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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CGC-22-601492

UNLIMITED CIVIL JURISDICTION

PAUL WOZNIAK,

Plaintiff,

v.

KARMAN HEALTHCARE INC.;
WALGREEN CO.;

Defendants.

Case No.

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

08/30/2022

Clerk of the Court

BY: JEFFREY FLORES

Deputy Clerk

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 defendants
7 KARMAN HEALTHCARE INC. and WALGREEN CO. in California.

8 2. By this Complaint, plaintiff seeks to remedy defendants’ 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 defendants’ Products, are referred to hereinafter as “consumers.”

14 3. Detectable levels of DEHP are found in and on Products that defendants
15 manufacture, distribute, and/or offer 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. Defendants manufacture, distribute, import, sells, and offer for sale without health
27 hazard warnings in California, the Products including, but not limited to, the *Karman Full Length*
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1 *Armpad with Cushion Blue, AP22U, #04563510015* 6. All such Products containing DEHP that
2 were (and in many instances continue to be) manufactured, distributed, sold, or offered for sale in
3 the State of California are referred to collectively hereinafter as “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 the defendants
7 to 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 defendants’ violations of Proposition 65, plaintiff seeks preliminary and
11 permanent injunctive relief to compel defendants 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 defendants for their 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 KARMAN HEALTHCARE INC. is a person in the course of doing
22 business within the meaning of Health & safety Code §§25249.6 and 25249.11.

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

13. Defendant WALGREEN CO. is a person in the course of doing business within the meaning of Health & safety Code §§25249.6 and 25249.11.

14. WALGREEN CO. 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.

15. KARMAN HEALTHCARE INC. and WALGREEN CO. shall hereinafter, where appropriate, be referred to as the “DEFENDANTS.”

VENUE AND JURISDICTION

16. Venue is proper in the Superior Court for the County of San Francisco pursuant to Code of Civil Procedure §§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 DEFENDANTS conducted, and continue to conduct, business in San Francisco with respect to the PRODUCTS.

17. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, §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.

18. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that DEFENDANTS are each 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. DEFENDANTS' 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)**

3 19. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 18, inclusive.

5 20. 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 21. 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 22. On March 4, 2020, plaintiff served a 60-Day Notice of Violation (the Notice),
13 together with a certificate of merit, on KARMAN HEALTHCARE INC. and WALGREEN CO.,
14 the California Attorney General’s Office, and the requisite public enforcement agencies alleging
15 that, as a result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California
16 are being exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS,
17 without the consumers first receiving a “clear and reasonable warning” regarding the harms
18 associated with exposures to DEHP, as required by Proposition 65.

19 23. DEFENDANTS manufacture, import, distribute, sell, and offers the PRODUCTS
20 for sale or use in violation of Health & safety Code §25249.6, and DEFENDANTS’ violations
21 have continued beyond their receipt of plaintiff’s Notice. As such, DEFENDANTS’ violations are
22 ongoing and continuous in nature and, unless enjoined will continue in the future.

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

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

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

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

8 28. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
9 continues to cause, consumer product exposures to DEHP, as defined by title 27 of the California
10 Code of Regulations, §25600.1(e).

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

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

17 31. 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 through dermal contact
19 and/or ingestion resulting from their use of the PRODUCTS.

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

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

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

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

2. That the Court, pursuant to Health & safety Code §25249.7(a), preliminarily and permanently enjoin DEFENDANTS 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, §25600 *et seq.*, regarding the harms associated with exposures to DEHP;

3. That the Court, pursuant to Health & safety Code §25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS 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, §25600 *et seq.*;

4. That the Court grant plaintiff 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: August 30, 2022

Respectfully submitted,

CHANLER, LLC

By: _____


Clifford A. Chanler
Attorneys for Plaintiff
PAUL WOZNIAK