



1 Clifford A. Chanler, State Bar No. 135534  
 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 cliff@chanler.com  
 josh@chanler.com

**FILED**  
**ALAMEDA COUNTY**

**JUL 12 2016**

CLERK OF THE SUPERIOR COURT  
 By Pam Williams  
 Deputy

6 Attorneys for Plaintiff  
 7 PAUL WOZNIAK

8  
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 10 COUNTY OF ALAMEDA  
 11 UNLIMITED CIVIL JURISDICTION

13 PAUL WOZNIAK,

14 Plaintiff,

15 v.

16 FRANKLIN FINANCIAL MANAGEMENT,  
 17 INC.; EAST BAY RESTAURANT SUPPLY,  
 INC.; and DOES 1-150, inclusive,

18 Defendants.

Case No. RG14744062

**~~PROPOSED~~ JUDGMENT PURSUANT  
 TO TERMS OF PROPOSITION 65  
 SETTLEMENT AND CONSENT  
 JUDGMENT**

Date: July 12, 2016

Time: 9:00 a.m.

Dept.: 15

Judge: Hon. Ioana Petrou

Reservation No. R-1743717

1 In the above-entitled action, plaintiff Paul Wozniak and defendants Franklin  
2 Financial Management, LLC dba Update International, and East Bay Restaurant Supply,  
3 Inc. having agreed through their respective counsel that Judgment be entered pursuant to  
4 the terms of their settlement agreement in the form of a Consent Judgment, and following  
5 this Court's issuance of an Order approving this Proposition 65 settlement and Consent  
6 Judgment,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to  
8 California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure  
9 § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment  
10 attached hereto as **Exhibit A**. By stipulation of the parties, the Court will retain  
11 jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

12  
13 **IT IS SO ORDERED.**

14  
15 Dated: 7/12/16

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

**IOANA PETROU**

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**EXHIBIT A**

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

8 Attorneys for Plaintiff  
9 PAUL WOZNIAK

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

PAUL WOZNIAK,

Plaintiff,

v.

FRANKLIN FINANCIAL MANAGEMENT,  
INC.; EAST BAY RESTAURANT SUPPLY,  
INC.; and DOES 1-150, inclusive,

Defendants.

Case No. RG14744062

**[PROPOSED] CONSENT JUDGMENT**

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

1     **1.     INTRODUCTION**

2             **1.1     Parties**

3             This Consent Judgment is entered into by and between Paul Wozniak (“Wozniak”), Franklin  
4     Financial Management, LLC dba Update International (“Franklin”), and East Bay Restaurant Supply,  
5     Inc. (“East Bay”), with Wozniak, Franklin, and East Bay each individually referred to as a “Party”  
6     and collectively as the “Parties.” Franklin and East Bay are hereinafter referred to collectively as  
7     “Defendants”.

8             Franklin Financial Management, Inc. dba Update International became a wholly owned  
9     subsidiary of Franklin Financial Holdings, Inc. Franklin Financial Management, Inc. dba Update  
10    International converted into a California limited liability company with the name “Franklin Financial  
11    Management, LLC.” Franklin Financial Holdings, Inc. sold all the issued and outstanding  
12    membership interests of Franklin Financial Management, LLC.

13            **1.2     Plaintiff**

14            Wozniak is an individual residing in California who seeks to promote awareness of exposures  
15    to toxic chemicals and to improve human health by reducing or eliminating hazardous substances  
16    contained in consumer products.

17            **1.3     Defendants**

18            Defendants each employ ten or more individuals and are each a “person in the course of doing  
19    business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and  
20    Safety Code section 25249.6 *et seq.* (“Proposition 65”).

21            **1.4     General Allegations**

22            Wozniak alleges that Defendants manufacture, import, sell, or distribute for sale in California,  
23    nylon cooking utensils that contain 4,4'-Methylenedianiline (“4,4'-MDA”), without first providing  
24    the exposure warning required by Proposition 65. 4,4'-MDA is listed pursuant to Proposition 65 as a  
25    chemical known to the State of California to cause cancer.

