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ENDORSED  
FILED  
ALAMEDA COUNTY  
DEC 10 2014  
CLERK OF THE SUPERIOR COURT  
By [Signature]  
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

PAUL WOZNIAK  
Plaintiff,  
v.  
NEWELL RUBBERMAID INC.;  
CALPHALON CORPORATION; THE TJX  
COMPANIES, INC., IRWIN INDUSTRIAL  
TOOL COMPANY, SANFORD L.P., and  
DOES 1-150, inclusive,  
Defendants.

Case No. RG14744066  
**FIRST AMENDED 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 (“4,4’-MDA”), a toxic chemical that is  
5 found in nylon cooking utensils that are sold in California, and exposures to Di(2-  
6 ethylhexyl)phthalate (“DEHP”), a toxic chemical that is found in vinyl/PVC tape and vinyl/PVC  
7 journal covers that are sold in California.

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

12 3. By this First Amended Complaint, plaintiff seeks to remedy defendants’  
13 continuing failure to warn California citizens about the risks of exposures to DEHP present in  
14 and on the vinyl/PVC tape and vinyl/PVC journal covers manufactured, distributed, and offered  
15 for sale or use to consumers throughout the State of California,

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

19 5. Detectable levels of DEHP are commonly found in and on components of  
20 vinyl/PVC tape and vinyl/PVC journal covers that defendants import, manufacture, distribute,  
21 ship, sell and/or offer for sale to consumers throughout the State of California.

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

1           7.     On January 1, 1988, California listed 4,4'-MDA pursuant to Proposition 65 as a  
2 chemical that is known to cause cancer. 4,4'-MDA became subject to the “clear and reasonable  
3 warning” requirements of the act one year later on January 1, 1999. Cal. Code Regs. tit. 27, §  
4 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b).

5           8.     On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a  
6 chemical that is known to cause birth defects or other reproductive harm. DEHP became  
7 subject to the “clear and reasonable warning” requirements of the act one year later on October  
8 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
9 25249.10(b).

10          9.     Defendants manufacture, distribute, import, sell, and/or offer for sale in California  
11 products containing 4'-MDA and/or DEHP as follows:

12           a.     Defendants Newell Rubbermaid Inc (“NEWELL”), The TJX Companies  
13 (“TJX”) and Calphalon Corporation (“CALPHALON”) , manufacture, distribute,  
14 import, sell, and/or offer for sale without warning in California, nylon cooking utensils  
15 containing 4'-MDA, including, but not limited to, the *Calphalon Nylon Spoon*,  
16 #1751971, (UPC No. 0 16853 04062 9) (collectively, “UTENSIL PRODUCTS”).

17           b.     Defendants NEWELL and Irwin Industrial Tool Company (“IRWIN”)  
18 manufacture, distribute, import, sell, and/or offer for sale without warning in California,  
19 vinyl/PVC tape containing DEHP , including, but not limited to, the *Irwin Strait-Line*,  
20 #65604, (UPC No. 0 24721 71005 5) (collectively, “TAPE PRODUCTS”).

21           c.     Defendants NEWELL and Sanford, L.P. (“SANFORD”) manufacture,  
22 distribute, import, sell, and/or offer for sale without warning in California, vinyl/PVC  
23 journal covers containing DEHP , including, but not limited to, the *Rolodex Journal*,  
24 USLV1173080, (UPC No. 0 30402 63717 7) (collectively, “JOURNAL PRODUCTS”).

25          10.    All such UTENSIL PRODUCTS, TAPE PRODUCTS, and JOURNAL  
26 PRODUCTS described in Paragraphs 9(a) through 9(c) above, shall hereinafter be collectively  
27 referred to as “PRODUCTS.” As to each specific defendant, however, PRODUCTS shall refer  
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1 only to those categories of products listed for the specific defendant in Paragraphs 9(a) through  
2 9(c) above.

3 11. 4,4'-MDA and DEHP are referred to collectively hereinafter as the "LISTED  
4 CHEMICALS."

