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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

**RG15766672**

PAUL WOZNAK,  
  
Plaintiff,  
  
v.  
  
MESSERMEISTER, INC.; and DOES 1-150,  
inclusive,  
  
Defendants.

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

**NATURE OF THE ACTION**

1  
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 *High Heat Serving Utensil Ladle, #700-3, UPC No. 0 98872 70003 6*. All  
26 such nylon cooking utensils containing the LISTED CHEMICAL are referred to collectively  
27 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 WOZNAK 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 MESSERMEISTER, INC. (“MESSERMEISTER”) 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.       MESSERMEISTER 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.       Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
25 person in the course of doing business within the meaning of Health and Safety Code sections  
26 25249.6 and 25249.11.  
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1 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
2 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
3 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
4 California.

5 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person  
6 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
7 and 25249.11.

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

11 17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in  
12 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
13 and 25249.11.

14 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
15 State of California.

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

21 20. MESSERMEISTER, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
22 DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively referred to as  
23 "DEFENDANTS."

24 **VENUE AND JURISDICTION**

25 21. Venue is proper in the County of Alameda, pursuant to Code of Civil Procedure  
26 sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because  
27 plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
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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 22. 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 23. 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 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
17 Paragraphs 1 through 23, inclusive.

18 25. 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 26. 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 27. On January 23, 2015, plaintiff’s sixty-day notice of violation, together with the  
27 requisite certificate of merit, was provided to MESSERMEISTER and certain public  
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1 enforcement agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS  
2 containing the LISTED CHEMICAL, consumers, and other individuals in the State of  
3 California were being exposed to the LISTED CHEMICAL resulting from their reasonably  
4 foreseeable use of the PRODUCTS, without the individual purchasers and users first having  
5 received a "clear and reasonable warning" regarding such toxic exposures, as required by  
6 Proposition 65.

7 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
8 and 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 will continue to occur in the future.

12 29. 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 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
16 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the  
17 reasonably foreseeable uses of these products result in exposures that require a "clear and  
18 reasonable" warning under Proposition 65.

19 31. 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 CHEMICAL.

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

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

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1           34. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses  
2 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact  
3 and/or ingestion.

4           35. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the  
5 reasonably foreseeable uses 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           36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
9 workers, consumers and other individuals in California not covered by California’s  
10 Occupational Safety Health Act, Labor Code section 6300 et seq. who have been, or will be,  
11 exposed to the LISTED CHEMICAL.

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

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

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

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**PRAYER FOR RELIEF**

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

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 the LISTED CHEMICAL;

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: April 16, 2015

Respectfully Submitted,  
THE CHANLER GROUP

By:   
\_\_\_\_\_  
Josh Voorhees  
Attorneys for Plaintiff  
PAUL WOZNIAK