

ENDORSED
FILED
ALAMEDA COUNTY

DEC 10 2014
CLERK OF THE SUPERIOR COURT
By _____ Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
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12 PAUL WOZNIAK,
13 Plaintiff,
14 v.
15 FLP, LLC; TWENTY-FIRST CENTURY
16 HEALTHCARE, INC.; RITE AID
17 CORPORATION; and DOES 1-150, inclusive,
18 Defendants.

Case No. RG14750997
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(Health & Safety Code § 25249.6 *et seq.*)

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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 and di(2-ethylhexyl)phthalate (“DEHP”) a toxic chemical found
6 in kitchen tools with vinyl/PVC grips that are sold in California.

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

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

15 4. Detectable levels of DEHP are commonly found in and on the vinyl/PVC grips of
16 kitchen tools with that defendants import, manufacture, distribute, ship, sell and offer for sale to
17 consumers throughout the State of California.

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

23 6. On January 1, 1998, California listed 4,4’-MDA pursuant to Proposition 65 as a
24 chemical that is known to cause cancer. 4,4’-MDA became subject to the “clear and reasonable
25 warning” requirements of the act one year later on January 1, 1999. Cal. Code Regs. tit. 27, §
26 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b).

1 7. On October 24, 2003, California listed DEHP as a chemical known to cause birth
2 defects and other reproductive harm. DEHP became subject to the “clear and reasonable
3 warning” requirements of Proposition 65, one year later on October 24, 2004. (27 CCR § 27001
4 (c); Cal. Health & Safety Code § 25249.8.)

5 8. 4,4’-MDA and DEHP are referred to collectively hereinafter as the “LISTED
6 CHEMICALS.”

7 9. Defendants manufacture, distribute, import, sell, and offer for sale without a
8 warning in California, the following products:

9 a. nylon cooking utensils containing 4,4’-MDA, including, but not limited to,
10 the *Essential Home 14 Piece Cookware Set (Nylon Spoon)*, #05591153-1, UPC #0 48552
11 43047 0; and

12 b. kitchen tools with vinyl/PVC grips containing DEHP, including, but not
13 limited to, the *Cook’s Kitchen Bottle Opener*, #09612, UPC #7 40985 88204 7.

14 10. All such nylon cooking utensils containing 4,4’-MDA, and kitchen tools with
15 vinyl/PVC grips containing DEHP are referred to collectively hereinafter as the “PRODUCTS.”

16 11. Defendants’ failure to warn consumers and other individuals in California of the
17 harms associated with exposures to the LISTED CHEMICALS in conjunction with defendants’
18 sales of the PRODUCTS containing the LISTED CHEMICALS constitute violations of
19 Proposition 65, and subject defendants to enjoinder of such conduct, as well as civil penalties
20 for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

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

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

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2 **PARTIES**

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

7 15. Defendant FLP, LLC (“FLP”) is a person in the course of doing business within
8 the meaning of Health and Safety Code sections 25249.6 and 25249.11.

9 16. FLP manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
10 sale or use in the State of California, or it implies by its conduct that it manufactures, imports,
11 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

12 17. Defendant RITE AID CORPORATION (“RITE AID”) is a person in the course
13 of doing business within the meaning of Health and Safety Code sections 25249.6 and
14 25249.11.

15 18. RITE AID manufactures, imports, distributes, sells, and/or offers the PRODUCTS
16 for sale or use in the State of California, or it implies by its conduct that it manufactures, imports,
17 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

18 19. Defendant TWENTY-FIRST CENTURY HEALTHCARE, INC. (“TWENTY-
19 FIRST CENTURY”) is a person in the course of doing business within the meaning of Health
20 and Safety Code sections 25249.6 and 25249.11.

21 20. TWENTY-FIRST CENTURY manufactures, imports, distributes, sells, and/or
22 offers the PRODUCTS for sale or use in the State of California, or it implies by its conduct that
23 it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
24 State of California.

25 21. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
26 person in the course of doing business within the meaning of Health and Safety Code sections
27 25249.6 and 25249.11.
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1 wrongful conduct occurred, and continue to occur, in this county, and/or because
2 DEFENDANTS conducted, and continue to conduct, business in Alameda County with respect
3 to the PRODUCTS.

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

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

14 **FIRST CAUSE OF ACTION**

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

16 32. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
17 Paragraphs 1 through 31, inclusive.

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

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

26 35. On September 30, 2014, plaintiff’s sixty-day notice of violation, together with the
27 requisite certificate of merit, was provided to FLP, RITE AID, TWENTY-FIRST CENTURY
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1 and the requisite public enforcement agencies stating that, as a result of DEFENDANTS' sales
2 of the PRODUCTS containing the LISTED CHEMICALS, consumers, and other individuals in
3 the State of California are being exposed to the LISTED CHEMICALS resulting from their
4 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
5 receiving a "clear and reasonable warning" regarding the health hazards associated with such
6 toxic exposures, as required by Proposition 65.

7 36. DEFENDANTS engage in the manufacture, importation, distribution, sale, and
8 offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
9 25249.6, and DEFENDANTS' violations have continued to occur beyond their receipt of
10 plaintiff's sixty-day notice of violation. As such, DEFENDANTS' violations are ongoing and
11 continuous in nature, and, unless enjoined, will continue to occur in the future.

12 37. After receiving plaintiff's sixty-day notice of violation, the appropriate public
13 enforcement agencies have failed to commence and diligently prosecute a cause of action
14 against DEFENDANTS under Proposition 65.

15 38. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
16 or use in California by DEFENDANTS contain the LISTED CHEMICALS in such a way that
17 the reasonably foreseeable use of these products result in exposures that require a "clear and
18 reasonable" warning under Proposition 65.

19 39. DEFENDANTS knew or should have known that the PRODUCTS they
20 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
21 CHEMICALS.

22 40. The LISTED CHEMICALS is present in or on the PRODUCTS in such a way as
23 to expose individuals through dermal contact and/or ingestion during reasonably foreseeable
24 use.

25 41. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
26 continues to cause, consumer exposures to the LISTED CHEMICALS, as such exposures are
27 defined by title 27 of the California Code of Regulations, section 25602(b).

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1 42. DEFENDANTS know that the normal and reasonably foreseeable use of the
2 PRODUCTS exposes individuals to the LISTED CHEMICALS through dermal contact and/or
3 ingestion.

4 43. DEFENDANTS intend for such exposures to the LISTED CHEMICALS from the
5 reasonably foreseeable use of the PRODUCTS to occur by their deliberate, non-accidental
6 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or
7 use to individuals in the State of California.

8 44. DEFENDANTS failed to provide a "clear and reasonable warning" to those
9 consumers and other individuals in California who have been, or will be, exposed to the
10 LISTED CHEMICALS.

11 45. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
12 directly by California voters, consumers, and other individuals exposed to the LISTED
13 CHEMICALS through dermal contact and/or ingestion, resulting from the reasonably
14 foreseeable use of the PRODUCTS sold by DEFENDANTS without a "clear and reasonable
15 warning," have suffered, and continue to suffer, irreparable harm for which they have no plain,
16 speedy, or adequate remedy at law.

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

20 47. As a consequence of the above-described acts, Health and Safety Code
21 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
22 DEFENDANTS.

23 **PRAYER FOR RELIEF**

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

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

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

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

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

Dated: December 10, 2014

Respectfully Submitted,
THE CHANLER GROUP

By: 
Josh Voorhees
Attorneys for Plaintiff
PAUL WOZNIAK