

1 Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
2 2560 Ninth Street
Parker Plaza, Suite 214
3 Berkeley, CA 94710-2565
Telephone: (510) 848-8880
4 Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
PAUL WOZNIAK
6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO
9 UNLIMITED CIVIL JURISDICTION
10

11 PAUL WOZNIAK,

12 Plaintiff,

13 v.

14 TRAMONTINA USA, INC., *et al.*

15 Defendants.
16

Case No. CGC-16-550191

[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 Tramontina USA, Inc. (“Tramontina”), with Wozniak and Tramontina each individually referred
5 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 Tramontina 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 Tramontina 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 Tramontina
22 including, but not limited to, *Mainstays Non-Stick Aluminum Cookware Set (Solid Nylon Spoon)*,
23 *MS14-045-450-12, UPC #0 16017 08419 3*, hereinafter the “Products”.

24 **1.6 Notice of Violation**

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

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 February 1, 2016 Wozniak filed the instant action ("Complaint") naming Tramontina 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 Tramontina 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 Tramontina'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 Tramontina as to the allegations contained in the Complaint, that venue is proper in
19 the County of San Francisco, 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 to Approve the Consent Judgment is granted by the Court.

24 **2. INJUNCTIVE RELIEF**

25 **2.1 Products**

26 Commencing on the Effective Date, and continuing thereafter, Tramontina shall only
27 manufacture, sell, or distribute for sale in or into California, Products which:
28

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

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, Tramontina 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.

3.2 Reimbursement of Attorney’s Fees and Costs

The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after the other settlement terms had been finalized, Tramontina expressed a desire to resolve Wozniak’s fees and costs. The Parties then attempted to (and did) reach an accord on the compensation due to Wozniak and his counsel under the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this Consent Judgment. Tramontina shall pay \$22,500 for the fees and costs incurred by Wozniak investigating, bringing this matter to Tramontina’s attention, litigating and negotiating a settlement in the public interest.

1 **3.3 Payments Held in Trust**

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

9 3.3.1 A check in the amount of \$6,750 paid to OEHHA;

10 3.3.2 A check in the amount of \$2,250 paid to "Wozniak Client Trust Account";

11 3.3.3 A check in the amount of \$22,500 paid to The Chanler Group.

12 **3.4 Payment Address**

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

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

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 Wozniak's Public Release of Proposition 65 Claims**

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

1 as set forth in the Notice.

2 **4.2 Wozniak's Individual Release of Claims**

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

10 **4.3 Tramontina's Release of Wozniak**

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

17 **5. COURT APPROVAL**

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

21 **6. SEVERABILITY**

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

25 **7. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the state of California
27 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
28 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Tramontina

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

5 **8. NOTICE**

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

9 **Tramontina**

10 Antonio Galafassi, President
11 Tramontina USA, Inc.
12 12955 West Airport Boulevard
13 Sugar Land, TX 77478

Fredrick A. Rafeedie, Esq.
JONES BELL LLP
601 South Figueroa St, 27th Floor
Los Angeles, CA 90017

13 **Wozniak**

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

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

23 **10. POST EXECUTION ACTIVITIES**

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

1 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
2 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.

4 **11. MODIFICATION**

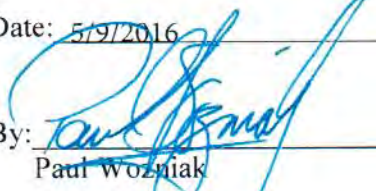
5 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
6 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
7 Party, and the entry of a modified consent judgment by the Court.

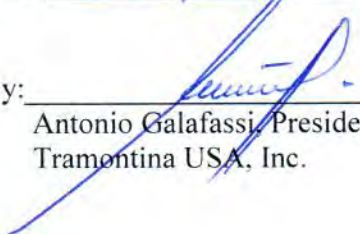
8 **12. AUTHORIZATION**

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

12 **AGREED TO:**

AGREED TO:

13
14 Date: 5/9/2016
15
16 By: 
Paul Wozniak

14 Date: 05/12/16
15
16 By: 
Antonio Galafassi, President
Tramontina USA, Inc.

28