

ENDORSED
FILED
ALAMEDA COUNTY

DEC 10 2014

CLERK OF THE SUPERIOR COURT

By [Signature] Deputy

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

5 Attorneys for Plaintiff
6 PAUL WOZNIAK

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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 TABLETOPS UNLIMITED, INC.; SEARS
16 HOLDINGS CORPORATION; KMART
CORPORATION; and DOES 1-150, inclusive,

17 Defendants.

Case No. RG14750998

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

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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.

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 a
24 warning in California, nylon cooking utensils containing the LISTED CHEMICAL, including,
25 but not limited to, the *Essential Home 14 Piece Cookware Set (Nylon Spoon)*, #05591153-1,
26 *UPC #0 48552 43047 0*. All such nylon cooking utensils containing the LISTED CHEMICAL
27 are referred to collectively hereinafter as the “PRODUCTS.”
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1 7. Defendants' failure to warn consumers and other individuals in California of the
2 harms associated with exposures to the LISTED CHEMICAL in conjunction with defendants'
3 sales of the PRODUCTS containing the LISTED CHEMICAL constitute violations of
4 Proposition 65, and subject defendants to enjoinder of such conduct, as well as civil penalties
5 for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

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

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

12 **PARTIES**

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

17 11. Defendant TABLETOPS UNLIMITED, INC. ("TABLETOPS") is a person in the
18 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
19 25249.11.

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

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

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

4 15. Defendant SEARS HOLDINGS CORPORATION (“SEARS”) is a person in the
5 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
6 25249.11.

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

10 17. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
11 person in the course of doing business within the meaning of Health and Safety Code sections
12 25249.6 and 25249.11.

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

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

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

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

26 22. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
27 State of California.

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

6 24. TABLETOPS, KMART, SEARS, MANUFACTURER DEFENDANTS,
 7 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively
 8 referred to as "DEFENDANTS."

9 **VENUE AND JURISDICTION**

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

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

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

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1 **FIRST CAUSE OF ACTION**

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

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

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

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

13 31. On September 30, 2014, plaintiff’s sixty-day notice of violation, together with the
14 requisite certificate of merit, was provided to TABLETOPS, KMART, SEARS and the requisite
15 public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
16 PRODUCTS containing the LISTED CHEMICAL, consumers, and other individuals in the
17 State of California are being exposed to the LISTED CHEMICAL resulting from their
18 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
19 receiving a “clear and reasonable warning” regarding the health hazards associated with such
20 toxic exposures, as required by Proposition 65.

21 32. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
22 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
23 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
24 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
25 continuous in nature, and, unless enjoined, will continue to occur in the future.

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

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

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

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

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

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

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

21 40. DEFENDANTS failed to provide a “clear and reasonable warning” to those
22 consumers and other individuals in California who have been, or will be, exposed to the
23 LISTED CHEMICAL.

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

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

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

9 **PRAYER FOR RELIEF**

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

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

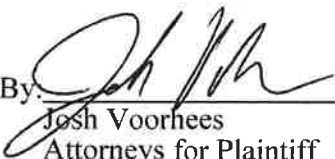
14 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
16 offering the PRODUCTS for sale or use in California without first providing a “clear and
17 reasonable warning” as defined by title 27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

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

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

21 Dated: December 10, 2014

22 Respectfully Submitted,
23 THE CHANLER GROUP

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25 By: 
26 Josh Voorhees
27 Attorneys for Plaintiff
28 PAUL WOZNIAK