

1 Josh Voorhees, State Bar No. 241436  
THE CHANLER GROUP  
2 2560 Ninth Street  
Parker Plaza, Suite 214  
3 Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
4 Facsimile: (510) 848-8118

5 Attorneys for Plaintiff  
PAUL WOZNIAK  
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ENDORSED  
FILED  
ALAMEDA COUNTY

OCT 10 2014

CLERK OF THE SUPERIOR COURT

By S. IYAMU Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 UNLIMITED CIVIL JURISDICTION  
11

12 PAUL WOZNIAK

13 Plaintiff,

14 v.

15 FRANKLIN FINANCIAL MANAGEMENT,  
16 INC.; EAST BAY RESTAURANT SUPPLY,  
INC.; and DOES 1-150, inclusive,

17 Defendants.  
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Case No. RG 14744062

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 *et seq.*)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff PAUL WOZNIAK  
3 in the public interest of the citizens of the State of California to enforce the People’s right to be  
4 informed about exposures 4,4’-Methylenedianiline (“4,4’-MDA”), a toxic chemical that is  
5 found in nylon cooking utensils that are sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
7 warn California citizens about the risks of exposures to 4,4’-MDA present in and on the nylon  
8 cooking utensils manufactured, distributed, and offered for sale or use to consumers throughout  
9 the State of California.

10 3. Detectable levels of 4,4’-MDA are commonly found in and on the nylon cooking  
11 utensils that defendants import, manufacture, distribute, ship, sell and/or offer for sale to  
12 consumers throughout the State of California.

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

18 5. On January 1, 1998, California listed 4,4’-MDA pursuant to Proposition 65 as a  
19 chemical that is known to cause cancer. 4,4’-MDA became subject to the “clear and reasonable  
20 warning” requirements of the act one year later on January 1, 1999. Cal. Code Regs. tit. 27, §  
21 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b). 4,4’-MDA is referred to  
22 hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without  
24 warning in California, nylon cooking utensils containing the LISTED CHEMICAL, including,  
25 but not limited to, the *Update International Nylon Utensils, Spoon, NKU-01, UPC #7 55576*  
26 *01964 1*. All such nylon cooking utensils containing the LISTED CHEMICAL are referred to  
27 collectively hereinafter as the “PRODUCTS.”  
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1           14. EAST BAY manufactures, imports, distributes, sells, and/or offers the  
2 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it  
3 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
4 State of California.

5           15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
6 person in the course of doing business within the meaning of Health and Safety Code sections  
7 25249.6 and 25249.11.

8           16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
9 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
10 and manufacture, one or more of the PRODUCTS offered for sale or use in the State of  
11 California.

12           17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
13 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
14 and 25249.11.

15           18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
16 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
17 in the State of California.

18           19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
19 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
20 and 25249.11.

21           20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
22 State of California.

23           21. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
24 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
25 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
26 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
27 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.  
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1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
2 harm.”

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

7 29. On May 21, 2014, plaintiff’s sixty-day notice of violation, together with the  
8 requisite certificate of merit, was provided to FRANKLIN, EAST BAY and the requisite public  
9 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS  
10 containing the LISTED CHEMICAL, consumers, and other individuals in the State of  
11 California are being exposed to the LISTED CHEMICAL resulting from their reasonably  
12 foreseeable use of the PRODUCTS, without the individual purchasers and users first receiving a  
13 “clear and reasonable warning” regarding the health hazards associated with such toxic  
14 exposures, as required by Proposition 65.

15 30. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
16 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
17 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
18 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and  
19 continuous in nature, and, unless enjoined, will continue to occur in the future.

20 31. After receiving plaintiff’s sixty-day notice of violation, the appropriate public  
21 enforcement agencies have failed to commence and diligently prosecute a cause of action  
22 against DEFENDANTS under Proposition 65.

23 32. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
24 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the  
25 reasonably foreseeable use of these products result in exposures that require a “clear and  
26 reasonable” warning under Proposition 65.

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1           33.    DEFENDANTS knew or should have known that the PRODUCTS they  
2 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
3 CHEMICAL.

4           34.    The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
5 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

6           35.    The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
7 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
8 defined by title 27 of the California Code of Regulations, section 25602(b).

9           36.    DEFENDANTS have knowledge that the normal and reasonably foreseeable uses  
10 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact  
11 and/or ingestion.

12           37.    DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the  
13 reasonably foreseeable use of the PRODUCTS to occur by their deliberate, non-accidental  
14 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or  
15 use to individuals in the State of California.

16           38.    DEFENDANTS failed to provide a “clear and reasonable warning” to those  
17 workers, consumers and other individuals in California who have been, or will be, exposed to  
18 the LISTED CHEMICAL.

19           39.    Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
20 directly by California voters, workers, consumers, and other individuals exposed to the LISTED  
21 CHEMICAL through dermal contact and/or ingestion, resulting from the reasonably foreseeable  
22 uses of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,”  
23 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or  
24 adequate remedy at law.

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

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1 41. As a consequence of the above-described acts, Health and Safety Code  
2 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
3 DEFENDANTS.

4 **PRAYER FOR RELIEF**

5 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

6 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
7 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for  
8 each violation;


9 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
10 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
11 offering the PRODUCTS for sale or use in California without first providing a "clear and  
12 reasonable warning" as defined by title 27 of the California Code of Regulations, section 25601  
13 *et seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

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

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

16 Dated: October 10, 2014

17 Respectfully Submitted,  
THE CHANLER GROUP

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20 By:   
21 Josh Voorhees  
22 Attorneys for Plaintiff  
23 PAUL WOZNIAK  
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