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

PAUL WOZNIAK,
Plaintiff,
v.
AMAZON.COM, INC,
Defendant.

Case No. CGC-21-594849

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

06/22/2022
Clerk of the Court
BY: ERNALYN BURA
Deputy Clerk

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff Paul Wozniak in the
3 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 solder wire
5 sold by defendants that are purchased by or shipped to citizens in California (the “Products”).
6 Some of the Products are repackaged, produced, stored, shipped and/or sold online to California
7 citizens by defendant Amazon.com, Inc. through, among other representations, “Amazon
8 Warehouse” or other iterations of Amazon.com, Inc. as the “seller” of the products.

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

16 3. Lead is found in solder wire that defendant manufactures, imports, distributes,
17 retails or otherwise markets or offers for sale to consumers and other citizens throughout
18 California. Defendant has actual knowledge of the Products’ lead contents. Most, if not all, of the
19 sales of the Products were and continue to be offered for purchase and/or transacted through
20 amazon.com.

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

26 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed
27 lead as a chemical known to cause birth defects and other reproductive harm. Lead became
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1 subject to the “clear and reasonable warning” requirements of the act one year later on February
2 27, 1988. 27 Cal. Code Regs. §27001(b); Health & Safety Code §25249.8 and §25249.10(b).

3 6. Defendant manufactures, imports, distributes, and/or offers for sale or use in
4 California, without the mandated health hazard warnings, various products (hereinafter, "the
5 Products") consisting of soldering wire that reference the toxicant “lead” or its elemental symbol,
6 “Pb” in: (i) the product’s name; (ii) the product description or information referenced prominently
7 near the online display for the item when sold through an e-commerce platform; (iii) the search
8 “filter,” if any, used to market the products online; (iv) the immediate product packaging or
9 container; or (v) any other conspicuous manner likely to be encountered without considerable
10 effort by an online purchaser before payment. Some examples of the Products were identified in
11 the sixty-day notices of violation sent to defendant. Other examples are listed in Exhibit A to this
12 first amended complaint. Exhibit B provides a photograph of the labeling of an example of one
13 Product in each of the two categories as well as a screen capture of the website listing on
14 amazon.com of an example of the same Products.

15 7. Defendant’s failure to warn consumers and other individuals in California of the
16 health hazards associated with exposures to lead in conjunction with defendant’s sales of the
17 Products are violations of Proposition 65 which subject defendant, to enjoinder of such conduct
18 as well as civil penalties for each violation. Health & Safety Code §25249.7(a) and (b)(1).¹

19 8. For defendant’s violations and threatened violations of Proposition 65, plaintiff
20 seeks preliminary and permanent injunctive relief to compel defendant to provide purchasers and
21 users of the Products with the required warning regarding specific health hazards associated with
22 exposures to lead. Health & Safety Code §25249.7(a).

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27 ¹ Claims released in one or more settlement agreements reached between plaintiff and upstream suppliers of lead-based
28 soldering wire, which were sold directly by the settling entity on amazon.com, are excluded from the cause of action
alleged herein. This exclusion, however, does not apply to the sale of Products by third-parties (i.e., non-settling
entities) on amazon.com.

1 9. Pursuant to Health & Safety Code §25249.7(b), plaintiff also seeks civil penalties
2 against defendant for their violations of Proposition 65, some of which are ongoing.

3 **PARTIES**

4 10. Plaintiff Paul Wozniak is a citizen of the State of California who is dedicated to
5 protecting the health of California citizens through the elimination or reduction of toxic exposures
6 from consumer and industrial products, and he brings this action in the public interest pursuant to
7 Health & Safety Code §25249.7(d).

8 11. Defendant Amazon.Com, Inc. (Amazon) is a person in the course of doing business
9 within the meaning of Health & Safety Code §§25249.6 and 25249.11.

10 12. Amazon imports, distributes, sells, facilitates, and/or offers the Products for sale or
11 use in the State of California, or implies by its conduct that it imports, distributes, facilitates for
12 sale, sells, and/or offers the Products for sale or use in the State of California. Amazon has offered
13 (and, in many instances, continues to offer) for sale Products supplied to it by entities that are not
14 subject to enforcement under Proposition 65 because: (i) they have fewer than ten employees
15 during all relevant periods; or (ii) do not have an agent for process of service in California.
16 Further, in some instances, the Products are shipped to California consumers, either directly (or
17 indirectly through an Amazon fulfilment center in the United States) by exporters located in
18 foreign countries without offices in the United States, after purchase at amazon.com.

19 13. Amazon may be referred to hereinafter as the “defendant.”

20 **VENUE AND JURISDICTION**

21 14. Venue is proper in the Superior Court for the County of San Francisco pursuant to
22 Code of Civil Procedure §§393, 395, and 395.5, because this Court is a court of competent
23 jurisdiction, because plaintiff seeks civil penalties against defendant, one or more instances of
24 wrongful conduct occurred, and continue to occur, in this county, and/or defendant conducted, and
25 continue to conduct business in San Francisco.