26            **1.5     Product Description**

27            The products covered by this Consent Judgment are nylon cooking utensils containing 4,4'-  
28    MDA that are manufactured, imported, sold, or distributed for sale in California by Defendants

1 including, but not limited to, *Update International Nylon Utensils, Spoon, NKU-01, UPC #7 55576*  
2 *01964 1* (the "Products").

3 **1.6 Notice of Violation**

4 On or about May 21, 2014, Wozniak served Franklin, East Bay and certain requisite public  
5 enforcement agencies with a "60-Day Notice of Violation" ("Notice"), alleging that Defendants  
6 violated Proposition 65 by failing to warn their customers and consumers in California that their  
7 Products expose users to 4,4'-MDA. To the best of the Parties' knowledge, no public enforcer has  
8 commenced and is diligently prosecuting the allegations set forth in the Notice.

9 **1.7 Complaint**

10 On October 10, 2014, Wozniak filed the instant action naming Franklin and East Bay as  
11 defendants for the alleged violations of Health and Safety Code section 25249.6 that are the subject  
12 of the Notice.

13 **1.8 No Admission**

14 Defendants deny the material, factual, and legal allegations contained in the Notice and  
15 Complaint, and maintain that all of the products they have sold and distributed for sale in California,  
16 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent  
17 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or  
18 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an  
19 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall  
20 not, however, diminish or otherwise affect Defendants' obligations, responsibilities, and duties under  
21 this Consent Judgment.

22 **1.9 Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
24 jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is proper in  
25 the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this  
26 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

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**1.10 Effective Date**

For purposes of this Consent Judgment, the term "Effective Date" means the date on which the Motion to Approve the Consent Judgment is granted by the Court.

**2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulation Commitment**

Commencing on or before the Effective Date, and continuing thereafter, Defendants shall only purchase for sale, or manufacture for sale in California, "Reformulated Products", or nylon cooking utensils that:

- i.* contain less than or equal to 200 parts per million ("ppm") 4,4'-MDA by weight using validated preparation and analytical methods used to detect the presence of 4,4'-MDA in a solid substance; and
- ii.* produce a leach result of 10 µg/L or less 4,4'-MDA by digesting the food contact end of the product into 100 ml of 3% acetic acid de-ionized water for 2 hours at 100°C, replenishing the acetic acid solution as needed to maintain 100 ml, and analyzing the leachate using a validated method to detect the presence of 4,4'-MDA in a liquid.

**2.2 Interim Warnings**

Commencing on or before the Effective Date, Defendants shall employ the following interim warning for all non-reformulated products purchased for sale or manufactured for sale before the Effective Date. Such warning shall not be employed for Reformulated Products purchased or manufactured after the Effective Date. Defendants further agrees that the warning will be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. For purposes of this Consent Judgment, a clear and reasonable warning shall consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in California containing the following statement:

**WARNING:** This product contains a chemical known to the State of California to cause cancer.





1     **3.     MONETARY SETTLEMENT TERMS**

2             **3.1     Civil Penalty Payments**

3             Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in  
4 this Consent Judgment, Defendants shall pay \$6,000 in civil penalties. The civil penalty payment  
5 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-  
6 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard  
7 Assessment (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Wozniak.

8             Defendants shall collectively make a civil penalty payment of \$6,000. Defendants shall  
9 provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the  
10 amount of \$4,500; and (b) “Paul Wozniak, Client Trust Account” in the amount of \$1,500, as set  
11 forth in Sections 3.4 and 3.5.

12             **3.2     Right to Cure and Stipulated Penalties**

13             If, within twelve months of the Effective Date, Plaintiff provides notice and appropriate  
14 supporting information to Defendants that levels of 4,4'-MDA in excess of the respective  
15 Reformulation Standards have been detected in one or more Products manufactured or imported after  
16 a deadline for meeting the Reformulation Standard under Section 2.1 above, Defendants may elect to  
17 cure the alleged violation by ceasing sale of the Product or applying the interim warning provided for  
18 in Section 2.2 within 30 days of receiving notice of the alleged violation. Supporting information to  
19 be provided to Defendants shall include, but is not limited to, the following: a copy of the test  
20 report(s) identifying the laboratory undertaking the testing, the test method(s) used, and the test  
21 result(s); a statement of the material/component/constituent of the Product that was tested; a photo of  
22 the Product that was tested; and the receipt(s) demonstrating the place, date and amount of purchase  
23 of the Product.

