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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:  
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- 1           *i.*    contain less than or equal to 200 parts per million (“ppm”) 4,4’-MDA by weight using  
2                    validated preparation and analytical methods used to detect the presence of 4,4’-MDA  
3                    in a solid substance, and;
- 4            *ii.*   produce a leach result of 10 µg/L or less 4,4’-MDA by digesting the food contact end  
5                    of the product into 100 ml of 3% acetic acid de-ionized water for 2 hours at 100°C,  
6                    replenishing the acetic acid solution as needed to maintain 100 ml, and analyzing the  
7                    leachate using a validated method to detect the presence of 4,4’-MDA in a liquid.

8            The testing shall be conducted in an accredited laboratory with qualified personnel. All  
9            analytical reports must contain quality control data that verify the laboratory’s performance for the  
10           results in each analytical report.

11    **3.    MONETARY SETTLEMENT TERMS**

12            **3.1    Civil Penalty Payments**

13            Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in  
14            this Consent Judgment, Tramontina shall pay \$9,000 in civil penalties. The civil penalty payment  
15            shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-  
16            five percent (75%) of the funds paid to the California Office of Environmental Health Hazard  
17            Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Wozniak.

18            **3.2    Reimbursement of Attorney’s Fees and Costs**

19            The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without  
20            reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to  
21            be resolved after the material terms of this Consent Judgment had been settled. Shortly after the  
22            other settlement terms had been finalized, Tramontina expressed a desire to resolve Wozniak’s fees  
23            and costs. The Parties then attempted to (and did) reach an accord on the compensation due to  
24            Wozniak and his counsel under the private attorney general doctrine codified at California Code of  
25            Civil Procedure section 1021.5 for all work performed through the mutual execution of this Consent  
26            Judgment. Tramontina shall pay \$22,500 for the fees and costs incurred by Wozniak investigating,  
27            bringing this matter to Tramontina’s attention, litigating and negotiating a settlement in the public  
28            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  
Sugar Land, TX 77478

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

13 **Wozniak**

14 Proposition 65 Coordinator  
15 The Chanler Group  
16 2560 Ninth Street  
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 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.

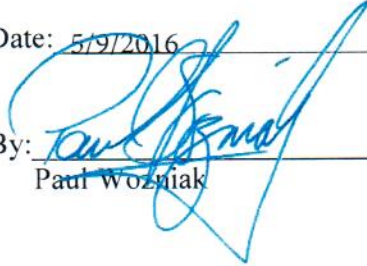
8 **12. AUTHORIZATION**

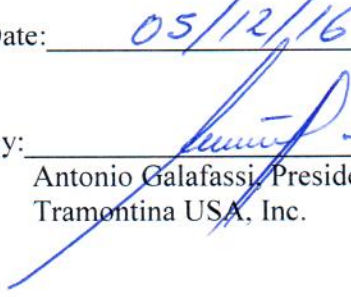
9 The undersigned are authorized to execute this Consent Judgment and have read, understood,  
10 and agree to all of the terms and conditions contained herein.

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**AGREED TO:**

**AGREED TO:**

Date: 5/9/2016  
By:   
Paul Wozniak

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