NEWEGG and endured by consumers and other
4 individuals in California are not exempt from the “clear and reasonable” warning requirements of
5 Proposition 65, yet NEWEGG provides no warning.

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

8 28. Lead is present in or on the PRODUCTS in such a way as to expose individuals to
9 lead through dermal contact and/or ingestion during reasonably foreseeable use.

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

13 30. NEWEGG had knowledge that the normal and reasonably foreseeable use of the
14 PRODUCTS exposed individuals to lead through dermal contact and/or ingestion.

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

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

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

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

35. 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 NEWEGG.

PRAAYER FOR RELIEF

Wherefore, Wozniak prays for judgment against NEWEGG as follows:

1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil penalties against NEWEGG, 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 NEWEGG from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” in accordance with title 27 of the California Code of Regulations, section 25601 *et seq.*, regarding the harms associated with exposures to lead;

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

4. That the Court grant Wozniak 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: December 13, 2017

Respectfully Submitted,
THE CHANLER GROUP

By: Christopher Tuttle
Attorneys for Plaintiff
PAUL WOZNIAK