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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
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16 PAUL WOZNIAK,

17 Plaintiff,

18 v.

19 WHALECO INC. DBA TEMU,

20 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 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 soldering
5 wire containing lead, including kits containing such items (hereafter referred to collectively as
6 “soldering wire”) and fishing weights, including tackle kits containing such items (hereafter
7 referred to collectively as “fishing weights”) sold and/or shipped by defendant that are purchased
8 by or shipped to citizens in California (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 soldering wire and
12 fishing weights that are manufactured, distributed, and offered for sale or use throughout the State
13 of California. Individuals, consumers and businesses not covered by California’s Occupational
14 Safety Health Act, Labor Code §§6300 *et seq.* who purchase, use or handle the Products are
15 referred to hereinafter as “consumers.”

16 3. Lead is found at elevated levels in soldering wire and fishing weights that defendant
17 manufactures, imports, distributes, retails or otherwise markets or offers for sale to consumers and
18 other citizens throughout California. Defendant has knowledge of the Products’ lead content.
19 Most, if not all, of the sales of the Products were and continue to be offered for purchase and/or
20 transacted through TEMU.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 in its website, without the mandated health hazard warnings, various products
5 consisting of soldering wire and fishing weights that reference the toxicant “lead” or its elemental
6 symbol, “Pb” in: (i) the product’s name; (ii) the product description or information referenced
7 prominently near the online display for the item when sold through defendant’s e-commerce
8 platform; (iii) the search “filter,” if any, used to market the products online; (iv) the immediate
9 product packaging or container; or (v) any other conspicuous manner likely to be encountered
10 without considerable effort by an online purchaser before payment. Some examples of the
11 Products were identified in the sixty-day notices of violation sent to defendant.

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

16 8. For defendant’s violations and threatened (i.e., continuing) violations of Proposition
17 65, plaintiff seeks preliminary and permanent injunctive relief to compel defendant to provide
18 purchasers and users of the Products with the required warning regarding specific health hazards
19 associated with exposures to lead. Health & Safety Code §25249.7(a).

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

22 PARTIES

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

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1 defendant's purposeful availment renders the exercise of personal jurisdiction (specific, limited or
2 both) by California courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Proposition 65)**

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

7 18. 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 19. 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 20. On June 7, 2023, plaintiff served two 60-Day Notices of Violation (the Notices),
15 together with the requisite certificates of merit, on TEMU, the California Attorney General's
16 Office, and the requisite public enforcement agencies alleging that, as a result of defendant's sales
17 of the Products, consumers in California are being exposed to lead resulting from their reasonably
18 foreseeable use of the Products, without them first receiving a "clear and reasonable warning"
19 regarding the reproductive and developmental harms associated with such exposures, as required
20 by Proposition 65. The Notices are limited to soldering wire and fishing weights containing lead
21 that reference the toxicant "lead" in: (i) the product's name; (ii) the product description or
22 information referenced prominently near the online display for the item; (iii) the search "filter," if
23 any, used to market the products online; (iv) the product packaging or container; and/or (v) in any
24 other conspicuous manner likely to be read by the online purchaser before payment without
25 considerable effort.

26 21. Defendant manufactures, imports, distributes, facilitates for sale, sells, and/or offers
27 the Products for sale or use in violation of Health & Safety Code §25249.6, and defendant's
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1 violations have continued well beyond their receipt of plaintiff's Notices. As such, defendant's
2 violations are ongoing and continuous in nature and, unless enjoined will continue in the future
3 without any information or written answers that they will cease and desist until compliance is
4 ensured.

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

8 23. The Products that defendant's manufactures, imports, distributes, or offers for sale
9 throughout the State of California cause exposures to lead as a result of the reasonably foreseeable
10 use of the Products. Such exposures caused by defendant and endured by consumers in California
11 who purchase, use or handle the Products are not exempt from the "clear and reasonable" warning
12 requirements of Proposition 65, yet defendant does not provide compliant warnings for the
13 reproductive toxicity of lead.

14 24. Defendant has knowledge that the Products they manufacture, import, distribute,
15 sell, facilitate for sale or offer for sale in California contain lead and, in certain instances in which
16 "lead" or "Pb" was not referenced on the platform, the overwhelming evidence is that the Product
17 contained lead.

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

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

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

25 28. Defendant intends that exposures to lead from the reasonably foreseeable use of the
26 Products will occur by their deliberate, non-accidental participation in the manufacture,
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1 importation, distribution, sale, and offering of the Products for sale or use to consumers and others
2 in California.

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

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

11 31. Pursuant to Health & Safety Code §25249.7(b), as a consequence of the above-
12 described acts, defendant, and each of them, are liable for a maximum civil penalty of \$2,500 per
13 day for each violation (e.g., each unit sale).

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

16 **PRAYER FOR RELIEF**

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

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

20 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
21 permanently enjoin defendant from manufacturing, importing, distributing, or offering the
22 Products for sale or use in California without first providing a “clear and reasonable warning”
23 regarding the harms associated with exposures to lead;

24 3. That the Court, pursuant to Health & Safety Code §25249.7(a), issue preliminary
25 and permanent injunctions mandating that defendant recall all Products currently in the chain of
26 commerce in California without a “clear and reasonable warning” as defined by 27 California
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1 Code of Regulations §25600 *et seq.*, and refund purchasers of the purchase price and shipping
2 costs;

3 4. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

4 5. That the Court grant such other and further relief as may be just and proper.

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Dated: August 30, 2023

Respectfully submitted,
CHANLER, LLC

By: 
Clifford A. Chanler

Attorneys for Plaintiff
PAUL WOZNIAK