24             If, more than twelve months of the Effective Date, Plaintiff provides notice and appropriate  
25 supporting information to Defendants that levels of 4,4'-MDA in excess of the respective  
26 Reformulation Standards have been detected in one or more Products manufactured or imported after  
27 a deadline for meeting the Reformulation Standard under Section 2.1 above, Defendants may elect to  
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1 pay a stipulated penalty of \$5,000.<sup>1</sup> Plaintiff shall further be entitled to reimbursement of their  
2 associated expense in an amount not to exceed \$5,000.

3 If, more than twenty-four months of the Effective Date, Plaintiff provides notice and  
4 appropriate supporting information to Defendants that levels of 4,4'-MDA in excess of the respective  
5 Reformulation Standards have been detected in one or more Products manufactured or imported after  
6 a deadline for meeting the Reformulation Standard under Section 2.1 above, plaintiff shall have the  
7 right to pursue any legal remedy available to enforce the terms of this agreement and California's  
8 Proposition 65.

9 **3.3 Reimbursement of Attorney's Fees and Costs**

10 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without  
11 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to  
12 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the  
13 other settlement terms had been finalized, Defendants expressed a desire to resolve Wozniak's fees  
14 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to  
15 Wozniak and his counsel under general contract principles and the private attorney general doctrine  
16 codified at California Code of Civil Procedure section 1021.5 for all work performed through the  
17 mutual execution of this Consent Judgment. On or before the Effective Date, Defendants shall pay  
18 \$29,000 for the fees and costs incurred by Wozniak investigating, bringing this matter to Defendants'  
19 attention, litigating and negotiating a settlement in the public interest.

20 **3.4 Payments Held in Trust**

21 All payments due under this Consent Judgment shall be held in trust until such time as the  
22 Court approves the Parties' settlement. All payments due under this agreement shall be delivered  
23 within five (5) days of the date that this Consent Judgment is fully executed by the Parties, and held  
24 in trust by Defendants' counsel until the Court grants the motion for approval of this Consent  
25 Judgment contemplated by Section 5. Within two business days of the Court's approval of this  
26 Consent Judgment, Defendants' counsel shall tender the civil penalty payment and attorneys' fee  
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28 <sup>1</sup> Any stipulated penalty payments made pursuant to this Section should be allocated and  
remitted in the same manner as set forth in Sections 3.1 and 3.3, respectively.

1 and costs reimbursements required by Sections 3.1 and 3.3.

2 **3.5 Payment Address**

3 All payments required by this Consent Judgment shall be delivered to the following  
4 address:

5 The Chanler Group  
6 Attn: Proposition 65 Controller  
7 2560 Ninth Street  
8 Parker Plaza, Suite 214  
9 Berkeley, CA 94710

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Wozniak's Public Release of Proposition 65 Claims**

12 Wozniak, acting on his own behalf and in the public interest, releases Defendants and their  
13 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,  
14 members (including, but not limited to , Crown Brands, LLC), predecessors (including, but not  
15 limited to, Franklin Financial Management, Inc. and Update International), successors, assigns and  
16 attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell the  
17 Products including, but not limited to, their downstream distributors, wholesalers, customers,  
18 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for  
19 any violations arising under Proposition-65 for unwarned exposures to 4,4'-MDA in the Products  
20 sold by Defendants prior to the Effective Date, as set forth in the Notice. Compliance with the  
21 terms of this Consent Judgment, specifically Sections 2.1 and 2.2, constitutes compliance with  
22 Proposition 65 with respect to exposures to failures to warn about 4,4'-MDA from the Products sold  
23 by Defendants after the Effective Date.

24 **4.2 Wozniak's Individual Release of Claims**

25 Wozniak, in his individual capacity only and *not* in his representative capacity, also provides  
26 a release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and  
27 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
28 attorneys' fees, damages, losses, claims, liabilities and demands of Wozniak of any nature, character  
or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual

1 exposures to 4,4'-MDA in Products sold or distributed for sale by Defendants before the Effective  
2 Date.

