

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 04/08/2011

TIME: 11:04:00 AM

DEPT: C-70

JUDICIAL OFFICER PRESIDING: Randa Trapp

CLERK: Anthony Shirley

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2010-00084587-CU-MC-CTL** CASE INIT.DATE: 01/29/2010

CASE TITLE: **Wimberly vs. Ontel Products Inc**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

APPEARANCES

The Court has received and approved the Amended and Restated Stipulation and Order Re Consent Judgment.

The Court Orders this case dismissed without prejudice.

The Court will retain jurisdiction to reopen case for any good cause, including but not limited to entry of judgment if defendant(s) fail to abide by the provisions of the consent judgment / settlement agreement.

Randa Trapp

Judge Randa Trapp

1 Stephen Ure, Esq., (CSB# 188244)
2 **LAW OFFICES OF STEPHEN URE, PC**
3 1518 Sixth Avenue
4 San Diego, CA 92101
5 Telephone: 619-235-5400
6 Facsimile: 619-235-5404

7 *Attorneys for Plaintiff, Evelyn Wimberley*

FILED
Clerk of the Superior Court

MAR 14 2011

By: Anthony Shirley, Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**
10 **UNLIMITED CIVIL JURISDICTION**

13 **EVELYN WIMBERLEY,**)

14)
15 **Plaintiff**)

16)
17 **and**)

18 **ONTEL PRODUCTS, INC. ,**)
19 **CVS/PHARMACY, INC.**)

20)
21 **Defendants.**)

CASE NO.:

37-2010-00084587-CU-MC-CTL

~~**[PROPOSED]**~~

JUDGMENT APPROVING

PROP 65 STIPULATION AND

CONSENT JUDGMENT

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

Date: April 15, 2011

Time: 11:00AM

Dept. C-70

Judicial Officer: Randa Trapp

Action Filed: January 29, 2010

EXHIBIT 1

1 Stephen Ure, Esq., (CSB# 188244)
2 **LAW OFFICES OF STEPHEN URE, PC**
3 1518 Sixth Avenue
4 San Diego, CA 92101
5 Telephone: 619-235-5400
6 Facsimile: 619-235-5404

7 *Attorneys for Plaintiff, Evelyn Wimberley*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10
11
12 **EVELYN WIMBERLEY,**) **CASE NO.: 37-2010-00084587-CU-MC-CTL**
13)
14 **Plaintiff,**) **AMENDED AND RESTATED**
15 **and**) **STIPULATION AND [PROPOSED]**
16) **ORDER RE CONSENT JUDGMENT**
17) **Complaint filed: January 29, 2010**
18 **ONTEL PRODUCTS, INC.**)
19 **CVS/Pharmacy; CVS Caremark**)
20 **Corporation; and DOES 1-150,**)
21 **inclusive**)
22 **Defendants.**)

23 **1. INTRODUCTION** This Stipulation and proposed Order re Consent Judgment (“Consent
24 Judgment”) amends and restates the agreement earlier entered into by the parties and last
25 signed on June 14, 2010. The only change made from the earlier agreement is in Section 2.3
26 (“Notice and Cure Requirements”) wherein the term “one hundred eighty days” has been
27 changed to “thirty days.” This change was made in consultation with the California Attorney
28 General’s Office.

STIPULATION AND [PROPOSED] ORDER RE CONSENT JUDGMENT

1
2 **1.1 Evelyn Wimberley and Ontel Products Corporation**

3 This Consent Judgment is entered into by and between Plaintiff Evelyn Wimberley
4 (hereafter “Wimberley” or “Plaintiff”), and defendants Ontel Products Corporation (hereinafter
5 “Ontel”) and CVS Pharmacy, Inc. (“CVS”). Wimberley, Ontel, and CVS are collectively
6 referred to as the “Parties” and individually as a “Party.”
7

8 **1.2 Plaintiff Evelyn Wimberley**

9 Wimberley is an individual residing in California who seeks to promote awareness of
10 exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
11 substances contained in consumer products.
12

13 **1.3 Defendants Ontel Products Corporation and CVS**

14 Each of Ontel and CVS employs ten or more persons and is a person in the course of
15 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
16 California health & Safety Code § 25249.6 *et seq.* (hereinafter “Proposition 65”).
17

18 **1.4 General Allegations**

19 Wimberley alleges that Ontel manufactured, distributed and/or sold Battery Operated LED
20 Lights (referred to herein as the “Products”) containing Lead (hereinafter “Lead”) in the State of
21 California without the requisite health warnings. Lead is listed pursuant to Proposition 65 as a
22 chemical known to the State of California to cause birth defects and other reproductive harm.
23
24 Lead shall be referred to hereinafter as the “Listed Chemical.”

