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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.

HAMPTON FORGE, LTD.; SEARS  
HOLDINGS CORPORATION; and DOES 1-  
150, inclusive,

Defendants.

Case No. **RG15766658**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**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 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 *Hampton Forge Gourmet Collection 48 Piece Kitchen Starter Set*  
26 (*Spoon*), *HMC01B085A*, *UPC No. 7 33652 14583 5*. All such nylon cooking utensils  
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1 containing the LISTED CHEMICAL are referred to collectively hereinafter as the  
2 “PRODUCTS.”

3 7. Defendants’ failure to warn consumers and other individuals in California of the  
4 harms associated with exposures to the LISTED CHEMICAL in conjunction with defendants’  
5 sales of the PRODUCTS containing the LISTED CHEMICAL constitute violations of  
6 Proposition 65, and subject defendants to enjoinder of such conduct, as well as civil penalties  
7 for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

8 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and  
9 permanent injunctive relief to compel defendants to provide purchasers or users of the  
10 PRODUCTS with the required warning regarding the health hazards associated with exposures  
11 to the LISTED CHEMICAL. 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, and each of them, for each violation 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 harmful  
17 exposures to toxic chemicals from consumer products. He brings this action in the public  
18 interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant HAMPTON FORGE, LTD. (“HAMPTON”) is a person in the course  
20 of doing business within the meaning of Health and Safety Code sections 25249.6 and  
21 25249.11.

22 12. HAMPTON manufactures, imports, distributes, sells, and/or offers the  
23 PRODUCTS for sale or use in the State of California, or it 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.

26 13. SEARS HOLDINGS CORPORATION (“SEARS”) is a person in the course of  
27 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.  
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1           14. SEARS manufactures, imports, distributes, sells, and/or offers the PRODUCTS for  
2 sale or use in the State of California, or it implies by its conduct that it manufactures, imports,  
3 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

4           15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
5 person in the course of doing business within the meaning of Health and Safety Code sections  
6 25249.6 and 25249.11.

7           16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
8 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
9 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
10 California.

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

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

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

20           20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
21 State of California.

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

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1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
2 harm.”

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

7 29. On January 23, 2015, plaintiff’s sixty-day notice of violation, together with the  
8 requisite certificate of merit, was provided to HAMPTON, SEARS, and certain public  
9 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS  
10 containing the LISTED CHEMICAL, consumers, and other individuals in the State of  
11 California were being exposed to the LISTED CHEMICAL resulting from their reasonably  
12 foreseeable use of the PRODUCTS, without the individual purchasers and users first having  
13 received a “clear and reasonable warning” regarding such toxic exposures, as required by  
14 Proposition 65.

15 30. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
16 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
17 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
18 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and  
19 continuous in nature, and will continue to occur in the future.

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

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

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

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

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

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

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

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

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

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