5 12. Defendants' failure to warn consumers and other individuals in California of the  
6 harms associated with exposures to the LISTED CHEMICALS in conjunction with defendants'  
7 sales of the PRODUCTS containing the LISTED CHEMICALS constitute violations of  
8 Proposition 65, and subject defendants to enjoinder of such conduct, as well as civil penalties  
9 for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

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

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

#### 16 **PARTIES**

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

21 16. Defendant NEWELL is a person in the course of doing business within the  
22 meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

26 18. Defendant CALPHALON is a person in the course of doing business within the  
27 meaning of Health and Safety Code sections 25249.6 and 25249.11.

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1           19. CALPHALON manufactures, imports, distributes, sells, and/or offers the  
2 UTENSIL PRODUCTS for sale or use in the State of California, or it implies by its conduct that  
3 it manufactures, imports, distributes, sells, and/or offers the UTENSIL PRODUCTS for sale or  
4 use in the State of California.

5           20. TJX is a person in the course of doing business within the meaning of Health and  
6 Safety Code sections 25249.6 and 25249.11.

7           21. TJX manufactures, imports, distributes, sells, and/or offers the UTENSIL  
8 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it  
9 manufactures, imports, distributes, sells, and/or offers the UTENSIL PRODUCTS for sale or use  
10 in the State of California.

11           22. SANFORD is a person in the course of doing business within the meaning of  
12 Health and Safety Code sections 25249.6 and 25249.11.

13           23. SANFORD manufactures, imports, distributes, sells, and/or offers the JOURNAL  
14 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it  
15 manufactures, imports, distributes, sells, and/or offers the JOURNAL PRODUCTS for sale or  
16 use in the State of California.

17           24. IRWIN is a person in the course of doing business within the meaning of Health  
18 and Safety Code sections 25249.6 and 25249.11.

19           25. IRWIN manufactures, imports, distributes, sells, and/or offers the TAPE  
20 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it  
21 manufactures, imports, distributes, sells, and/or offers the TAPE PRODUCTS for sale or use in  
22 the State of California.

23           26. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
24 person in the course of doing business within the meaning of Health and Safety Code s sections  
25 25249.6 and 25249.11.

26           27. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
27 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
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1 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
2 California.

3 28. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
4 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
5 and 25249.11.

6 29. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
7 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
8 in the State of California.

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

12 31. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
13 State of California.

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

19 33. NEWELL, CALPHALON, TJX, IRWIN, SANFORD, MANUFACTURER  
20 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are  
21 hereinafter collectively referred to as “DEFENDANTS.”

22 **VENUE AND JURISDICTION**

23 34. Venue is proper in the County of Alameda, pursuant to Code of Civil Procedure  
24 sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because  
25 plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
26 wrongful conduct occurred, and continue to occur, in this county, and/or because

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1 DEFENDANTS conducted, and continue to conduct, business in Alameda county with respect  
2 to the PRODUCTS.

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

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

13 **FIRST CAUSE OF ACTION**

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

15 37. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
16 Paragraphs 1 through 36, inclusive.

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

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

25 40. On May 21, 2014, plaintiff’s sixty-day notice of violation, together with the  
26 requisite certificate of merit, was provided to NEWELL, CALPHALON, TJX and certain public  
27 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the UTENSIL  
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1 PRODUCTS containing 4,4'-MDA, consumers, and other individuals in the State of California  
2 were being exposed to 4,4'-MDA resulting from their reasonably foreseeable use of the  
3 PRODUCTS, without the individual purchasers and users first having received a “clear and  
4 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

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

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

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

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

25 45. DEFENDANTS knew or should have known that the PRODUCTS they  
26 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
27 CHEMICALS.

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1           46. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as  
2 to expose individuals through dermal contact and/or ingestion during reasonably foreseeable  
3 use.

4           47. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
5 continue to cause, consumer exposures to the LISTED CHEMICALS, as such exposures are  
6 defined by title 27 of the California Code of Regulations, section 25602(b).

7           48. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses  
8 of the PRODUCTS expose individuals to the LISTED CHEMICALS through dermal contact  
9 and/or ingestion.

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

14           50. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
15 workers, consumers and other individuals in California not covered by California’s  
16 Occupational Safety Health Act, Labor Code section 6300 et seq. who have been, or will be,  
17 exposed to the LISTED CHEMICALS.

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

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

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