25 **1.5 Product Description**

26 The Products that are covered by this Consent Judgment are defined as follows: Battery
27 Operated Lights containing Lead, such as the *Stick “N” Click (#7 3554110506 7)*.
28

1.6 Notice of Violation

1 Wimberley asserts that on October 3, 2009, she served Ontel, CVS and the Office of the
2 California Attorney General of the State of California counties' District Attorneys and all City
3 Attorneys of California cities with populations exceeding 750,000, (collectively, "Public
4 Enforcers") with a document entitled "60-Day Notice of Violation" (the "Original Notice") that
5 provided Ontel, CVS and Public Enforcers with notice of alleged violations of Proposition 65 for
6 failing to warn consumers that battery operated LED lights that Ontel sold allegedly exposed
7 users in California to Lead. To the best of the Parties' knowledge, no Public Enforcer has
8 diligently prosecuted any of the allegations set forth in the Notice.

9 **1.7 Complaint**

10 On January 29, 2010 Wimberley, who was and is acting in the interest of the general
11 public in California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for
12 the County of San Diego against Ontel, CVS Pharmacy, and CVS Caremark Corporation and
13 Does 1 through 150, alleging violations of Proposition 65 based on the allegations in the Original
14 Notice. Wimberley agrees to dismiss with prejudice CVS Caremark Corporation, upon filing the
15 Motion for Court approval of the Consent Judgment

16 **1.8 No Admission**

17 Ontel and CVS deny the material, factual and legal allegations contained in Wimberley's
18 Notice, and Ontel maintains that all Products that it has manufactured, sold and distributed in
19 California have been and are in compliance with all laws. Nothing in this Consent Judgment
20 shall be construed as an admission by Ontel or CVS of any fact, finding, issue of law, or
21 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
22 an admission by Ontel or CVS of any fact, finding, conclusion, issue of law, or violation of law,
23 such being specifically denied by Ontel and CVS. However, this section shall not diminish or
24 otherwise affect the obligations, responsibilities, and duties of Ontel or CVS under this Consent
25 Judgment.
26 Judgment.

27 **1.9 Consent to Jurisdiction**

1 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction
2 over Ontel and CVS as to the allegations contained in the Complaint, that venue is proper in the
3 County of San Diego and this Court has jurisdiction to enter and enforce this consent Judgment
4 as a full and final binding resolution of all claims which were or could have been raised in the
5 Complaint against Ontel and CVS based on the facts alleged therein and in the Notice.
6

7 **1.10 Effective Date**

8 For purposes of this Consent Judgment, the term “Effective Date” shall mean thirty days
9 after the entry of this Consent Judgment.
10

11 **1.11 Compliance with California Regulations** Plaintiff shall comply with 11 CCR Sections
12 3003, 3004 and 3008.

13 **2. WARNINGS**

14 After the Effective Date, Ontel shall not expose any residents of California to Products
15 containing Lead unless such Products are sold with the warning set out in Section 2.1 or are
16 subject to one of the exceptions set forth in Section 2.2.
17

18 **2.1 Product Warnings**

19 Any warning issued for Products pursuant to this Section shall bear the warning language
20 set out in 27 Cal. Code of Regs. § 25603.2 (the “Warning”).
21

22 **2.2 Exceptions To Warning Requirement**

23 The warning requirement set forth in Section 2.1 shall not apply to any Products which are
24 described in any one of subsections (i) and (ii) below (herein referred to as the “Compliance
25 Standard”):
26

- 27 (i) Products received in inventory before the Effective Date;
28

1 (ii) Products with respect to which the paint and plastic frames and see-through
2 covers that are likely to be touched, contacted or handled by a user during ordinary
3 installation, cleaning, maintenance, or use contain no more than 600 parts per million
4 Lead.
5

