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8 Attorneys for Plaintiff
9 PAUL WOZNIAK

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

13 PAUL WOZNIAK,

14 Plaintiff,

15 v.

16 IMUSA USA, LLC, *et al.*

17 Defendants.

Case No.: RG 15766667

[PROPOSED] CONSENT JUDGMENT

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

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Paul Wozniak (“Wozniak”),
4 and IMUSA, USA, LLC (“IMUSA”), with Wozniak and IMUSA each individually referred to as a
5 “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 IMUSA**

11 IMUSA employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of 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 IMUSA 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 alleged to be required by Proposition 65. 4,4'-MDA is listed
18 pursuant to 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, stored, distributed, shipped, sold and/or offered for sale in
22 California by IMUSA including, but not limited to, *IMUSA Spoon, UPC No. 0 94046 71036 8*,
23 hereinafter the “Products”.

24 **1.6 Notice of Violation**

25 On or about January 23, 2015 Wozniak served IMUSA, retailers Lowe’s HIW, Inc.¹ and
26 Orchard Supply Company, LLC (“Orchard”) (Lowe’s HIW, Lowe’s Home Centers and Orchard are

27 ¹ Lowe’s HIW, Inc. is not an operating entity, and the business of Lowe’s HIW, Inc. (“Lowe’s HIW”) has been
28 acquired by Lowe’s Home Centers, LLC (“Lowe’s Home Centers”).

1 collectively referred to hereinafter as “Lowe’s”), and certain requisite public enforcement agencies
2 with a “60-Day Notice of Violation” (“Notice”) alleging that IMUSA and Lowe’s violated
3 Proposition 65 by failing to warn their customers and consumers in California that their Products
4 expose users to 4,4’-MDA. IMUSA represents that it is the manufacturer or importer of the exemplar
5 Products identified in the Notice. To the best of the Parties’ knowledge, no public enforcer has
6 commenced and is diligently prosecuting the allegations set forth in the Notice.

7 **1.7 Complaint**

8 On April 16, 2015 Wozniak initiated the instant action by filing a Complaint (the
9 “Complaint”) naming IMUSA, Lowe’s HIW and Orchard as defendants for the alleged violations of
10 Health and Safety Code section 25249.6 that are the subject of the Notice.

11 **1.8 No Admission**

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

20 **1.9 Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over IMUSA as to the allegations contained in the Complaint, that venue is proper in the
23 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
24 Consent Judgment pursuant to California Code of Civil Procedure section 664.6.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
27 the Motion for Approval of the Consent Judgment is granted by the Court.
28

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulated Products**

3 Commencing on the Effective Date, and continuing thereafter, IMUSA shall only
4 manufacture, import, distribute, ship, sell and/or offer for sale in California, Products as defined at
5 Section 1.5 of this Consent Judgment that are reformulated (the "Reformulated Products"). For
6 purposes of this Consent Judgment, Reformulated Products shall mean the Products:

- 7 a. contain less than or equal to 200 parts per million ("ppm") 4,4'-MDA by
8 weight using European Standard EN-14362 or other equivalent validated
9 preparation and analytical methods used to detect the presence of 4,4'-MDA in
10 a solid substance and analyzed using gas chromatography with
11 mass spectrometer detection (GC-MS) to determine 4,4'-MDA content by
12 weight and solid substance; and,
- 13 b. produce a leach result of 10 ug/L or less 4,4'-MDA by digesting the food
14 contact end of the product into 100 ml of 3% acetic acid de ionized water for 2
15 hours at 100° C, replenishing the acetic acid solution as needed to maintain
16 100 ml, and analyzing the leachate using a validated method to detect the
17 presence of 4,4'-MDA in a liquid.

18 Any testing conducted by IMUSA for purposes of determining whether the Products are
19 Reformulated Products in compliance with the reformulation standards in this Section 2.1 must be
20 conducted by an accredited laboratory with qualified personnel. All analytical reports generated must
21 contain quality control data that verify the laboratory's performance for the results in each analytical
22 report.

23 **3. MONETARY SETTLEMENT TERMS**

24 **3.1 Civil Penalty Payment**

25 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
26 this Consent Judgment, IMUSA shall pay \$12,000 in civil penalties (the "Civil Penalty Payment").
27 The Civil Penalty Payment shall be allocated according to Health and Safety Code section
28 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the California Office of

1 Environmental Health Hazard Assessment (“OEHHA”), and twenty-five percent (25%) of the funds
2 remitted to Wozniak. IMUSA shall make the Civil Penalty Payment of \$12,000 in two checks for the
3 following amounts made payable to: (a) “OEHHA” in the amount of \$9,000; and (b) “Paul Wozniak,
4 Client Trust Account” in the amount of \$3,000.