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

3 16. The California Superior Court has jurisdiction over defendant based on plaintiff’s
4 information and good faith belief that defendant is a person, firm, corporation has a principal
5 office or association that is a citizen of the State of California, has sufficient minimum contacts in
6 the State of California, and/or otherwise purposefully avails itself of the California market.
7 defendant’s purposeful availment renders the exercise of personal jurisdiction (specific, limited or
8 both) by California courts consistent with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65)**

11 17. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 16, inclusive.

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

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

20 20. On April 29, 2021, plaintiff served a 60-Day Notice of Violation (the April 29
21 Notice), together with the requisite certificates of merit, on Amazon, the California Attorney
22 General’s Office, and the requisite public enforcement agencies alleging that, as a result of
23 defendant’s sales of the Products, consumers in California are being exposed to lead resulting
24 from their reasonably foreseeable use of the Products, without them first receiving a “clear and
25 reasonable warning” regarding the reproductive and developmental harms associated with such
26 exposures, as required by Proposition 65. The Notice is limited to solder wire containing lead that
27 reference the toxicant “lead” in: (i) the product’s name; (ii) the product description or information
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1 referenced prominently near the online display for the item; (iii) the search “filter,” if any, used to
2 market the products online; (iv) the product packaging or container; or (v) in any other
3 conspicuous manner likely to be read by the online purchaser before payment without
4 considerable effort (actual knowledge limitation).

5 21. On September 10, 2021, plaintiff served a Supplemental 60-Day Notice of
6 Violation, (the September 10 Notice), together with the requisite certificate of merit, on Amazon,
7 the California Attorney General’s Office, and the requisite public enforcement agencies alleging
8 that, as a result of defendant’s sales of lead-based solder wires, consumers in California are being
9 exposed to the toxicant resulting from their reasonably foreseeable use of such Products, without
10 consumers first receiving a “clear and reasonable warning” regarding the reproductive toxicity
11 associated with exposures to the heavy metal, as required by Proposition 65. The September 10
12 Notice named more exemplars of lead-based soldering wire and contained the actual knowledge
13 limitation. The April 29 Notice and the September 10 Notice shall be referred collectively to as
14 the “Notices.”

15 22. Defendant manufactures, imports, distributes, facilitates for sale, sells, and/or offers
16 the Products for sale or use in violation of Health & Safety Code §25249.6, and defendant’s
17 violations have continued well beyond their receipt of plaintiff’s Notice. As such, defendant’s
18 violations are ongoing and continuous in nature and, unless enjoined will continue in the future
19 without any information or written answers that they will cease and desist until compliance is
20 ensured.

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

24 24. The Products that defendant’s manufactures, imports, distributes, or offers for sale
25 throughout the State of California cause exposures to lead as a result of the reasonably foreseeable
26 use of the Products. Such exposures caused by defendant and endured by consumers in California
27 who purchase, use or handle the Products are not exempt from the “clear and reasonable” warning
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1 requirements of Proposition 65, yet defendant does not provide compliant warnings for the
2 reproductive toxicity of lead.

3 25. Defendant has actual knowledge that the Products they manufacture, import,
4 distribute, sell, facilitate for sale or offer for sale in California contain lead.

5 26. Lead is present in or on the Products in such a way as to expose consumers through
6 dermal contact, ingestion and/or inhalation during reasonably foreseeable use.

7 27. The normal and reasonably foreseeable use of the Products has caused, and
8 continues to cause, consumer product exposures to lead as defined by 27 California Code of
9 Regulations §25600.1(e) and other types of exposures set forth in the Notices.

10 28. Defendant knows that the normal and reasonably foreseeable use of the Products
11 exposes individuals to lead through dermal contact, ingestion and/or inhalation.

12 29. Defendant intends that exposures to lead from the reasonably foreseeable use of the
13 Products will occur by their deliberate, non-accidental participation in the manufacture,
14 importation, distribution, sale, and offering of the Products for sale or use to consumers and others
15 in California.

16 30. Defendant failed to provide a “clear and reasonable warning” to those consumers
17 and other citizens in California who have been, or who will be, exposed to lead through dermal
18 contact, ingestion and/or inhalation resulting from their use of the Products.

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

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

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1 33. As a consequence of the above-described acts, Health & Safety Code §25249.7(a)
2 also specifically authorizes the Court to grant injunctive relief against defendant.

3 **PRAYER FOR RELIEF**


4 Wherefore, plaintiff prays for judgment against defendant as follows:

- 5 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil
6 penalties against defendant, and each of them, in the amount of \$2,500 per day for each violation;
- 7 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
8 permanently enjoin defendant from manufacturing, importing, distributing, or offering the
9 Products for sale or use in California without first providing a “clear and reasonable warning”
10 regarding the harms associated with exposures to lead;
- 11 3. That the Court, pursuant to Health & Safety Code §25249.7(a), issue preliminary
12 and permanent injunctions mandating that defendant recall all Products currently in the chain of
13 commerce in California without a “clear and reasonable warning” as defined by 27 California
14 Code of Regulations §25600 *et seq.*, and refund purchasers;
- 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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19 Dated: June 20, 2022

Respectfully submitted,

CHANLER, LLC

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22 By: _____
Clifford A. Chanler

23 Attorneys for Plaintiff
24 PAUL WOZNIAK
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