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9 Attorneys for Plaintiff
10 PAUL WOZNIAK

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
15

16 PAUL WOZNIAK,

17 Plaintiff,

18 v.

19 TABLETOPS UNLIMITED, INC.; SEARS
20 HOLDINGS CORPORATION; KMART
21 CORPORATION; and DOES 1-150,
22 inclusive,

23 Defendants.
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Case No. RG14750998

[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 Paul Wozniak (“Wozniak”) and
4 Tabletops Unlimited, Inc. (“Tabletops”), with Wozniak and Tabletops 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 Defendant**

11 Tabletops 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 Tabletops 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 prior to use and purchase of the items.
18 4,4'-MDA is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
19 cancer, and has been listed as such since January 1, 1989.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are the nylon cooking utensils containing
22 4,4'-MDA, that are manufactured, imported, sold, or distributed for sale in California by Tabletops,
23 and that are specifically listed on Exhibit A, hereto, hereinafter the “Products”. Products include the
24 utensils whether sold individually (as replacements, for example) or as a set. Products also include
25 any product branded under a third party name, such as a retailer’s private label line.

26 **1.6 Notice of Violation**

27 On or about September 30, 2014, Wozniak served Tabletops, Sears Holdings Corporation,
28 Kmart Corporation, and certain requisite public enforcement agencies with a “60-Day Notice of

1 Violation” (“Notice”) alleging that Tabletops violated Proposition 65 by failing to warn its customers
2 and consumers in California that the Products expose users to 4,4’-MDA. To the best of the Parties’
3 knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth
4 in the Notice. Since the Notice, Tabletops asserts that it tested its products to confirm the 4’4,-MDA
5 reformulation standards set forth below would be met.

6 **1.7 Complaint**

7 On December 10, 2014, Wozniak filed the instant action (“Complaint”) naming Tabletops,
8 and certain retailers, as defendants for the alleged violations of Health and Safety Code section
9 25249.6 that are the subject of the Notice.

10 **1.8 No Admission**

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

19 **1.9 Jurisdiction**

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

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” means June 1, 2016.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

2 **2.1 Reformulated Products**

3 Commencing on the Effective Date, and continuing thereafter, Tabletops shall only purchase,
4 manufacture or import for sale, or otherwise sell in California, "Reformulated Products."

5 For purposes of this Consent Judgment, Reformulated Products shall:

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

14 Products in the stream of commerce (i.e., those manufactured prior to the execution of this
15 Consent Judgment) sold or distributed for sale in California by Tabletops prior to May 31, 2016 for
16 which a civil penalty has been assessed in Section 3.1 of this Consent Judgment, may be sold without
17 further alleged violation. On or before May 31, 2016, an officer of Tabletops shall provide in writing
18 to Plaintiff that Tabletops has met reformulation standards set forth above.

19 **3. MONETARY SETTLEMENT TERMS**

20 **3.1 Civil Penalty**

21 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
22 this Consent Judgment, Tabletops shall pay \$24,000 in civil penalties. The civil penalty payment
23 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-
24 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
25 Assessment ("OEHHA") and twenty-five percent (25%) of the funds remitted to Wozniak.
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1 **3.1.1 Civil Penalty Payment**

2 Tabletops shall make a civil penalty payment of \$24,000 in two checks for the
3 following amounts made payable to: (a) “OEHHA” in the amount of \$18,000 and (b) “Paul Wozniak,
4 Client Trust Account” in the amount of \$6,000 as set forth in Sections 3.3 and 3.4

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, Tabletops expressed a desire to resolve Wozniak’s fees and
10 costs. The Parties then attempted to (and did not) reach an accord on the compensation due to
11 Wozniak and his counsel under the private attorney general doctrine codified at California Code of
12 Civil Procedure section 1021.5. The Parties do agree, however, that Wozniak and his counsel are
13 entitled to their reasonable attorneys’ fees and costs under the California Law, including the
14 prerequisites set forth by Code of Civil Procedure section 1021.5.