5 **3.2 Reimbursement of Attorney’s Fees and Costs**

6 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without
7 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
8 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
9 other settlement terms had been finalized, IMUSA expressed a desire to resolve Wozniak’s fees and
10 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Wozniak
11 and his counsel under general contract principles and the private attorney general doctrine codified at
12 California Code of Civil Procedure Section 1021.5 for all work performed through the mutual
13 execution of this Consent Judgment. IMUSA shall pay \$32,000 (the “Fees Payment”) in the form of
14 a check made payable to “The Chanler Group” for the fees and costs incurred by Wozniak
15 investigating, bringing this matter to IMUSA’s attention, filing the Complaint, litigating and
16 negotiating a settlement in the public interest and preparing, filing, serving and presenting the motion
17 to obtain the Court’s approval of this Consent Judgment.

18 **3.3 Payments Procedures**

19 All payments due under this Consent Judgment shall be paid and delivered according to the
20 following subsections:

21 **3.3.1 Trust Deposit**

22 Within five (5) days of the date that this Consent Judgment is fully executed by all
23 of the Parties, IMUSA shall deliver the three checks comprising the Civil Penalty Payment
24 described at Section 3.1 and the Fees Payment described at Section 3.2 totaling \$44,000 to
25 IMUSA’s counsel, Buchanan, Ingersoll & Rooney LLP (“Buchanan”) located at 600 W.
26 Broadway, Suite 1100, San Diego, California 92101-3387 where the checks shall remain and be
27 held in trust until the Court grants the motion for approval of this Consent Judgment
28 contemplated by Section 5 of this Consent Judgment.

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3.3.2 Disbursement

Within fourteen (14) days of the Effective Date, IMUSA shall cause Buchanan to send the Civil Penalty Payment checks described at Section 3.1 and the Fees Payment Check described at Section 3.2 to the payment address provided at Section 3.3.3 of this Consent Judgment.

3.3.3 Payment Address

All payments and tax documentation required by this Consent Judgment shall be mailed or delivered to the following address:

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

3.3.4 Required Tax Documentation

IMUSA agrees to provide an IRS 1099 form for its payments under this Consent Judgment to each of the following payees: (a) "Office of Environmental Health Hazard Assessment"; (b) "Paul Wozniak"; and (c) "The Chanler Group". Addresses and tax identification numbers for each of the above payees shall be furnished by the payees to IMUSA within ten (10) days after the Effective Date.

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, waives and releases IMUSA and its parents, subsidiaries, affiliated entities under common ownership, owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants, predecessors, successors, and assignees ("Releasees") and each entity to whom IMUSA directly or indirectly distributes, ships or sells the Products including, but not limited to, it's downstream distributors, wholesalers, customers, franchisers, franchisees, cooperative members, licensors and licensees, and retailers, including, but not limited to, Lowe's, their respective directors, officers, shareholders, employees, agents, principals, attorneys, parent companies, subsidiaries, affiliates, divisions, suppliers, vendors, manufacturers, franchisees, customers, insurers, accountants, predecessors, successors and

1 assignees (“Downstream Releasees”) for any and all claims, actions, causes of action, suits,
2 demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could have been
3 asserted, for any alleged violations arising under Proposition 65 for unwarned exposures to 4,4’-
4 MDA from Products manufactured, imported, stored, distributed, shipped, sold and/or offered for
5 sale in California by IMUSA on or before the Effective Date, as set forth in the Notice. Compliance
6 with the terms of this Consent Judgment specifically Section 2.1. constitutes compliance with
7 Proposition 65 with respect to any 4,4’-MDA in the Products sold by IMUSA on or after the
8 Effective Date.

9 **4.2 Wozniak’s Individual Release of Claims**

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

17 **4.3 IMUSA’s Release of Wozniak**

18 IMUSA, on its own behalf, and on behalf of its past and current agents, representatives,
19 attorneys, successors, and assignees, hereby waives any and all claims against Wozniak and his
20 attorneys and other representatives for any and all actions taken or statements made by Wozniak
21 and his attorneys and other representatives, whether in the course of investigating claims with
22 regard to this matter concerning the Products or otherwise seeking to enforce Proposition 65 against
23 it in this matter pertaining to the Products, or with respect to the Products in this matter on or before
24 the Effective Date.

