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9 PAUL WOZNIAK

ENDORSED
FILED
Superior Court of California
County of San Francisco

MAY - 4 2020

CLERK OF THE COURT
BY: ANNA L. TORRES
Deputy Clerk

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

13 PAUL WOZNIAK,

14 Plaintiff,

15 v.

16 INVACARE CORPORATION; and DOES 1-
17 150, inclusive,

18 Defendants.

Case No.

CGC-20-584325

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

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1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff PAUL WOZNIAK in
3 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 di(2-ethylhexyl)phthalate (DEHP), a toxic
5 chemical found in and on upholstery on wheelchair legrest pads sold by defendants in California.

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

13 3. Detectable levels of DEHP are found in and on upholstery on wheelchair legrest
14 pads that defendants manufacture, distribute, and offer for sale to consumers and other individuals
15 throughout the 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 warning
20 to such individual . . .” Health & Safety Code § 25249.6.

21 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
22 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became
23 subject to the “clear and reasonable warning” requirements of the act one year later on October 24,
24 2004. 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, upholstery on wheelchair legrest pads including, but not limited to,
27 the *Invacare Wheelchair Elevating Legrests, Model/Ref T94HCP*. All such upholstery on
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1 wheelchair legrest pads containing DEHP that are manufactured, distributed, sold, or offered for
2 sale by defendants in the State of California are referred to collectively hereinafter as
3 “PRODUCTS.”

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

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

13 9. 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 10. Plaintiff PAUL WOZNIAK is a citizen of the State of California who is dedicated
17 to protecting the health of California citizens through the elimination or reduction of toxic
18 exposures from consumer products, and he brings this action in the public interest pursuant to
19 Health and Safety Code section 25249.7(d).

20 11. Defendant INVACARE CORPORATION (INVACARE) is a person in the course
21 of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

22 12. INVACARE 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 State
25 of California.

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1 13. Defendants DOES 1-50 (MANUFACTURER DEFENDANTS) are each a person in
2 the course of doing business within the meaning of Health and Safety Code sections 25249.6 and
3 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 sale
7 or use in California.

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

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

16 17. Defendants DOES 101-150 (RETAILER DEFENDANTS) are each a person in the
17 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
18 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 alleges,
24 that each of the fictitiously named defendants is responsible for the acts and occurrences alleged
25 herein. When ascertained, their true names shall be reflected in an amended complaint.

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1 20. INVACARE, MANUFACTURER DEFENDANTS, DISTRIBUTOR
2 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be
3 referred to collectively as the “DEFENDANTS.”

4 **VENUE AND JURISDICTION**

5 21. Venue is proper in the Superior Court for the County of San Francisco pursuant to
6 Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent
7 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more
8 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because
9 DEFENDANTS conducted, and continue to conduct, business in San Francisco with respect to the
10 PRODUCTS.

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

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

21 **FIRST CAUSE OF ACTION**

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

23 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
24 Paragraphs 1 through 23, inclusive.

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

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

5 27. On January 7, 2020, plaintiff served a 60-Day Notice of Violation, (the Notice),
6 together with the requisite certificate of merit, on INVACARE, the California Attorney General’s
7 Office, and the requisite public enforcement agencies alleging that, as a result of DEFENDANTS’
8 sales of the PRODUCTS, consumers in the State of California are being exposed to DEHP
9 resulting from their reasonably foreseeable use of the PRODUCTS, without the consumers first
10 receiving a “clear and reasonable warning” regarding the harms associated with exposures to
11 DEHP, as required by Proposition 65.

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

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

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

24 31. DEFENDANTS knew or should have known that the PRODUCTS they
25 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.

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

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

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

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

10 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
11 consumers in California who have been, or who will be, exposed to DEHP through dermal contact
12 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, consumers 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 and
16 reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm for
17 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, and each of them, are liable for a maximum civil penalty
20 of \$2,500 per day 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.

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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 civil
4 penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each
5 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 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 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: May 4, 2020

Respectfully submitted,
CHANLER, LLC

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21 By: 
22 Clifford A. Chanler
23 Attorneys for Plaintiff
24 PAUL WOZNIAK
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