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ENDORSED
FILED
ALAMEDA COUNTY

APR 14 2015

CLERK OF THE SUPERIOR COURT
By Ciceli Johnson Deputy

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
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15 PAUL WOZNIAK

16 Plaintiff,

17 v.

18 BIG LOTS, INC.; BIG LOTS STORES, INC.;
19 and DOES 1-150, inclusive,

20 Defendants.

RG15766334

Case No. _____

**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, a toxic chemical that is found in nylon
5 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’-Methylenedianiline present in and
8 on the nylon cooking utensils manufactured, distributed, and offered for sale or use to
9 consumers throughout the State of California.

10 3. Detectable levels of 4,4’-Methylenedianiline are commonly found in and on
11 components of nylon cooking utensils that defendants import, manufacture, distribute, ship, sell
12 and/or offer for 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’-Methylenedianiline pursuant to
19 Proposition 65 as a chemical that is known to cause cancer. 4,4’-Methylenedianiline became
20 subject to the “clear and reasonable warning” requirements of the act one year later on January
21 1, 1989. Cal. Code Regs. tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b).
22 4,4’-Methylenedianiline is referred to 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 *Mainstays Nylon Utensil Set 8 pieces, Black-MS19-041-200-42, (UPC*
26 *No. 0 16346 38083 6)*. All such nylon cooking utensils containing the LISTED CHEMICAL
27 are referred to collectively hereinafter as the “PRODUCTS.”
28

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 BIG LOTS, INC. ("BIG LOTS") is a person in the course of doing
18 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

22 13. BIG LOTS STORES, INC. ("BIG LOTS STORES") is a person in the course of
23 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

24 14. BIG LOTS STORES manufactures, imports, distributes, sells, and/or offers the
25 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it
26 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
27 State of California.

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1 15. 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 16. 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 17. 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 18. 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 19. 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 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
18 State of California.

19 21. 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 22. BIG LOTS, BIG LOTS STORES, MANUFACTURER DEFENDANTS,
25 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively
26 referred to as “DEFENDANTS.”
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1 VENUE AND JURISDICTION

2 23. Venue is proper in the County of Alameda, pursuant to Code of Civil Procedure
3 sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because
4 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 Alameda county with respect
7 to the PRODUCTS.

8 24. 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 25. The California Superior Court has jurisdiction over DEFENDANTS based on
13 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
14 association that is a citizen of the State of California, has sufficient minimum contacts in the
15 State of California, and/or otherwise purposefully avails itself of the California market.
16 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 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
21 Paragraphs 1 through 25, inclusive.

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

26 28. 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 29. On May 21, 2014, plaintiff’s sixty-day notice of violation, together with the
4 requisite certificate of merit, was provided to BIG LOTS, BIG LOTS STORES, and certain
5 public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
6 PRODUCTS containing the LISTED CHEMICAL, consumers, and other individuals in the
7 State of California were being exposed to the LISTED CHEMICAL resulting from their
8 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
9 having received a “clear and reasonable warning” regarding such toxic exposures, as required
10 by Proposition 65.

11 30. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
12 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
13 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
14 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
15 continuous in nature, and will continue to occur in the future.

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

19 32. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
20 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the
21 reasonably foreseeable uses of these products result in exposures that require a “clear and
22 reasonable” warning under Proposition 65.

23 33. DEFENDANTS knew or should have known that the PRODUCTS they
24 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
25 CHEMICAL.

26 34. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
27 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.
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1 35. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
2 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
3 defined by title 27 of the California Code of Regulations, section 25602(b).

4 36. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
5 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
6 and/or ingestion.

7 37. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the
8 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental
9 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or
10 use to individuals in the State of California.

11 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
12 workers, consumers and other individuals in California not covered by California’s
13 Occupational Safety Health Act, Labor Code section 6300 et seq. who have been, or will be,
14 exposed to the LISTED CHEMICAL.

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

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

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

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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;

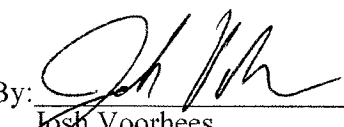
6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
8 offering the PRODUCTS for sale or use in California without first providing a “clear and
9 reasonable warning” as defined by title 27 of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

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

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

13 Dated: April 14, 2015

14 Respectfully Submitted,
15 THE CHANLER GROUP

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17 By: 
18 Josh Voorhees
19 Attorneys for Plaintiff
20 PAUL WOZNIAK
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