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**ENDORSED  
FILED  
ALAMEDA COUNTY**

APR 16 2015

CLERK OF THE SUPERIOR COURT  
By Lilly Tran

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

PAUL WOZNIAK,  
Plaintiff,  
v.  
IMUSA USA, LLC; LOWE'S HIW, INC.;  
ORCHARD SUPPLY COMPANY, LLC; and  
DOES 1-150, inclusive,  
Defendants.

Case No. RG15766667  
**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.

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 components of  
11 nylon cooking utensils that defendants import, manufacture, distribute, ship, sell and/or offer for  
12 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’-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, 1989. 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 *IMUSA Spoon, UPC #0 94046 71036 8*. All such nylon cooking utensils  
26 containing the LISTED CHEMICAL are referred to collectively hereinafter as the  
27 “PRODUCTS.”

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1           15.    ORCHARD SUPPLY COMPANY, LLC (“ORCHARD”) is a person in the  
2 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
3 25249.11.

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

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

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

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

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

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

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

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

4 24. IMUSA, LOWE'S, ORCHARD, MANUFACTURER DEFENDANTS,  
5 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively  
6 referred to as "DEFENDANTS."

7 **VENUE AND JURISDICTION**

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

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

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

24 **FIRST CAUSE OF ACTION**

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

26 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
27 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 January 23, 2015, plaintiff’s sixty-day notice of violation, together with the  
10 requisite certificate of merit, was provided to IMUSA, LOWE’S, ORCHARD, and certain  
11 public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the  
12 PRODUCTS containing the LISTED CHEMICAL, consumers, and other individuals in the  
13 State of California were being exposed to the LISTED CHEMICAL resulting from their  
14 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first  
15 having received a “clear and reasonable warning” regarding such toxic exposures, as required  
16 by 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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