6 **2.3 Notice and Cure Requirements**

7 Any Person alleging that Ontel has not complied with Section 2.2 (ii) above must
8 meet the following requirements before asserting that Ontel has violated the terms of this
9 Consent Judgment.
10

11 (a) Notice must be provided pursuant to this Consent Judgment to Ontel in
12 writing of the alleged lack of compliance with Section 2.2 (ii);

13 (b) The required Notice must include all test results reflecting laboratory
14 analysis for Lead content of the Product;

15 (c) If only one test result is provided as part of the required Notice, the one
16 test result must show in excess of 1,800 parts per million Lead;

17 (c) The required Notice to Ontel must also include shipment of all Products to
18 Ontel that allegedly contained in excess of 1,800 ppm Lead.
19

20 If proper Notice is provided to Ontel, Ontel shall have the opportunity to cure any
21 alleged violation. Ontel shall be deemed to have cured any alleged violation of the terms
22 of this Consent Judgment, if it meets the following requirements:
23

24 (a) Within thirty days from receipt of the required Notice, including the test
25 results and the Product(s), Ontel has provided to the Party alleging the violations test
26 results which demonstrate 600 or fewer parts per million Lead in the tested Product; or
27
28

1 (b) Ontel produces evidence showing that it started including the Warning on
2 new shipments of the Product to residents of California within thirty days of receipt of
3 the required Notice.
4

5 **2.4 Existing and Future Products**

6 (a) Any Products that have been distributed, shipped, or sold, or that are otherwise in the
7 stream of commerce, prior to the Effective Date, shall be released from any claims that were
8 brought or that could be brought by Wimberley in the Complaint, as though they were Claims
9 within the meaning of Section 5.1, below. As a result, the obligations of this Section 2 do not
10 apply to such Products.
11

12 (b) Ontel shall periodically test newly manufactured or imported Products to be sold in
13 California to assure that it either meets the Compliance Standard or carries the Warning.
14

15 **3. MONETARY PAYMENTS**

16 In settlement of all claims referred to in this Consent Judgment, the total monetary
17 settlement payments to be paid by Ontel are set forth in section 3 and 4, which shall subsequently
18 and within a commercially reasonable time be distributed by Law Offices of Stephen Ure, PC as
19 specified herein.
20

21 **3.1 Payment Pursuant to Health & Safety Code § 25249.7**

22 Ontel shall pay \$1000.00 in civil penalties to be apportioned in accordance with California
23 Health & Safety Code §25192, with 75% of these funds remitted to the State of California's
24 OEHHA and the remaining 25% of the penalty remitted to Evelyn Wimberley as provided by
25 California Health & Safety Code § 25249.12(d).
26

27 Ontel shall issue two separate checks for the penalty payment: (a) one check made
28 payable to "Law Offices of Stephen Ure, PC. in Trust For OEHHA" in the amount of \$750.00

1 representing 75% of the total penalty; and (b) one check to “Law Offices of Stephen Ure, PC. in
2 Trust for Wimberley” in the amount of \$250.00 representing 25% of the total penalty. A Form
3 1099 shall be issued for the above payment:

4 (a) OEHHA, P.O. Box 4010, CA 95814 (EIN: 68-0284486); and

5
6 (b) The Law Offices of Stephen Ure, PC shall issue a Form 1099 to Evelyn Wimberley, for
7 the payment to Wimberley.

8 Payment shall be delivered to Mrs. Wimberley’s counsel on or before June 10, 2010 at the
9 following address:

10
11 Law Offices of Stephen Ure, PC.
12 1518 Sixth Avenue
San Diego, CA 92101

13 **4. REIMBURSEMENT OF FEES AND COSTS**

14 **4.1 Attorney Fees and Costs**

15 The parties acknowledge that Mrs. Wimberley and her counsel offered to resolve this
16 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
17 leaving this fee issue to be resolved after the material terms of the agreement had been settled.

