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

12 PAUL WOZNIAK,

13 Plaintiff,

14 v.

15 MESSERMEISTER, INC., *et al.*

16 Defendants.
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Case No. RG15766672

[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 Messermeister, Inc. (“Messermeister”), with Wozniak and Messermeister each individually
5 referred to as 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 Defendant**

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

14 **1.4 General Allegations**

15 Wozniak alleges that Messermeister 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 Messermeister
22 including, but not limited to, *High Heat Serving Utensil Ladle, #700-3, UPC #0 98872 70003 6*,
23 hereinafter the “Products”.

24 **1.6 Notice of Violation**

25 On or about January 23, 2015 Wozniak served Messermeister, and certain requisite public
26 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Messermeister
27 violated Proposition 65 by failing to warn its customers and consumers in California that the Products
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1 expose users to 4,4'-MDA. To the best of the Parties' knowledge, no public enforcer has commenced
2 and is 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 Messermeister 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 Messermeister 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 Messermeister's obligations, responsibilities, and duties
15 under 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 Messermeister as to the allegations contained in the Complaint, that venue is proper
19 in the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of
20 this 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 Reformulation Commitment**

26 Messermeister shall not manufacture, sell, or distribute for sale in or into California any
27 Products with a production date after the Effective Date except for "Reformulated Products." For
28 purposes of this Consent Judgment, Reformulated Products shall:

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

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

11 **3. MONETARY SETTLEMENT TERMS**

12 **3.1 Civil Penalty Payments**

13 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims alleged in the
14 Notice or referred to in this Consent Judgment, Messermeister shall pay \$2,000 in civil penalties.
15 The civil penalty payment shall be allocated according to Health and Safety Code section
16 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the California Office of
17 Environmental Health Hazard Assessment (“OEHHA”), and twenty-five percent (25%) of the funds
18 remitted to Wozniak.

19 Messermeister shall provide its payment in two checks for the following amounts made
20 payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “Paul Wozniak, Client Trust Account” in
21 the amount of \$500, as set forth in Sections 3.3 and 3.4.

22 **3.2 Reimbursement of Attorney’s Fees and Costs**

23 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without
24 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
25 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
26 other settlement terms had been finalized, Messermeister expressed a desire to resolve Wozniak’s
27 fees and costs. The Parties then attempted to (and did) reach an accord on the compensation due to
28 Wozniak and his counsel under general contract principles and the private attorney general doctrine

1 codified at California Code of Civil Procedure section 1021.5 for all work performed through the
2 mutual execution of this Consent Judgment. Messermeister shall pay \$24,000 for the fees and costs
3 incurred by Wozniak investigating, bringing this matter to Messermeister's attention, litigating and
4 negotiating a settlement in the public interest.

5 **3.3 Payments**

6 All payments due under this Consent Judgment shall be held in trust until such time as the
7 Court approves the Parties' settlement. All payments due under this agreement shall be delivered
8 within five (5) business days of the date that this Consent Judgment is fully executed by the Parties,
9 and held in trust by Messermeister's counsel until the Court grants the motion for approval of this
10 Consent Judgment contemplated by Section 5. Within five business days of the Court's approval of
11 this Consent Judgment, Messermeister's counsel shall tender the initial civil penalty payments and
12 attorneys' fee and costs reimbursements required by Sections 3.1 and 3.2.

13 **3.4 Payment Address**

14 All payments required by this Consent Judgment shall be delivered to the following
15 address:

16 The Chanler Group
17 Attn: Proposition 65 Controller
2560 Ninth Street
18 Parker Plaza, Suite 214
Berkeley, CA 94710

19 **4. CLAIMS COVERED AND RELEASED**

20 **4.1 Wozniak's Public Release of Proposition 65 Claims**

21 Wozniak, acting on his own behalf and in the public interest, releases Messermeister and its
22 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
23 shareholders and attorneys ("Releasees") and each entity to whom it directly or indirectly distributes
24 or sells the Products including, but not limited to, its downstream distributors, wholesalers,
25 customers, retailers, franchisers, cooperative members, licensors and licensees ("Downstream
26 Releasees") for any violations arising under Proposition 65 for unwarned exposures to 4,4'-MDA
27 from Products sold by Messermeister with a production date prior to the Effective Date, as set forth
28 in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with

1 Proposition 65 with respect to exposures to failures to warn about 4,4'-MDA from the Products sold
2 by Messermeister with a production date prior to the Effective Date, as set forth in the Notice.

3 **4.2 Wozniak's Individual Release of Claims**

4 Wozniak, in his individual capacity only and *not* in his representative capacity, also provides
5 a release to Messermeister, Releasees, and Downstream Releasees which shall be effective as a full
6 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
7 attorneys' fees, damages, losses, claims, liabilities and demands of Wozniak of any nature, character
8 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
9 exposures to 4,4'-MDA in the Products sold or distributed for sale by Messermeister with a
10 production date prior to the Effective Date.

11 **4.3 Messermeister's Release of Wozniak**

12 Messermeister, on its own behalf, and on behalf of its past and current agents,
13 representatives, attorneys, successors, and assignees, hereby waives any and all claims against
14 Wozniak and his attorneys and other representatives (or those that could have been taken or made),
15 for any and all actions taken or statements made by Wozniak and his attorneys and other
16 representatives, whether in the course of investigating claims, otherwise seeking to enforce
17 Proposition 65 against it in this matter, or with respect to the Products.

18 **5. COURT APPROVAL**

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

22 **6. SEVERABILITY**

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

26 **7. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the state of California
28 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is

1 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Messermeister
2 may provide written notice to Wozniak of any asserted change in the law, and shall have no further
3 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
4 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
5 Messermeister from any obligation to comply with any pertinent state or federal toxics control laws.

6 **8. NOTICE**

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

10
11 **Messermeister**

12 Debra Dressler, President
13 Messermeister, Inc.
14 418 Bryant Circle, Suite A
Ojai, CA 93023

P. Mark Mahoney
Schiff Hardin LLP
One Market, Spear Street Tower
Thirty-Second Floor
San Francisco, CA 94105

15 **Wozniak**

16 Proposition 65 Coordinator
17 The Chanler Group
18 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

21 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

25 **10. POST EXECUTION ACTIVITIES**

26 Wozniak agrees to comply with the reporting form requirements referenced in Health and
27 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
28

1 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
2 furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and
3 those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
4 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
5 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
6 supporting the motion, and appearing at the hearing before the Court.

7 **11. MODIFICATION**

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

11 **12. AUTHORIZATION**

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

14
15 **AGREED TO:**

16
17 Date: 5/13/2016

18
19 By: 
PAUL WOZNIAK

15 **AGREED TO:**

16
17 Date: 5-25-16

18
19 By: 
DEBRA DRESSLER, PRESIDENT
MESSERMEISTER, INC.