15 In an effort to save resources, the Parties have agreed to have the outstanding fee and cost
16 issue adjudicated by mediation initially. If the mediation is unsuccessful after 4 hours, the Parties
17 have further agreed to convey the necessary authority to the neutral conducting the mediation to
18 determine a sum that it deems to be the reasonable attorneys’ fees and costs recoverable by plaintiff’s
19 counsel. The parties agree that if the mediator is required to make a determination of Wozniak’s
20 reasonable fees and costs, that determination shall be final and binding upon the Parties. The cost of
21 mediation shall be equally divided between Wozniak and Tabletops. Nothing in this Consent
22 Judgment shall prohibit Wozniak from seeking recovery of 100% of the fees and costs incurred
23 seeking to recover his attorneys’ fees and costs, including those fees and costs associated with the
24 mediation process if authorized under California law.

25 The parties agree, in an effort to keep the ADR process shortened, (i) to use a single neutral
26 rather than three neutrals; (ii) that the mediation proceedings shall be confidential and privileged
27 except for the written fee and cost award which shall be limited to the amount of the award; and (iii)
28 the briefs be limited to ten (10) pages or less, plus any necessary declarations.

1 The mediation shall take place through AAA or JAMS in San Francisco, California on or
2 before December 15, 2015, with payment to occur within 10 calendar days of the date the mediator
3 awards attorneys' fees and costs or the date the Parties negotiate a fixed sum under mediation,
4 whichever is sooner. Plaintiff shall initiate the mediation process and both parties agree to respond to
5 the list of potential neutrals within three days of the ADR service providing the parties with a list of
6 available neutrals. The funds shall be held in trust and thereafter paid to "The Chanler Group"
7 following the procedure set forth in Sections 3.3 and 3.4.

8 **3.3 Payments Held in Trust**

9 All payments due under this Consent Judgment shall be held by Tabletop's counsel in trust
10 until such time as the Court approves the Parties' settlement.

11 The initial civil penalty payment required by Section 3.1.1 shall be delivered within seven
12 (7) business days of the date that this Consent Judgment is fully executed by the Parties, and held in
13 trust by Tabletops' counsel until the Court grants the motion for approval of this Consent Judgment
14 contemplated by Section 5.

15 The attorneys' fee award set forth in Section 3.2 shall be held in trust by Tabletops'
16 counsel until the Court grants the motion for approval of this Consent Judgment contemplated by
17 Section 5.

18 Within seven (7) business days of receiving payments to be held in trust, Tabletops shall
19 confirm in writing to Wozniak's counsel that the funds have been deposited into a trust account.
20 Within seven (7) business days of the Court's approval of this Consent Judgment, Tabletops'
21 counsel shall tender the payments held in trust pursuant to Sections 3.1 through 3.3 to the address
22 below.

23 **3.4 Payment Address**

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

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

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2 **3.5 Tax Related Documents**

3 Tabletops agrees to provide an IRS 1099 form for its payments under this Consent Judgment
4 to each of the following payees: (a) “Office of Environmental Health Hazard Assessment”; (b) “Paul
5 Wozniak”; and (c) “The Chanler Group.” After this Consent Judgment is fully executed by the
6 Parties, Wozniak or his counsel shall provide Tabletops’ counsel of record with addresses and tax
7 identification numbers for all of the above payees.

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Wozniak’s Public Release of Proposition 65 Claims**

10 Wozniak, acting on his own behalf and in the public interest, waives all claims and fully
11 releases Tabletops and its parents, subsidiaries, affiliated entities under common ownership,
12 directors, officers, employees, and attorneys (“Releasees”) and each entity to whom it directly or
13 indirectly distributes or sells the Products including, but not limited to, its downstream distributors,
14 wholesalers, customers, retailers (including, but not limited, to Sears, Roebuck and Co., erroneously
15 sued herein as Sears Holdings Corporation; and Kmart Corporation), franchisers, cooperative
16 members, licensors and licensees (“Downstream Releasees”) for any violations arising under
17 Proposition 65 for unwarned exposures to 4,4’-MDA from Products manufactured, imported, sold
18 or distributed for sale in California by Tabletops prior to the Effective Date, as set forth in the
19 Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
20 Proposition 65 with respect to exposures to failures to warn about 4,4’-MDA from the Products
21 manufactured, imported, sold or distributed for sale in California by Tabletops before the Effective
22 Date.