18 The Parties then attempted to (and did) reach an accord on the compensation due to Wimberley
19 and her counsel under general contract principles and the private attorney general doctrine
20 codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through
21 the mutual execution of this agreement. The reimbursement of attorneys’ fees and costs under
22 Section 4.1 shall be paid as follows:
23
24

25 Ontel shall reimburse Wimberley and her counsel the total of \$19,000.00 for fees and costs
26 incurred as a result of investigating, bringing this matter to Ontel’s attention and negotiating a
27 settlement in the public interest. Law Offices of Stephen Ure, PC. will cause a complete W-9
28

1 Form with respect to itself to be provided to Ontel or Ontel's counsel prior to payment. Ontel
2 shall issue a 1099 to Law Offices of Stephen Ure, PC. for the above fees and costs, plus the
3 payment to Wimberley under Section 3.1 (\$19,250.00 in total). The payment shall be made
4 payable to "Law Offices of Stephen Ure, PC" and shall be delivered on or before June 10, 2010
5 to the following address:
6

7 Law Offices of Stephen Ure, PC.
8 1518 Sixth Avenue
9 San Diego, CA 92101

10 **5. RELEASE OF ALL CLAIMS**

11 **5.1 Release of Ontel, CVS and Ontel's Downstream Customers**

12 In further consideration of the promises and agreements herein contained, and for the
13 payments to be made pursuant to Sections 3 and 4, Wimberley on behalf of herself, her past and
14 current agents, representatives, attorneys, successors, and/or assignees, and on behalf of the
15 general public to the extent allowed by law, hereby waives all rights to institute or participate in,
16 directly or indirectly, any form of legal action and releases all claims, including without
17 limitation, all actions, and causes of action, in law or in equity, suits, liabilities demands,
18 obligations, damages, costs, fines penalties losses, or expenses (including but not limited to,
19 investigation fees, expert fees, and attorney's fees) or any nature whatsoever, whether known or
20 unknown, fixed or contingent (collectively "claims") against Ontel and CVS and each of Ontel's
21 downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees,
22 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates,
23 subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders,
24 agents, and employees, and sister and parent entities (collectively "Releasees"). This release is
25 limited to those claims that arise under Proposition 65, as such claims relate to Ontel's alleged
26
27
28

1 failure to warn about exposures to or identification of the Listed Chemical contained in the
2 Products. This release is intended to be a full, final, and binding resolution of those claims that
3 arise from or relate to facts alleged in the Original Notice and the Complaint, as against Ontel
4 and CVS and Releasees, concerning Ontel's and CVS's alleged failure to warn about exposures
5 to Lead contained in the Products.
6

7 Wimberley also, on behalf of herself, her past and current agents, representatives, attorneys,
8 successors, and/or assignees, in her individual capacity only, provides a general release herein
9 which shall be effective as a full and final accord and satisfaction, and as a bar to all claims of
10 Wimberley against Ontel and CVS and the Releasees of any nature, character or kind, known or
11 unknown, suspected or unsuspected, arising under Proposition 65 or an alleged failure to provide
12 warnings for exposures to any Proposition 65-listed chemical from any products manufactured,
13 distributed or sold by Ontel. Wimberley acknowledges that she is familiar with Section 1542 of
14 the California Civil Code, which provides as follows:
15
16

17 A general release does not extend to claims which the creditor
18 does not know or suspect to exist in his favor at the time of
19 executing the release, which if known by him must have
20 materially affected his settlement with the debtor.

21 Wimberley, in her individual capacity only, expressly waives and relinquishes any and all
22 rights and benefits which she may have under, or which may be conferred on her by the
23 provisions of Section 1542 of the California Civil Code as well as under any other state or
24 federal statute or common law principle of similar effect, to the fullest extent that she may
25 lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such
26 intention, the release hereby given shall remain in effect as a full and complete release
27 notwithstanding the discovery or existence of any such additional or different claims or facts
28 arising out of the released matters.

1 Notwithstanding the foregoing, this release shall not limit or affect Wimberley's right to
2 enforce the terms of this Consent Judgment.

