

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

**ENDORSED
FILED
ALAMEDA COUNTY**

NOV 13 2015

CLERK OF THE SUPERIOR COURT
By T. Lopez Deputy

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION
14

15 PAUL WOZNIAK,

16 Plaintiff,

17 v.

18 HAMPTON FORGE, LTD , *et al.*,

19 Defendants.

Case No. RG15766658

PL
**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT**

Date: October 29, 2015

Time: 9:00 a.m.

Dept.: 19

Judge: Honorable Gail B. Bereola

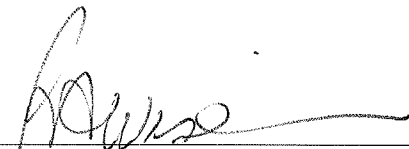
Reservation No. R-1659762

1 In the captioned action, plaintiff Paul Wozniak, and defendant HAMPTON FORGE, LTD,
2 having agreed through their respective counsel that Judgment be entered pursuant to the terms of their
3 settlement agreement in the form of a [proposed] consent judgment (“Consent Judgment”), and
4 following this Court’s issuance of an Order approving this Proposition 65 settlement and Consent
5 Judgment,

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

11
12 **IT IS SO ORDERED.**

13
14 Dated: 11/13/15
15 T.L.

16
17
18
19
20
21
22
23
24
25
26
27
28


JUDGE OF THE SUPERIOR COURT
Judge Rebecca Wiseman T.L.

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Attorneys for Plaintiff
PAUL WOZNIAK

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

PAUL WOZNIAK,
Plaintiff,
v.
HAMPTON FORGE, LTD., *et al.*
Defendants.

Case No. RG15766658
[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 plaintiff Paul Wozniak (“Wozniak”),
4 and Hampton Forge, Ltd. (“Hampton”), with Wozniak and Hampton each individually referred to as
5 a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Hampton**

11 Hampton employs ten or more individuals and is a “person in the course of doing business”
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
13 Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Wozniak alleges that Hampton manufactures, imports, sells, or distributes for sale in
16 California, nylon cooking utensils that contain 4,4'-methylenedianiline (“4,4'-MDA”) without first
17 providing the exposure warning required by Proposition 65. 4,4'-MDA is listed pursuant to
18 Proposition 65 as a chemical known to the State of California to cause cancer.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are nylon cooking utensils containing 4,4'-
21 MDA that are manufactured, imported, sold, or distributed for sale in California by Hampton
22 including, but not limited to, *Hampton Forge Gourmet Collection 48 Piece Kitchen Starter Set*
23 *(Spoon)*, *HMC01B085A*, *UPC #7 33652 14583 5*, hereinafter the “Products”.

24 **1.6 Notice of Violation**

25 On or about January 23, 2015, Wozniak served Hampton, and certain requisite public
26 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Hampton violated
27 Proposition 65 by failing to warn it’s customers and consumers in California that the Products expose
28

1 users to 4,4'-MDA. To the best of the Parties' knowledge, no public enforcer has commenced and is
2 diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On April 16, 2015 Wozniak filed the instant action ("Complaint") naming Hampton as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

8 Hampton denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
10 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
11 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
12 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
13 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
14 not, however, diminish or otherwise affect Hampton's obligations, responsibilities, and duties under
15 this Consent Judgment.

16 **1.9 Jurisdiction**

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

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
23 the Motion for Approval of the Consent Judgment is granted by the Court.

24 **2. INJUNCTIVE RELIEF: REFORMULATION**

25 **2.1 Reformulated Products**

26 Commencing on December 31, 2015, and continuing thereafter, Hampton shall only
27 manufacture, sell, or distribute for sale in California, "Reformulated Products." For purposes of this
28 Consent Judgment, Reformulated Products shall:

- 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;
- ii. and produce a leach result of 10 ug/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.

The testing shall be conducted in an accredited laboratory with qualified personnel. All analytical reports must contain quality control data that verify the laboratory’s performance for the results in each analytical report.

On or before December 31, 2015, Hampton shall demonstrate its compliance with this Section by providing Wozniak with written certification, that (as of such date) all of the Products it manufactures, sells, or distributes for sale in California, if any, are Reformulated Products and that only Reformulated Products will be sold or distributed for sale in California in the future. Hampton shall ensure compliance with this Section by testing its Products, requiring a third party to test its Products, and/or requiring a third party to certify that the Products supplied to Hampton, for sale in California, meet the standards established herein.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in this Consent Judgment, Hampton shall pay \$9,000 in civil penalties. The civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Wozniak. Hampton shall provide its payments according to the procedures set forth in Sections 3.3.

