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2 THE CHANLER GROUP  
3 2560 Ninth Street  
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6 Telephone: (510) 848-8880  
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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.<sup>1</sup> and  
26 Orchard Supply Company, LLC (“Orchard”) (Lowe’s HIW, Lowe’s Home Centers and Orchard are

27 <sup>1</sup> 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                    masospectrometer 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.

1                   **3.3.2 Disbursement**

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

6                   **3.3.3 Payment Address**

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

9                   The Chanler Group  
10                   Attn: Proposition 65 Controller  
11                   2560 Ninth Street  
12                   Parker Plaza, Suite 214  
13                   Berkeley, CA 94710

14                   **3.3.4 Required Tax Documentation**

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

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, waives and releases IMUSA  
23 and its parents, subsidiaries, affiliated entities under common ownership, owners, directors, officers,  
24 agents, principals, employees, attorneys, insurers, accountants, predecessors, successors, and  
25 assignees ("Releasees") and each entity to whom IMUSA directly or indirectly distributes, ships or  
26 sells the Products including, but not limited to, it's downstream distributors, wholesalers, customers,  
27 franchisers, franchisees, cooperative members, licensors and licensees, and retailers, including, but  
28 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  
6000 NW 97th Avenue, Unit 26  
Doral, FL 33178

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

12 **Wozniak**

13 Proposition 65 Coordinator  
14 The Chanler Group  
15 2560 Ninth Street  
16 Parker Plaza, Suite 214  
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 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.

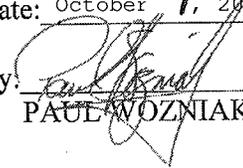
5 **11. MODIFICATION**

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:**

17 Date: October 7, 2015  
18 By:   
19 PAUL WOZNIAK

**AGREED TO BY IMUSA USA, LLC:**

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Raul A. Corzo, IV  
President and General Manager  
IMUSA USA, LLC

21  
22 **IT IS SO ORDERED:**

23 Date: \_\_\_\_\_  
24 \_\_\_\_\_  
25 JUDGE OF THE SUPERIOR COURT  
26  
27  
28

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.

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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.

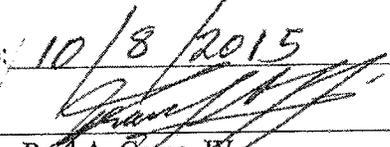
15  
16 **AGREED TO BY PAUL WOZNAK:**

17 Date: \_\_\_\_\_

18 By: \_\_\_\_\_  
19 PAUL WOZNAK

16 **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  
24 Date: \_\_\_\_\_

\_\_\_\_\_  
25 JUDGE OF THE SUPERIOR COURT  
26  
27  
28