3 **5.2 Effect of Consent Judgment**

4 Compliance with the terms of this Consent Judgment resolves any issue, now and in the
5 future, concerning compliance by Ontel, CVS, and the Releasees with the requirements of
6 Proposition 65 with respect to alleged exposure to Lead from the Products distributed or sold by
7 Ontel, CVS, and the Releasees.
8

9 **5.3 Ontel's Release of Wimberley**

10 Ontel waives any and all claim against Wimberley, her attorney and other representatives
11 for any and all actions taken or statements made (or those that could have been taken or made)
12 by Wimberley and her attorneys and other representatives, whether in the course of investigating
13 claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or
14 with respect to the Products. Ontel provides a general release herein which shall be effective as a
15 full and final accord and satisfaction, and as a bar to all released claims described herein that it
16 may have against Wimberley, of any nature, character or kind, known or unknown, and
17 suspected or unsuspected. Ontel acknowledges that it is familiar with Section 1542 of the
18 California civil Code, which provides as follows:
19
20

21 A general release does not extend to claims which the creditor
22 does not know or suspect to exist in his favor at the time of
23 executing the release, which if known by him must have
24 materially affected his settlement with the debtor.

25 Ontel expressly waives and relinquishes any and all rights and benefits which it may have
26 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil
27 Code as well as under any other state or federal statute or common law principles of similar
28 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the

1 released matters. In furtherance of such intention, the release hereby given shall be and remain in
2 effect as a full and complete release notwithstanding the discovery or existence of any such
3 additional or different claims or facts arising out of the released matters.
4

5 Notwithstanding the foregoing, this release shall not limit or affect Ontel's and CVS'
6 right to enforce the terms of this Consent Judgment.

7 **6. COURT APPROVAL**

8 This Consent Judgment is not effective until it is approved and entered by the Court and shall
9 be null and void if, for any reason, it is not approved and entered by the Court within one year
10 after it has been fully executed by all Parties. If the Court does not approve the Consent
11 Judgment, the Parties shall meet and confer as to (and jointly agree on) whether to modify the
12 language or appeal the ruling. If the Parties do not jointly agree on a course of action to take,
13 then the case shall proceed in its normal course on the trial court's calendar, and any monies that
14 have been provided to Plaintiff, or her counsel, pursuant Section 3 and/or Section 4 above, shall
15 be refunded within thirty (30) days of Ontel providing written notice thereof. In the event that
16 this Consent Judgment is entered by the Court and subsequently overturned by any appellate
17 court, any monies that have been provided to Plaintiff, or her counsel pursuant to Section 3
18 and/or Section 4 above, shall be refunded within fifteen (15) days of the appellate decision
19 becoming final. If the Court's approval is ultimately overturned by an appellate court, the Parties
20 shall meet and confer as to (and jointly agree on) whether to modify the terms of the Consent
21 Judgment. If the Parties do not jointly agree on a course of action to take, then the case shall
22 proceed in its normal course on the trial court's calendar.
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26 **7. ENTRY OF CONSENT JUDGMENT**
27
28

1 The parties hereby request that the Court promptly enter this Consent Judgment. Upon entry of
2 the Consent Judgment, the Parties waive their respective rights to a hearing or trial on the
3 allegations of the Complaint.
4

5 **8. SEVERABILITY**

6 If, subsequent to the execution of this Consent Judgment, any of the provision of this
7 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
8 provisions remaining shall not be adversely affected.
9

10 **9. ENTIRE AGREEMENT**

11 This Consent Judgment contains the sole and entire agreement and understanding of the
12 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
13 negotiations, commitments, and understandings related hereto. No. representations, oral or
14 otherwise, express or implied, other than those contained herein haven been made by any Party
15 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
16 deemed to exist or to bind any of the Parties.
17

18 **10. 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 or is
21 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Ontel
22 shall provide written notice to Wimberley of any asserted change in the law, and shall have no
23 further obligation pursuant to this Consent Judgment with respect to and to the extent that, the
24 Products are so affected.
25

26 **11. NOTICES**
27
28

1 Unless specified herein, all correspondence and notices required to be provided pursuant to
2 this Consent Judgment shall be in writing and personally delivered or sent by (i) first-class mail
3 or (ii) overnight courier on any Party by the other Party at the following addresses:
4

5 To Ontel Products Corporation:

6 President
7 Ontel Products Corporation
8 21 Law Drive
9 Fairfield, New Jersey 07004

10 To CVS:

11 Legal Department - Intellectual Property
12 CVS Pharmacy, Inc.
13 One CVS Drive
14 Woonsocket, Rhode Island 02895

15 To Evelyn Wimberley:

16 Proposition 65 Controller
17 Law Offices of Stephen Ure, PC.
18 1518 Sixth Avenue
19 San Diego, CA 92101

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

22 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

23 This Consent Judgment may be executed in counterparts and by facsimile or pdf (scanning),
24 each of which shall be deemed an original and all of which, when taken together, shall constitute
25 one and the same document.

