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ENDORSED  
FILED  
ALAMEDA COUNTY

OCT 10 2014

CLERK OF THE SUPERIOR COURT  
By S. IYAMU Deputy

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA  
11 UNLIMITED CIVIL JURISDICTION  
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14 **RG 14744080**

15 PAUL WOZNAK

16 Plaintiff,

17 v.

18 NEWELL RUBBERMAID INC.;  
19 CALPHALON CORPORATION; THE TJX  
COMPANIES, INC., and DOES 1-150,  
20 inclusive,

21 Defendants.

Case No. \_\_\_\_\_

**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 to 4,4’-Methylenedianiline, a toxic chemical that is found in nylon  
5 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’-Methylenedianiline present in and  
8 on the nylon cooking utensils manufactured, distributed, and offered for sale or use to  
9 consumers throughout the State of California.

10 3. Detectable levels of 4,4’-Methylenedianiline are commonly found in and on  
11 components of nylon cooking utensils that defendants import, manufacture, distribute, ship, sell  
12 and/or offer for sale to 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, 1988, California listed 4,4’-Methylenedianiline pursuant to  
19 Proposition 65 as a chemical that is known to cause cancer. 4,4’-Methylenedianiline became  
20 subject to the “clear and reasonable warning” requirements of the act one year later on January  
21 1, 1989. Cal. Code Regs. tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b).  
22 4,4’-Methylenedianiline is referred to 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 *Calphalon Nylon Spoon, #1751971, (UPC No. 0 16853 04062 9)*. All  
26 such nylon cooking utensils containing the LISTED CHEMICAL are referred to collectively  
27 hereinafter as the “PRODUCTS.”  
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7. Defendants' failure to warn consumers and other individuals in California of the harms associated with exposures to the LISTED CHEMICAL in conjunction with defendants' sales of the PRODUCTS containing the LISTED CHEMICAL constitute violations of Proposition 65, and subject defendants to enjoinder of such conduct, as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and permanent injunctive relief to compel defendants to provide purchasers or users of the PRODUCTS with the required warning regarding the health hazards associated with exposures to the LISTED CHEMICAL. Health & Safety Code § 25249.7(a).

9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil penalties against defendants, and each of them, for each violation of Proposition 65.

**PARTIES**

10. Plaintiff PAUL WOZNIAK is a citizen of the State of California who is dedicated to protecting the health of California citizens through the elimination or reduction of harmful exposures to toxic chemicals from consumer products. He brings this action in the public interest pursuant to Health and Safety Code section 25249.7(d).

11. Defendant NEWELL RUBBERMAID INC. ("NEWELL") is a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

12. NEWELL manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

13. CALPHALON CORPORATION ("CALPHALON") is a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

14. CALPHALON manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California, or it implies by its conduct that it

1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
2 State of California.

3 15. THE TJX COMPANIES, INC. (“TJX”) is a person in the course of doing  
4 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

5 16. TJX manufactures, imports, distributes, sells, and/or offers the PRODUCTS for  
6 sale or use in the State of California, or it implies by its conduct that it

7 17. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
8 person in the course of doing business within the meaning of Health and Safety Code s sections  
9 25249.6 and 25249.11.

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

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

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

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

23 22. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
24 State of California.

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

3 24. NEWELL, CALPHALON, TJX, MANUFACTURER DEFENDANTS,  
4 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively  
5 referred to as “DEFENDANTS.”

6 **VENUE AND JURISDICTION**

7 25. Venue is proper in the County of Alameda, pursuant to Code of Civil Procedure  
8 sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because  
9 plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
10 wrongful conduct occurred, and continue to occur, in this county, and/or because  
11 DEFENDANTS conducted, and continue to conduct, business in Alameda county with respect  
12 to the PRODUCTS.

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

17 27. The California Superior Court has jurisdiction over DEFENDANTS based on  
18 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
19 association that is a citizen of the State of California, has sufficient minimum contacts in the  
20 State of California, and/or otherwise purposefully avails itself of the California market.  
21 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
22 California courts consistent with traditional notions of fair play and substantial justice.

23 **FIRST CAUSE OF ACTION**

24 **(Violation of Proposition 65 - Against All Defendants)**

25 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
26 Paragraphs 1 through 27, inclusive.

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

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

9           31. On May 21, 2014, plaintiff’s sixty-day notice of violation, together with the  
10 requisite certificate of merit, was provided to NEWELL, CALPHALON, TJX and certain public  
11 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS  
12 containing the LISTED CHEMICAL, consumers, and other individuals in the State of  
13 California were being exposed to the LISTED CHEMICAL resulting from their reasonably  
14 foreseeable use of the PRODUCTS, without the individual purchasers and users first having  
15 received a “clear and reasonable warning” regarding such toxic exposures, as required by  
16 Proposition 65.

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

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

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

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

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

8 37. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
9 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
10 defined by title 27 of the California Code of Regulations, section 25602(b).

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

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

18 40. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
19 workers, consumers and other individuals in California not covered by California’s  
20 Occupational Safety Health Act, Labor Code section 6300 et seq. who have been, or will be,  
21 exposed to the LISTED CHEMICAL.

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

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

4 43. As a consequence of the above-described acts, Health and Safety Code  
5 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
6 DEFENDANTS.

7 **PRAYER FOR RELIEF**

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

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

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

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

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

19 Dated: October 10, 2014

20 Respectfully Submitted,  
21 THE CHANLER GROUP

22  
23 By:   
24 Josh Voorhees  
25 Attorneys for Plaintiff  
26 PAUL WOZNIAK