3 **4.3 Defendants' Release of Wozniak**

4 Defendants, on their own behalf, and on behalf of their past and current agents,  
5 representatives, attorneys, successors, and assignees, hereby waive any and all claims against  
6 Wozniak and his attorneys and other representatives (or those that could have been taken or made),  
7 for any and all actions taken or statements made by Wozniak and his attorneys and other  
8 representatives, whether in the course of investigating claims, otherwise seeking to enforce  
9 Proposition 65 against it in this matter, or with respect to the Products.

10 **5. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
12 be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
13 has been fully executed by the Parties.

14 **6. SEVERABILITY**

15 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any  
16 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be  
17 adversely affected.

18 **7. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the state of California  
20 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is  
21 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Defendants  
22 may provide written notice to Wozniak of any asserted change in the law, and shall have no further  
23 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are  
24 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendants from any  
25 obligation to comply with any pertinent state or federal toxics control laws.

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**8. NOTICE**

Unless specified herein, all correspondence and notice required by this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail, return receipt requested; or (iii) a recognized overnight courier to the following addresses:

For Defendants:

Alec Cheung, President  
Franklin Financial Management, Inc.  
5801 South Boyle Avenue  
Los Angeles, CA 90058

Todd A. Duplanty  
Selman Breitman LLP  
33 New Montgomery, Sixth Floor  
San Francisco, CA 94105

John Breznikar, President  
Easy Bay Restaurant Supply, Inc.  
49 4<sup>th</sup> Street  
Oakland, CA 94607

For Wozniak:

The Chanler Group  
Attn: Proposition 65 Coordinator  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

Any Party may, from time to time, specify in writing to the other, a change of address to which all Notice and other communications shall be sent.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

This Consent Judgment may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**10. POST EXECUTION ACTIVITIES**

Wozniak agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall

1 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,  
2 supporting the motion, and appearing at the hearing before the Court.

3- **11. MODIFICATION**

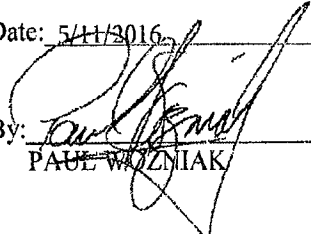
4 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
5 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any  
6 Party, and the entry of a modified consent judgment by the Court.

7 **12. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment and have read, understood,  
9 and agree to all of the terms and conditions contained herein.

10 **AGREED TO:**

**AGREED TO:**

11  
12 Date: 5/11/2016  
13  
14 By:   
PAUL WOZNIAK

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Alec Cheung, Vice President  
FRANKLIN FINANCIAL  
MANAGEMENT, LLC dba Update  
International

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**AGREED TO:**  
Date: \_\_\_\_\_  
By: \_\_\_\_\_  
John Breznikar, President  
EAST BAY RESTAURANT SUPPLY, INC.

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This Consent Judgment may be modified only by: (i) a written agreement of the Parties and entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any Party, and the entry of a modified consent judgment by the Court.

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The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein.

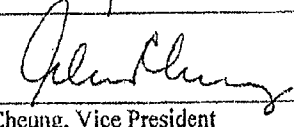
**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
PAUL WOZNIAK

**AGREED TO:**

Date: May 18, 2016

By:   
Alec Cheung, Vice President  
FRANKLIN FINANCIAL  
MANAGEMENT, LLC dba Update  
International

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
John Breznikar, President  
EAST BAY RESTAURANT SUPPLY, INC.

1 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,  
2 supporting the motion, and appearing at the hearing before the Court.

3 **11. MODIFICATION**

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5 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any  
6 Party, and the entry of a modified consent judgment by the Court.

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9 and agree to all of the terms and conditions contained herein.

10 **AGREED TO:**

**AGREED TO:**

11  
12 Date: \_\_\_\_\_

Date: \_\_\_\_\_

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14 By: \_\_\_\_\_  
PAUL WOZNIAK

15 By: \_\_\_\_\_  
Alec Cheung, Vice President  
FRANKLIN FINANCIAL  
MANAGEMENT, LLC dba Update  
International

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17 **AGREED TO:**

18  
19 Date: 5/18/16

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21 By: [Signature]  
Jon Breznikar, President  
EAST BAY RESTAURANT SUPPLY, INC.  
JONATHAN BREZNIKAR  
CORPORATE SECRETARY  
5/18/16

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