

1 Clifford A. Chanler, State Bar No. 135534
O'Neil G. Dennis, State Bar No. 256636
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 E-mail: cliff@chanler.com
E-mail: oneil@chanler.com
6

7 Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D.
8
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA
12 UNLIMITED CIVIL JURISDICTION

13 WHITNEY R. LEEMAN, PH.D.,

14 Plaintiff,

15 v.

16 HAMPTON PRODUCTS INTERNATIONAL
17 CORPORATION, *et al.*

18 Defendants.
19

Case No. 16CV292585

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)
20
21
22
23
24
25
26
27
28

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D.
4 (“Leeman”), and Hampton Products International Corporation (“Hampton”), with Leeman and
5 Hampton each individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Leeman 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 Leeman alleges that Hampton manufactures, imports, sells, offers for sale, distributes for sale,
16 or purchases for resale in California, locks with vinyl/PVC cables that contain di(2-
17 ethylhexyl)phthalate (“DEHP”) without first providing the exposure warning required by Proposition
18 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
19 cancer and birth defects or other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are locks with vinyl/PVC cables containing
22 DEHP that are manufactured, imported, sold, or distributed for sale in California by Hampton
23 including, but not limited to, *Brinks Resettable Luggage Lock, #165-25105, UPC #0 39208 98345 7*,
24 hereinafter the “Products”.

25 **1.6 Notice of Violation**

26 On or about December 29, 2015, Leeman served Hampton, and certain requisite public
27 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Hampton violated
28 Proposition 65 by failing to warn its customers and consumers in California that the Products expose

1 users to DEHP. 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 March 10, 2016 Leeman 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 Proposition 65. Nothing in this
11 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
12 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
13 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This
14 Section shall not, however, diminish or otherwise affect Hampton's obligations, responsibilities, and
15 duties 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 Hampton as to the allegations contained in the Complaint, that venue is proper in the
19 County of Santa Clara, 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/WARNINGS**

25 **2.1 Reformulation and Warning Commitments**

26 Commencing sixty (60) days after the Effective Date, and continuing thereafter, Hampton
27 agrees to only sell, distribute for sale, manufacture for sale or purchase for resale in California:

28 (a) "Reformulated Products" or (b) Products that bear a clear and reasonable health hazard warning,

1 pursuant to Sections 2.2 below. For purposes of this Consent Judgment, “Reformulated Products” are
2 Products containing DEHP in concentrations of equal to or less than 0.1 percent (1,000 parts per
3 million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
4 3580A and 8270C or other methodology utilized by federal or state government agencies for the
5 purpose of determining DEHP content in a solid substance.

6 **2.2 Clear and Reasonable Warnings**

7 Hampton agrees that on or after the date that is sixty (60) days after the Effective Date, all
8 Products it sells and/or distributes in California that do not qualify as Reformulated Products will
9 bear a clear and reasonable warning pursuant to this Section. Defendant further agrees that the
10 warning will be prominently placed with such conspicuousness when compared with other words,
11 statements, designs, or devices as to render it likely to be read and understood by an ordinary
12 individual under customary conditions before purchase or use. For purposes of this Consent
13 Judgment, a clear and reasonable warning for the Products shall consist of a warning affixed to the
14 packaging, or, if no packaging exists, directly on each non-reformulated Product sold in California,
15 and shall contain the statement below:

16 **WARNING:** This product contains DEHP, a chemical
17 known to the State of California to cause
18 cancer, and birth defects or other
reproductive harm.

19 **OR**

20 **WARNING:** This product contains one or more chemicals
21 known to the State of California to cause
22 cancer, birth defects or other reproductive
harm. Wash hands after handling.¹

23 **3. MONETARY SETTLEMENT TERMS**

24 **3.1 Civil Penalty Payments**

25 Pursuant to Health & Safety Code section 25249.7(b), in settlement of all the claims referred to in
26 this Consent Judgment, Hampton shall pay to Leeman \$3,500 in civil penalties. Leeman shall

27
28 ¹ Hampton may use this warning only for Products that Hampton reasonably believes contains one or more Proposition 65-
listed chemicals in addition to DEHP.

1 allocate the civil penalty payment according to Health and Safety Code section 25249.12(c)(1) and
2 (d), with seventy-five percent (75%) of the funds paid to the California Office of Environmental
3 Health Hazard Assessment (“OEHHA”) by Leeman, and twenty-five percent (25%) of the funds
4 retained by Leeman. Civil penalties are to be paid within seven days of the Effective Date, payable
5 as follows: (i) a check payable to “OEHHA” in the amount of \$2,625;

6 (ii) a check payable to “Whitney R. Leeman, Ph.D., Client Trust Account” in the
7 amount of \$875.

