

1 Clifford A. Chanler, State Bar No. 135534
CHANLER, LLC
2 72 Huckleberry Hill Road
New Canaan, CT 06840
3 Telephone: (203) 594-9246
Facsimile: (203) 702-5011
4 Email: Clifford@ChanlerLLC.com

5 Steven Y. Chen, State Bar No. 243200
STEVEN Y. CHEN, A PROFESSIONAL LAW CORPORATION
6 2650 River Avenue, Unit A
Rosemead, CA 91702
7 Telephone: (626) 782-5017
Facsimile: (626) 307-1657
8 Email: Schen@Schenlaw.com

9 Attorneys for Plaintiff
PAUL WOZNIAK

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ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

09/28/2022
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CGC-22-602014

UNLIMITED CIVIL JURISDICTION

PAUL WOZNIAK,

Plaintiff,

v.

ALCO SALES & SERVICE CO.;
AMAZON.COM, INC.,

Defendants.

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) and
5 Diisononyl Phthalate (DINP), toxic chemicals found in and on padded armrest pads used for
6 wheelchairs (Products) sold by defendants ALCO SALES & SERVICE CO. and
7 AMAZON.COM, INC. 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 and DINP present in and on the Products that are
11 manufactured, distributed, and offered for sale or use throughout the State of California.
12 Individuals not covered by California’s Occupational Safety Health Act, Labor Code §6300 *et*
13 *seq.*, who purchase, use or handle defendants’ Products, are referred to hereinafter as “consumers.”

14 3. Detectable levels of DEHP and DINP 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. Pursuant to Proposition 65, on December 20, 2013, California identified and listed
27 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable
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1 warning” requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27,
2 §27001(c); Health & Safety Code §§25249.8 and 25249.10(b).

3 7. Defendants manufacture, distribute, import, sells, and offer for sale without health
4 hazard warnings in California, the Products including, but not limited to, the *Alco Heavy Duty*
5 *Desk Length 10-1/4" Wheelchair Arm Pads, Black, #AL66055BK-A3, ASIN #B0767VLR6FAI*
6 such Products containing DEHP and DINP that were (and in many instances continue to be)
7 manufactured, distributed, sold, or offered for sale in the State of California are referred to
8 collectively hereinafter as “PRODUCTS.”

9 8. Defendants’ failure to warn consumers and other individuals in the State of
10 California of the health hazards associated with exposures to DEHP and DINP in conjunction with
11 defendants’ sales of the PRODUCTS are violations of Proposition 65, and subject the defendants
12 to enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
13 §25249.7(a) and (b)(1). Violative sales of the PRODUCTS include transactions by downstream
14 sellers such as online retailers.

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

19 10. Pursuant to Health & safety Code §25249.7(b), plaintiff also seeks civil penalties
20 against defendants for their violations of Proposition 65.

21 PARTIES

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

26 12. Defendant ALCO SALES & SERVICE CO. is a person in the course of doing
27 business within the meaning of Health & safety Code §§25249.6 and 25249.11.
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1 market. DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
2 California courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Proposition 65)**

5 20. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
6 Paragraphs 1 through 18, inclusive.

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

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

14 23. On June 1, 2022, plaintiff served a 60-Day Notice of Violation (the Notice),
15 together with a certificate of merit, on ALCO SALES & SERVICE CO. and AMAZON.COM,
16 INC., the California Attorney General’s Office, and the requisite public enforcement agencies
17 alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of
18 California are being exposed to DEHP and DINP resulting from their reasonably foreseeable use
19 of the PRODUCTS, without the consumers first receiving a “clear and reasonable warning”
20 regarding the harms associated with exposures to DEHP and DINP, as required by Proposition 65.

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

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

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

6 27. DEFENDANTS knew or should have known that the PRODUCTS it manufactures,
7 imports, distributes, sells, and offers for sale in California contain DEHP and DINP.

8 28. DEHP and DINP are present in or on the PRODUCTS in such a way as to expose
9 consumers through dermal contact and/or ingestion during reasonably foreseeable use.

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

13 30. DEFENDANTS know that the normal and reasonably foreseeable use of the
14 PRODUCTS exposes individuals to DEHP and DINP through dermal contact and/or ingestion.

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

19 32. DEFENDANTS failed to provide a “clear and reasonable warning” to those
20 consumers in California who have been, or who will be, exposed to DEHP and DINP through
21 dermal contact and/or ingestion resulting from their use of the PRODUCTS.

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

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