23 **4.2 Wozniak’s Individual Release of Claims**

24 Wozniak, in his individual capacity only and *not* in his representative capacity, also provides
25 a release to Tabletops, Releasees, and Downstream Releasees which shall be effective as a full and
26 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
27 attorneys’ fees, damages, losses, claims, liabilities and demands of Wozniak of any nature, character
28 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual

1 exposures to 4,4'-MDA in the Products manufactured, imported, sold or distributed for sale in
2 California by Tabletops before the Effective Date.

3 **4.3 Tabletops' Release of Wozniak**

4 Tabletops, on its own behalf, and on behalf of its past and current agents, representatives,
5 attorneys, successors, and assignees, hereby waives any and all claims against Wozniak and his
6 attorneys and other representatives (or those that could have been taken or made), for any and all
7 actions taken or statements made by Wozniak and his attorneys and other representatives, whether
8 in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this
9 matter, or with respect to the Products through the Effective Date.

10 **5. COURT APPROVAL**

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

14 **6. SEVERABILITY**

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

18 **7. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the state of California
20 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
21 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Tabletops may
22 provide written notice to Wozniak of any asserted change in the law, and shall have no further
23 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
24 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Tabletops from any
25 obligation to comply with any pertinent state or federal toxics control laws. Notably, this Consent
26 Judgment shall not apply to or govern sales of Products to consumers outside the State of California.
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1 **8. NOTICE**

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

5 For Tabletops:

6 Mohsen Asgari, President
7 Tabletops Unlimited, Inc.
8 23000 Avalon Boulevard
9 Carson, CA 90745

10 with a copy to:

11 Donald R. Ramenian, Esq.
12 LA Law Firm, P.C.
13 11355 W. Olympic Blvd, Suite 300
14 Los Angeles, CA 90064
15 Attorneys for Tabletops Unlimited, Inc.

16 For Wozniak:

17 The Chanler Group
18 Attn: Proposition 65 Coordinator
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710-2565

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

24 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

28 **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,
which Wozniak will file with the court. In furtherance of obtaining such approval, Wozniak and

1 Tabletops agree to fully support the entry of this Consent Judgment and to obtain judicial approval of
2 their settlement in a timely manner.

3 **11. MODIFICATION**

4 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
5 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
6 Party, and the entry of a modified consent judgment by the Court. Any motion to modify this
7 Consent Judgment or document filed with the Court after the Effective Date shall be served on the
8 Office of the Attorney General as well.

9 **12. AUTHORIZATION**

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

12 **AGREED TO:**

AGREED TO:

13
14 Date: 11/3/2015 _____

Date: _____

15
16 By:  _____
17 PAUL WOZNIAK

By: _____
Mohsen Asgari, President
Tabletops Unlimited, Inc.

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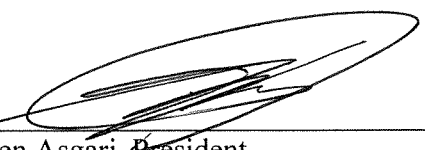
12 **AGREED TO:**

AGREED TO:

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14 Date: _____

Date: 11/3/15

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16 By: _____
17 PAUL WOZNIAK

By:  _____
Mohsen Asgari, President
Tabletops Unlimited, Inc.

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EXHIBIT A

1. *Essential Home 14 Piece Cookware Set*
#05591153-1, UPC #0 48552 43047 0;
2. *Essential Home 14 Piece Cookware Set*
#06257423-1, UPC #0 48552 43046 3; and
3. *Sandra by Sandra Lee 14 PC Tub of Tools Set*
#0-05238202-5, UPC#0 48552 39426 0