8 **3.2 Reimbursement of Attorney’s Fees and Costs**

9 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
10 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
11 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
12 other settlement terms had been finalized, Hampton expressed a desire to resolve Leeman’s fees and
13 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Leeman
14 and her counsel under general contract principles and the private attorney general doctrine codified at
15 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
16 execution of this Consent Judgment. Within seven days of the Effective Date, Hampton shall pay to
17 The Chanler Group \$29,500 for the fees and costs incurred by Leeman investigating, bringing this
18 matter to Hampton’s attention, litigating and negotiating a settlement in the public interest.

19 **3.3 Payment Address**

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

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

27 **4. CLAIMS COVERED AND RELEASED**

28 **4.1 Leeman’s Public Release of Proposition 65 Claims**

Leeman, acting on her own behalf and in the public interest, fully and finally releases
Hampton and its parents, subsidiaries, affiliated entities under common ownership, directors,

1 officers, employees, and attorneys (“Releasees”) and each entity to whom it directly or indirectly
2 distributes or sells the Products including, but not limited to, its downstream distributors,
3 wholesalers, sales representatives, customers, retailers, franchisers, cooperative members, licensors
4 and licensees (“Downstream Releasees”) for any actual or alleged violations arising under
5 Proposition 65 for unwarned exposures to DEHP from Products sold by Hampton or Downstream
6 Releasees prior to a date that is sixty (60) days after the Effective Date, as set forth in the Notice.
7 Compliance with the terms of this Consent Judgment, specifically Section 2, constitutes compliance
8 with Proposition 65 with respect to any exposure associated with a failure to warn about DEHP
9 from the Products sold by Hampton or Downstream Releasees.

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

11 Leeman, in her individual capacity only and *not* in her representative capacity, also provides a
12 release to Hampton, Releasees, and Downstream Releasees which shall be effective as a full and final
13 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 Leeman of any nature, character
15 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
16 exposures to DEHP in the Products manufactured, imported, sold, offered for sale, distributed for
17 sale, or purchased for resale by Hampton, or Downstream Releasees or based on any other violation
18 of law by Hampton and known to Leeman, in each case on or before the date that is ninety (60) days
19 after the Effective Date.

20 **4.3 Hampton’s Release of Leeman**

21 Hampton, on its own behalf, and on behalf of its past and current agents, representatives,
22 attorneys, successors, and assignees, hereby waives any and all claims against Leeman and her
23 attorneys and other representatives, for any and all actions taken or statements made by Leeman and
24 her attorneys and other representatives, whether in the course of investigating claims, otherwise
25 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.
26
27
28

1 **5. COURT APPROVAL**

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

5 **6. SEVERABILITY**

6 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
7 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
8 adversely affected, so long as the Parties' original intent remains intact.

9 **7. GOVERNING LAW**

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

17 Nothing in this Consent Judgment shall interfere the judgment entered in the matter of *Mateel*
18 *Environmental Justice v. Ez-Flo International Inc.*, et al., Superior Court of California, County of San
19 Francisco case number CGC-06-456810, to which Hampton is a party.

20 **8. NOTICE**

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

24 **Hampton**

25
26 Hayward Kelley III, President
27 Hampton Products International Corporation
28 50 Icon
 Foothill Ranch, CA 92610

 Robert Nicksin, Esq.
 400 South Hope Street
 18th Floor
 Los Angeles CA 90071-2899
 United States

1 **Leeman**

2 Proposition 65 Coordinator
3 The Chanler Group
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

13 **10. POST EXECUTION ACTIVITIES**

14 Leeman agrees to comply with the reporting form requirements referenced in Health and
15 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
16 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement.
17 Leeman shall prepare and file a Motion for Approval of this Consent Judgment. In furtherance of
18 obtaining such approval, the Parties agree to mutually employ their best efforts, and those of their
19 counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their
20 settlement in a timely manner. For purposes of this Section, “best efforts” shall include, at a
21 minimum, cooperating on the drafting and filing of the necessary moving papers, supporting the
22 motion. Hampton’s obligation to support a Motion for Approval of this Consent Judgment shall not
23 necessarily apply to any proposed revisions to this Consent Judgment requested by the Court or the
24 California Attorney General.

25 **11. MODIFICATION**

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

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

12. ENFORCEMENT

Any Party may, after meeting and conferring, for a period no longer than sixty (60) days, by motion or application for an order to show cause before this Court, enforce the terms and conditions contained in this Consent Judgment. This Court shall retain jurisdiction to implement or modify the Consent Judgment.

13. AUTHORIZATION

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

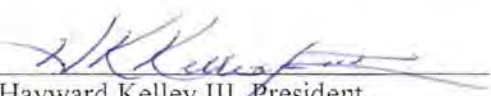
AGREED TO:

AGREED TO:

Date: 6/2/2016

Date: June 1, 2016

By: 
WHITNEY R. LEEMAN, PH.D.

By: 
Hayward Kelley III, President
HAMPTON PRODUCTS INTERNATIONAL
CORPORATION