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PAUL WOZNIAK

ENDORSED
FILED
Superior Court of California
County of San Francisco

OCT 26 2018

CLERK OF THE COURT
BY: BOWMAN LIU
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

PAUL WOZNIAK,

Plaintiff,

v.

BARDWIL INDUSTRIES, INC.; and DOES 1-
150, inclusive,

Defendants.

Case No. CGC-18-570910

**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 lead, a toxic chemical found in and on
5 napkin rings sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
8 section 6300 *et seq.*, who purchase, use or handle defendants’ products, about the risks of
9 exposure to lead present in and on napkin rings that are manufactured, distributed, and offered
10 for sale or use throughout the State of California. Individuals not covered by California’s
11 Occupational Safety Health Act, Labor Code section 6300 *et seq.*, who purchase, use or handle
12 defendants’ products, are referred to hereinafter as “consumers.”

13 3. Detectable levels of lead are found in and on napkin rings that defendants
14 manufacture, distribute, and offer for sale to consumers and other individuals throughout the
15 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 February 27, 1987, California identified and listed
22 lead as a chemical known to cause birth defects (and reproductive harm). Lead became subject
23 to the “clear and reasonable warning” requirements of the act one year later on February 27,
24 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 and 25249.10(b).

25 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
26 hazard warnings in California, napkin rings including, but not limited to, the *Napkin Rings Set*
27 *of 4, STYLE 8873, MERRY RING, UPC #0 47596 60584 4*. All such napkin rings containing
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1 lead that are manufactured, distributed, sold or offered for sale by defendants in the State of
2 California are referred to collectively hereinafter as “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 lead 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) and (b)(1).

8 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
9 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with
10 the required warning regarding the health hazards associated with exposures to lead. Health &
11 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 BARDWIL INDUSTRIES, INC. (BARDWIL) is a person in the
20 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
21 25249.11.

22 12. BARDWIL 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 person
2 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
3 and 25249.11.

4 14. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
5 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
6 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
7 sale or use in 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, and each of them, distribute, exchange,
12 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
13 retailers for sale or use in the State of California, or each implies by its conduct that it
14 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
15 individuals, businesses, or retailers for sale or use in the State of California.

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

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

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

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1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
2 harm.”

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

7 27. On May 31, 2018, plaintiff served a 60-Day Notice of Violation, the “Notice”,
8 together with the requisite certificate of merit, on BARDWIL, the California Attorney General’s
9 Office, and the requisite public enforcement agencies alleging that, as a result of
10 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being
11 exposed to lead resulting from their reasonably foreseeable use of the PRODUCTS, without the
12 consumers first receiving a “clear and reasonable warning” regarding the harms associated with
13 exposures to lead, as required by Proposition 65.

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

18 29. After receiving plaintiff’s Notice, no public enforcement agency has commenced
19 and diligently prosecuted a cause of action against DEFENDANTS under Proposition 65 to
20 enforce the alleged violations that are the subject of plaintiff’s Notice.

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

26 31. DEFENDANTS knew or should have known that the PRODUCTS they
27 manufacture, import, distribute, sell, and offer for sale in California contain lead.
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1 32. Lead is present in or on the PRODUCTS in such a way as to expose consumers
2 through dermal contact and/or ingestion during reasonably foreseeable use.

3 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
4 continues to cause, consumer product exposures to lead, as defined by title 27 of the California
5 Code of Regulations, section 25600.1(e).

6 34. DEFENDANTS know that the normal and reasonably foreseeable use of the
7 PRODUCTS exposes individuals to lead through dermal contact and/or ingestion.

8 35. DEFENDANTS intend that exposures to lead from the reasonably foreseeable use
9 of the PRODUCTS will occur by their deliberate, non-accidental participation in the
10 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
11 consumers in California.

12 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
13 consumers in California who have been, or who will be, exposed to lead through dermal contact
14 and/or ingestion resulting from their use of the PRODUCTS.

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

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

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

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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,
10 section 25600 *et seq.*, regarding the harms associated with exposures to lead;

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 25600 *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: October 25, 2018

Respectfully submitted,
THE CHANLER GROUP

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21 By: 

22 Clifford A. Chanler
23 Attorneys for plaintiff
24 PAUL WOZNIAK
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