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ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

04/05/2022
Clerk of the Court
BY: LAURA SIMMONS
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CGC-22-599021

UNLIMITED CIVIL JURISDICTION

PAUL WOZNIAK,

Plaintiff,

v.

COMPASS HEALTH BRANDS CORP.,

Defendant.

Case No.

**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 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 wheelchairs with armrests and/or other accessible vinyl components (as
6 well as wheelchair components offered for sale separately) (Products) sold by defendant
7 COMPASS HEALTH BRANDS CORP. in California.

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

14 3. Detectable levels of DEHP are found in and on Products that defendant
15 manufactures, distributes, and/or offers for sale to consumers and other individuals throughout the
16 State of California.

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

22 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
23 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became
24 subject to the “clear and reasonable warning” requirements of the act one year later on October 24,
25 2004. Cal. Code Regs. tit. 27, §27001(c); Health & Safety Code §§25249.8 and 25249.10(b).

26 6. Defendant manufactures, distributes, imports, sells, and offers for sale without
27 health hazard warnings in California, the Products including, but not limited to, the *Armrest Pad*,
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1 *Full-Length For Reclining, Item #90152, UPC #0 92237 60762* 6. All such Products containing
2 DEHP that were (and in many instances continue to be) manufactured, distributed, sold, or offered
3 for sale in the State of California are referred to collectively hereinafter as “PRODUCTS.”

4 7. Defendant’s 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 defendant’s sales of the PRODUCTS are violations of Proposition 65, and subject the defendant to
7 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
8 §25249.7(a) and (b)(1). Violative sales of the PRODUCTS include transactions by downstream
9 sellers such as online retailers.

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

14 9. Pursuant to Health & safety Code §25249.7(b), plaintiff also seeks civil penalties
15 against defendant for its violations of Proposition 65.

16 **PARTIES**

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

21 11. Defendant COMPASS HEALTH BRANDS CORP. is a person in the course of
22 doing business within the meaning of Health & safety Code §§25249.6 and 25249.11.

23 12. COMPASS HEALTH BRANDS CORP. manufactures, imports, distributes, sells,
24 and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct
25 that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
26 State of California.

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1 19. 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 20. On February 11, 2020, and on June 5, 2020, plaintiff served a 60-Day Notice of
6 Violation and a Supplemental 60-Day Notice of Violation, respectively (the Notices), together
7 with a certificate of merit, on COMPASS HEALTH BRANDS CORP., the California Attorney
8 General’s Office, and the requisite public enforcement agencies alleging that, as a result of
9 DEFENDANT’S sales of the PRODUCTS, consumers in the State of California are being exposed
10 to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without the
11 consumers first receiving a “clear and reasonable warning” regarding the harms associated with
12 exposures to DEHP, as required by Proposition 65.

13 21. DEFENDANT manufactures, imports, distributes, sells, and offers the PRODUCTS
14 for sale or use in violation of Health & safety Code §25249.6, and DEFENDANT’S violations
15 have continued beyond their receipt of plaintiff’s Notices. As such, DEFENDANT’S violations
16 are ongoing and continuous in nature and, unless enjoined will continue in the future.

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

20 23. The PRODUCTS that DEFENDANT manufactures, imports, distributes, sells, and
21 offers for sale or use in California cause exposures to DEHP as a result of the reasonably
22 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANT and endured by
23 consumers and other individuals in California are not exempt from the “clear and reasonable”
24 warning requirements of Proposition 65, yet DEFENDANT provides no warning.

25 24. DEFENDANT knew or should have known that the PRODUCTS it manufactures,
26 imports, distributes, sells, and offers for sale in California contain DEHP.

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1 25. DEHP 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 26. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
4 continues to cause, consumer product exposures to DEHP, as defined by title 27 of the California
5 Code of Regulations, §25600.1(e).

6 27. DEFENDANT knows that the normal and reasonably foreseeable use of the
7 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

8 28. DEFENDANT intended that exposures to DEHP from the reasonably foreseeable
9 use of the PRODUCTS will occur by its 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 29. DEFENDANT failed to provide a “clear and reasonable warning” to those
13 consumers in California who have been, or who will be, exposed to DEHP through dermal contact
14 and/or ingestion resulting from their use of the PRODUCTS.

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

20 31. Pursuant to Health & safety Code §25249.7(b), as a consequence of the above-
21 described acts, DEFENDANT is liable for a maximum civil penalty of \$2,500 per day for each
22 violation.

23 32. As a consequence of the above-described acts, Health & safety Code §25249.7(a)
24 also specifically authorizes the Court to grant injunctive relief against DEFENDANT.

25 33. On June 1, 2020, PAUL WOZNIAK filed an enforcement action in the Court based
26 on the sixty-notice of violation dated February 11, 2020. PAUL WOZNIAK did perfect service of
27 this complaint, but defendant did not file a responsive pleading. Therefore, on February 10, 2022,
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1 plaintiff filed and served a Request for Entry of Default on DEFENDANT. Upon stipulation
2 between the parties that the statute of limitation would be tolled for all claims alleged in the
3 February 11, 2020, notice as well as the June 5, 2020, supplemental notice from the date that each
4 notice was issued through April 15, 2022, plaintiff dismissed the prior action without prejudice.

5 **PRAYER FOR RELIEF**

6 Wherefore, plaintiff prays for judgment against DEFENDANT as follows:

7 1. That the Court, pursuant to Health & safety Code §25249.7(b), assess civil penalties
8 against DEFENDANT in the amount of \$2,500 per day for each violation;

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

14 3. That the Court, pursuant to Health & safety Code §25249.7(a), issue preliminary
15 and permanent injunctions mandating that DEFENDANT recall all PRODUCTS currently in the
16 chain of commerce in California without a “clear and reasonable warning” as defined by
17 California Code of Regulations title 27, §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.
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21 Dated: April 5, 2022

Respectfully submitted,

22 CHANLER, LLC

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24 By: 
25 Clifford A. Chanler
26 Attorneys for Plaintiff
27 PAUL WOZNIAK
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