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MARIN COUNTY SUPERIOR COURT

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

15 PAUL WOZNIAK,

16 Plaintiff,

17 v.

18 SERVICE TOOL COMPANY, L.L.C.; and
19 DOES 1-150, inclusive,

20 Defendants.

Case No. CIV 1901325

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

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

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1 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
2 warning to such individual . . .” Health & Safety Code § 25249.6.

3 6. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
4 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became
5 subject to the “clear and reasonable warning” requirements of the act one year later on October
6 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 and
7 25249.10(b).

8 7. Pursuant to Proposition 65, on February 27, 1987, California identified and listed
9 Lead as a chemical known to cause birth defects (and other reproductive harm). Lead became
10 subject to the warning requirement one year later and was therefore subject to the “clear and
11 reasonable warning” requirements of Proposition 65, beginning on February 27, 1988. Cal.
12 Code Regs. tit. 27, § 27001 (c); Health & Safety Code §§ 25249.8 & 25249.10(b).

13 8. Defendants manufacture, distribute, import, sell, and offer for sale without health
14 hazard warnings in California, (a) vinyl/PVC wires, that contain DEHP, which are a component
15 part of electrical test kits such as the *REGAL 3pc Electrical Test Kit, #39850, UPC #0 82021*
16 *39850 2*, (b) vinyl/PVC electrical tape that contains DEHP including, but not limited to, the
17 *Tool Cache Electrical Tape Set, 3PC, Model No. 19486, UPC #0 82021 19486 1*, and (c)
18 vinyl/PVC cords, that contain both DEHP and Lead, which are a component part of voltage
19 testers such as the *Tool Cache AC/DC Multi Tester, 51217, UPC #0 42374 89282 9*. All such
20 vinyl/PVC wires, vinyl/PVC electrical tape, and vinyl/PVC cords containing DEHP and
21 vinyl/PVC cords, also containing Lead, that are manufactured, distributed, sold, or offered for
22 sale by defendants in the State of California are referred to collectively hereinafter as
23 “PRODUCTS.”

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

3 10. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
4 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with
5 the required warning regarding the health hazards associated with exposures to DEHP and/or
6 Lead. Health & Safety Code § 25249.7(a).

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

9 **PARTIES**

10 12. Plaintiff PAUL WOZNAK is a citizen of the State of California who is dedicated
11 to protecting the health of California citizens through the elimination or reduction of toxic
12 exposures from consumer products, and he brings this action in the public interest pursuant to
13 Health and Safety Code section 25249.7(d).

14 13. Defendant SERVICE TOOL COMPANY, L.L.C. (SERVICE TOOL) is a person
15 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
16 and 25249.11.

17 14. SERVICE TOOL manufactures, imports, distributes, sells, and/or offers the
18 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
19 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
20 State of California.

21 15. Defendants DOES 1-50 (MANUFACTURER DEFENDANTS) are each a person
22 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
23 and 25249.11.

24 16. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
25 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
26 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
27 sale or use in California.

17. Defendants DOES 51-100 (DISTRIBUTOR 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.

18. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange, transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in the State of California, or each implies by its conduct that it distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in the State of California.

19. Defendants DOES 101-150 (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.

20. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to individuals in the State of California.

21. At this time, the true names of defendants DOES 1 through 150, 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.

22. SERVICE TOOL, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred to collectively as the “DEFENDANTS.”

VENUE AND JURISDICTION

23. Venue is proper in the Superior Court for the County of Marin pursuant to Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of wrongful conduct occurred, and continue to occur, in this county, and/or because

1 DEFENDANTS conducted, and continue to conduct, business in Marin with respect to the
2 PRODUCTS.

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

7 25. The California Superior Court has jurisdiction over DEFENDANTS based on
8 plaintiff’s information and good faith belief that DEFENDANTS are each a person, firm,
9 corporation or association that is a citizen of the State of California, has sufficient minimum
10 contacts in the State of California, and/or otherwise purposefully avails itself of the California
11 market. DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
12 California courts consistent with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

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

15 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 25, inclusive.

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

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

25 29. On February 23, 2017, plaintiff served a 60-day Notice of Violation (the
26 “Notice”), together with the requisite certificate of merit, on SERVICE TOOL and certain
27 public enforcement agencies alleging that, as a result of DEFENDANTS’ sales of vinyl/PVC
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1 wires, containing DEHP, which are a component part of electrical test kits, and vinyl/PVC
2 electrical tape containing DEHP, purchasers and users in the State of California were being
3 exposed to DEHP resulting from their reasonably foreseeable use of vinyl/PVC wires,
4 containing DEHP, which are a component part of electrical test kits, and vinyl/PVC electrical
5 tape containing DEHP, without the individual purchasers and users first having been provided
6 with a “clear and reasonable warning” regarding the harms associated with such exposures, as
7 required by Proposition 65.

8 30. On April 9, 2018, plaintiff served a Supplemental 60-Day Notice of Violation, the
9 “Supplemental Notice”, together with the requisite certificate of merit, on SERVICE TOOL, the
10 California Attorney General’s Office, and the requisite public enforcement agencies alleging
11 that, as a result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of
12 California are being exposed to DEHP and/or Lead resulting from their reasonably foreseeable
13 use of the PRODUCTS, without the consumers first receiving a “clear and reasonable warning”
14 regarding the harms associated with exposures to DEHP and/or Lead, as required by Proposition
15 65. The Notice and Supplemental Notice are collectively referred to hereinafter as the
16 “Notices.”

17 31. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
18 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
19 violations have continued beyond their receipt of plaintiff’s Notices. As such, DEFENDANTS’
20 violations are ongoing and continuous in nature and, unless enjoined will continue in the future.

21 32. After receiving plaintiff’s Notices, no public enforcement agency has commenced
22 and diligently prosecuted a cause of action against DEFENDANTS under Proposition 65 to
23 enforce the alleged violations that are the subject of plaintiff’s Notices.

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

3 34. DEFENDANTS knew or should have known that the PRODUCTS they
4 manufacture, import, distribute, sell, and offer for sale in California contain DEHP and/or Lead.

5 35. DEHP and/or Lead is present in or on the PRODUCTS in such a way as to expose
6 consumers through dermal contact and/or ingestion during reasonably foreseeable use.

7 36. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
8 continues to cause, consumer product exposures to DEHP and/or Lead, as defined by title 27 of
9 the California Code of Regulations, section 25600.1(e).

10 37. DEFENDANTS know that the normal and reasonably foreseeable use of the
11 PRODUCTS exposes individuals to DEHP and/or Lead through dermal contact and/or
12 ingestion.

13 38. DEFENDANTS intend that exposures to DEHP and/or Lead from the reasonably
14 foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental participation
15 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or
16 use to consumers in California.

17 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those
18 consumers in California who have been, or who will be, exposed to DEHP and/or Lead through
19 dermal contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

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

4 **PRAYER FOR RELIEF**

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

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

9 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
10 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
11 offering the PRODUCTS for sale or use in California without first providing a "clear and
12 reasonable warning" in accordance with title 27 of the California Code of Regulations,
13 section 25600 *et seq.*, regarding the harms associated with exposures to DEHP and/or Lead;

14 3. That the Court, pursuant to Health and Safety Code section 25249.7(a), issue
15 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
16 currently in the chain of commerce in California without a "clear and reasonable warning" as
17 defined by California Code of Regulations title 27, section 25600 *et seq.*;

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

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

20 Dated: April 5, 2019

Respectfully submitted,

21 LAW OFFICE OF LARALEI PARAS

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24 By: _____

Laralei S. Paras
Attorneys for Plaintiff
PAUL WOZNIAK