

1 Clifford A. Chanler, State Bar No. 135534
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118
9 E-mail cliff@chanler.com
10 E-mail josh@chanler.com

11 Attorneys for Plaintiff
12 PAUL WOZNIAK

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION

16 PAUL WOZNIAK

17 Plaintiff,

18 v.

19 TRAMONTINA USA, INC.; and DOES 1-
20 150, inclusive,

21 Defendants.

22 Case No.

CGC 16-550191

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

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**ENDORSED
FILED**
Superior Court of California
County of San Francisco
FEB 01 2016
CLERK OF THE COURT
BY: ROSSALY DE LA VEGA
Deputy Clerk

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 of the health hazards caused by exposures to 4,4’-Methylenedianiline (“4’4-MDA”), a
5 toxic chemical found in nylon cooking utensils sold by defendant in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
8 section 6300 et seq., who purchase, use or handle defendants’ products, about the risks of
9 exposure to 4’4-MDA present in and on nylon cooking utensils manufactured, distributed, and
10 offered for sale or use throughout the State of California. Individuals not covered by
11 California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase,
12 use or handle defendants’ products, are referred to hereinafter as “consumers.”

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

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

21 5. Pursuant to Proposition 65, on January 1, 1998, California identified and listed
22 4’4-MDA as a chemical known to cause cancer. 4’4-MDA became subject to the “clear and
23 reasonable warning” requirements of the act one year later on January 1, 1999. Cal. Code Regs.
24 tit. 27 § 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b).

25 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
26 hazard warnings in California, nylon cooking utensils containing 4’4-MDA including, but not
27 limited to, the *Mainstays Non-Stick Aluminum Cookware Set (Solid Nylon Spoon)*, MS14-045-
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1 450-12, UPC #0 16017 08419 3. All such nylon cooking utensils containing 4'4-MDA are
2 referred to collectively hereinafter as "PRODUCTS."

3 7. Defendants' failure to warn consumers in the State of California of the health
4 hazards associated with exposures to 4'4-MDA in conjunction with defendants' sales of the
5 PRODUCTS are violations of Proposition 65, and subject defendants to enjoinder of such
6 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) &
7 (b)(1).

8 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
9 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with
10 the required warning regarding the health hazards associated with exposures to 4'4-MDA.
11 Health & Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
13 penalties against defendants for their violations of Proposition 65.

14 **PARTIES**

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

19 11. Defendant TRAMONTINA USA, INC. ("TRAMONTINA") is a person in the
20 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
21 25249.11.

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

1 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
2 person in the course of doing business within the meaning of Health and Safety Code sections
3 25249.6 and 25249.11.

4 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
5 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
6 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
7 California.

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

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

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

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

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

24 20. TRAMONTINA, MANUFACTURER DEFENDANTS, DISTRIBUTOR
25 DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively referred to as
26 “DEFENDANTS.”
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1 VENUE AND JURISDICTION

2 21. Venue is proper in San Francisco Superior Court, pursuant to Code of Civil
3 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
4 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
5 wrongful conduct occurred, and continue to occur, in this county, and/or because
6 DEFENDANTS conducted, and continue to conduct, business in San Francisco with respect to
7 the PRODUCTS.

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

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

18 FIRST CAUSE OF ACTION

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

20 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
21 Paragraphs 1 through 23, inclusive.

22 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
23 Enforcement Act of 1986, the People of California expressly declare their right "[t]o be
24 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
25 harm."

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

3 27. On April 29, 2015, plaintiff served a sixty-day notice of violation, together with
4 the accompanying certificate of merit, on TRAMONTINA, the California Attorney General’s
5 Office, and the requisite public enforcement agencies alleging that, as a result of
6 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being
7 exposed to 4’4-MDA resulting from their reasonably foreseeable use of the PRODUCTS,
8 without the consumers first receiving a “clear and reasonable warning” regarding the harms
9 associated with exposures to 4’4-MDA, as required by Proposition 65.

10 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
11 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
12 violations have continued beyond its receipt of plaintiff’s sixty-day notice of violation. As such,
13 DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined will
14 continue in the future.

15 29. After receiving plaintiff’s sixty-day notice of violation, no public enforcement
16 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
17 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of
18 violation.

19 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell,
20 and/or offer for sale or use in California cause exposures to 4’4-MDA as a result of the
21 reasonably foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and
22 endured by consumers in California are not exempt from the “clear and reasonable” warning
23 requirements of Proposition 65, yet DEFENDANTS provide no warning. DEFENDANTS’
24 violations of Proposition 65, resulting from their failure to provide warnings to consumers
25 exposed to 4’4-MDA from the PRODUCTS have continued since as far back as October 28,
26 2012.

1 31. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufacture, import, distribute, sell, and/or offer for sale in California contain 4'4-MDA.

3 32. 4'4-MDA is present in or on the PRODUCTS in such a way as to expose
4 consumers through dermal contact and/or ingestion during reasonably foreseeable use.

5 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
6 continues to cause consumer exposures to 4'4-MDA, as defined by title 27 of the California
7 Code of Regulations, section 25602(b).

8 34. DEFENDANTS know that the normal and reasonably foreseeable use of the
9 PRODUCTS exposes individuals to 4'4-MDA through dermal contact and/or ingestion.

10 35. DEFENDANTS intend that consumers and other individuals in California will be
11 exposed to 4'4-MDA from the reasonably foreseeable use of the PRODUCTS by their
12 deliberate, non-accidental participation in the manufacture, importation, distribution, sale, and
13 offering of the PRODUCTS for sale or use to consumers in California.

14 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
15 consumers in California who have been, or who will be, exposed to 4'4-MDA through dermal
16 contact and/or ingestion resulting from their use of the PRODUCTS.

17 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
18 directly by California voters, consumers exposed to 4'4-MDA through dermal contact and/or
19 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sell without a "clear
20 and reasonable" health hazard warning, have suffered, and continue to suffer, irreparable harm
21 for which they have no plain, speedy, or adequate remedy at law.

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

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

1 **PRAYER FOR RELIEF**

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

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

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
8 offering the PRODUCTS for sale or use in California without first providing a “clear and
9 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
10 25601 *et seq.*, regarding the harms associated with exposures to 4’4-MDA;


11 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
13 currently in the chain of commerce in California without a “clear and reasonable warning” as
14 defined by California Code of Regulations title 27, section 25601 *et seq.*;

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

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

17 Dated: January 28, 2016

18 Respectfully submitted,
19 THE CHANLER GROUP

20 By: 
21 Josh Voorhees
22 Attorneys for Plaintiff
23 PAUL WOZNIAK
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