25 **4.4 Waiver of Unknown Claims**

26 IMUSA and Wozniak in its and his individual capacity acknowledge that each is familiar with
27 Section 1542 of California Civil Code which provides as follows:
28

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
2 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
3 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
4 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

5 IMUSA and Wozniak in its and his individual capacity: waives and relinquishes any right or
6 benefit each has or may have under Section 1542 of California Civil Code or any similar provision
7 under the statutory or non-statutory law of any other jurisdiction; understand the significance and
8 consequences of a California Civil Code Section 1542 waiver, and hereby assume full responsibility
9 for any damages or losses caused by this waiver; acknowledge that each may subsequently discover
10 facts in addition to, or different from, those that it believes to be true with respect to the claims
11 released in Sections 4.1., 4.2. and 4.3. herein; and agree that this Consent Judgment and the release
12 contained herein shall be and remain effective in all respects notwithstanding the discovery of such
13 additional or different facts.

14 **5. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the Court and shall
16 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
17 has been fully executed by the Parties. Wozniak through his counsel shall prepare, file, and serve the
18 required persons and entities with the motion to obtain the Court's approval of this Consent Judgment
19 within fourteen (14) days after the execution of this Consent Judgment by all of the Parties.

20 **6. SEVERABILITY**

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

24 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the state of California
26 and apply within the State of California. This Consent Judgment shall not govern sales of Products to
27 consumers outside the State of California. In the event that Proposition 65 is repealed, preempted, or
28 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then IMUSA

1 may provide written notice to Wozniak of any asserted change in the law, and shall have no further
2 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
3 so affected.

4 **8. NOTICE**

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

8 **IMUSA**

9 Raul A. Corzo, IV
10 President and General Manager
11 IMUSA USA, LLC
12 6000 NW 97th Avenue, Unit 26
13 Doral, FL 33178

14 Robert J. Parks, Esq.
15 Buchanan Ingersoll & Rooney PC
16 One America Plaza
17 600 West Broadway, Suite 1100
18 San Diego, California 92101-3387

19 **Wozniak**

20 Proposition 65 Coordinator
21 The Chanler Group
22 2560 Ninth Street
23 Parker Plaza, Suite 214
24 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 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

10. POST EXECUTION ACTIVITIES

Wozniak agrees to comply with the reporting form requirements referenced in Health and
Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and
those of their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain

1 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
2 shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
3 supporting the motion, and appearing at the hearing before the Court if required to obtain the Court's
4 Order approving and authorizing this Consent Judgment.

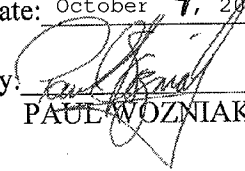
5 **11. MODIFICATION**

6 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
7 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
8 Party, and the entry of a modified consent judgment by the Court. Any Party seeking to modify this
9 Consent Judgment shall first meet and confer with the other Party for the purpose of a good faith
10 effort to reach an agreement on the request to modify at least thirty (30) days prior to filing any
11 motion for modification of the Consent Judgment with the Court.

12 **12. AUTHORIZATION**

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

15
16 **AGREED TO BY PAUL WOZNIAK: AGREED TO BY IMUSA USA, LLC:**

17 Date: October 7, 2015 Date: _____
18 By:  _____ By: _____
19 PAUL WOZNIAK Raul A. Corzo, IV
20 President and General Manager
21 IMUSA USA, LLC

22 IT IS SO ORDERED:

23 Date: _____ _____
24 JUDGE OF THE SUPERIOR COURT

1 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
2 shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
3 supporting the motion, and appearing at the hearing before the Court if required to obtain the Court's
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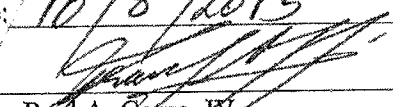
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16 **AGREED TO BY PAUL WOZNIAK:**

17 Date: _____

18 By: _____
19 PAUL WOZNIAK

AGREED TO BY IMUSA USA, LLC:

17 Date: 10/8/2015

18 By: 
19 Raul A. Corzo, IV
20 President and General Manager
IMUSA USA, LLC

21
22 **IT IS SO ORDERED:**

23 Date: _____

24 _____
25 JUDGE OF THE SUPERIOR COURT