1 **3.2 Reimbursement of Attorney’s Fees and Costs**

2 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
4 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
5 other settlement terms had been finalized, Hampton expressed a desire to resolve Wozniak’s fees and
6 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Wozniak
7 and his counsel under general contract principles and the private attorney general doctrine codified at
8 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
9 execution of this Consent Judgment in the amount of \$32,500. Hampton shall make its payment
10 according to the procedures set forth in Sections 3.3.

11 **3.3 Payments**

12 **3.3.1** On or before October 1, 2015, Hampton shall tender the following payment:

13 (i) a check to “OEHHA” in the amount of \$6,750, (ii) a check to “Paul Wozniak, Client Trust
14 Account” in the amount of \$2,250, and (iii) a check to “The Chanler Group” in the amount of
15 \$5,000.

16 **3.3.2** On or before November 1, 2015, Hampton shall tender a check to “The
17 Chanler Group” in the amount of \$14,000.

18 **3.3.3** On or before December 1, 2015, Hampton shall tender a check to “The
19 Chanler Group” in the amount of \$13,500.

20 **3.4 Payment Address**

21 All payments required by this Consent Judgment shall be delivered to the following
22 address:

23 The Chanler Group
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710

28 **4. CLAIMS COVERED AND RELEASED**

4.1 Wozniak’s Public Release of Proposition 65 Claims

 Wozniak, acting on his own behalf and in the public interest, releases Hampton and it’s

1 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
2 and attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
3 Products including, but not limited to, it’s downstream distributors, wholesalers, customers,
4 retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for
5 any violations arising under Proposition 65 for unwarned exposures to 4,4’-MDA from Products
6 sold by Hampton prior to the Effective Date, as set forth in the Notice. Compliance with the terms
7 of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to ,
8 and failures to warn about, 4,4’-MDA from the Products sold by Hampton before the Effective
9 Date, as set forth in the Notice.

10 **4.2 Wozniak’s Individual Release of Claims**

11 Wozniak, in his individual capacity only and *not* in his representative capacity, also provides
12 a release to Hampton, Releasees, and Downstream Releasees which shall be effective as a full and
13 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
14 attorneys’ fees, damages, losses, claims, liabilities and demands of Wozniak of any nature, character
15 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
16 exposures to 4,4’-MDA in the Products sold or distributed for sale by Hampton before the Effective
17 Date.

18 **4.3 Hampton’s Release of Wozniak**

19 Hampton, on it’s own behalf, and on behalf of it’s past and current agents, representatives,
20 attorneys, successors, and assignees, hereby waives any and all claims against Wozniak and his
21 attorneys and other representatives(or those that could have been taken or made), for any and all
22 actions taken or statements made by Wozniak and his attorneys and other representatives, whether
23 in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this
24 matter, or with respect to the Products.

25 **5. COURT APPROVAL**

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

1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

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

13 **8. NOTICE**

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

17 **Hampton**

18 Messod Amar, President
19 Hampton Forge, Ltd.
20 442 Highway 35 South, Suite 1
Eatontown, NJ 07724

Eric S.C. Lindstrom, Esq.
Keller and Heckman LLP
Three Embarcadero Center, Suite 1420
San Francisco, CA 94111

21 **Wozniak**

22 Proposition 65 Coordinator
23 The Chanler Group
24 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

27
28

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **10. POST EXECUTION ACTIVITIES**

6 Wozniak agrees to comply with the reporting form requirements referenced in Health and
7 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
8 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
9 furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and
10 those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
11 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
12 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
13 supporting the motion, and appearing at the hearing before the Court.

14 **11. MODIFICATION**

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

18
19 **12. AUTHORIZATION**

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

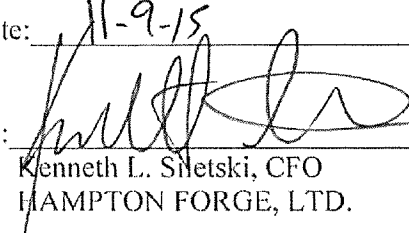
22 **AGREED TO:**

AGREED TO:

23
24 Date: November 9, 2015

Date: 11-9-15

25
26 By: 
PAUL WOZNIAK

27
28 By: 
Kenneth L. Smetzki, CFO
HAMPTON FORGE, LTD.