26 **13. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)**

27 Wimberley agrees to comply with the reporting form requirements referenced in California
28 Health and Safety Code § 25249.7(f).

1 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

2 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
3 noticed motion is required to obtain judicial approval of this Consent Judgment. Wimberley,
4 Ontel and CVS agree to mutually employ their best efforts to support the entry of this agreement
5 as a Consent Judgment by the trial court and defend the agreement against any appellate review.
6 Accordingly, Wimberley agrees to prepare and file a motion to approve the Consent Judgment, at
7 her own cost, and Ontel and CVS agree to support it.
8

9 **15. MODIFICATION AND ENFORCEMENT**

10 This Consent Judgment may be modified only: (1) by written agreement of the parties and
11 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion
12 of any Party and entry of a modified consent judgment by the Court. In the event that, after the
13 Parties' execution of this Consent Judgment: (1) a dispute arises with respect to any provisions
14 of this Consent Judgment; or (2) either Party seeks to enforce the terms of this Consent
15 Judgment, the prevailing party shall be entitled to reasonable attorneys' fees and costs.
16
17

18 **16. EFFECT OF CONSENT JUDGMENT**

19 This Consent Judgment shall apply to, be binding upon, and inure to the benefit of, the
20 Parties and their respective successors and assigns.
21

22 **17. AUTHORIZATION**

23 The undersigned are authorized to execute this Consent Judgment on behalf of their
24 respective parties and have read, understood, and agree to all of the terms and conditions of this
25 Consent Judgment.
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AGREED TO:

AGREED TO:

Date: _____

Date: 24/NOVEMBER/2010

By: _____

By: 

EVELYN WIMBERLEY

ONTEL PRODUCTS CORPORATION
JASON BIZIAK

AGREED TO:

Date: November 24, 2010

By: 

CVS PHARMACY, INC.
Karen L. Feisthame

APPROVED AS TO FORM:

APPROVED AS TO FORM:

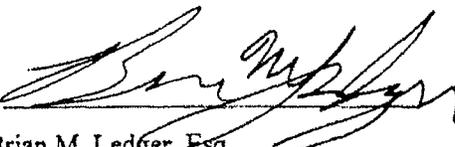
Date: _____

Date: 11/24/10

LAW OFFICES OF STEPHEN URE, PC.

GORDON & REES LLP

By: _____

By: 

Stephen Ure, Esq.
Attorneys for
EVELYN WIMBERLEY

Brian M. Ledger, Esq.
Attorneys for
ONTEL PRODUCTS CORPORATION and CVS
PHARMACY, INC.

STIPULATION AND [PROPOSED] ORDER RE CONSENT JUDGMENT

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AGREED TO:

AGREED TO:

Date: 11-29-10

Date: _____

By: 

By: _____

EVELYN WIMBERLEY

ONTEL PRODUCTS CORPORATION

AGREED TO:

Date: _____

By: _____

CVS PHARMACY, INC.

APPROVED AS TO FORM:

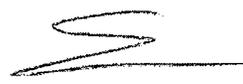
APPROVED AS TO FORM:

Date: 11.29.10

Date: _____

LAW OFFICES OF STEPHEN URE, PC.

GORDON & REES LLP

By: 

By: _____

Stephen Ure, Esq.
Attorneys for
EVELYN WIMBERLEY

Brian M. Ledger, Esq.
Attorneys for
ONTEL PRODUCTS CORPORATION and CVS
PHARMACY, INC.

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5 Telephone: 619-235-5400
6 Facsimile: 619-235-5404

7 *Attorneys for Plaintiff, Evelyn Wimberley*

FILED
Clerk of the Superior Court

MAR 14 2011

By: Anthony Shirley, Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**
10 **UNLIMITED CIVIL JURISDICTION**

13 **EVELYN WIMBERLEY,**

14)
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Plaintiff

ONTEL PRODUCTS, INC.
CVS/PHARMACY, INC

Defendants.

CASE NO.:

37-2010-00084587-CU-MC-CTL

**[PROPOSED] ORDER APPROVING
STIPULATION AND ORDER RE:
CONSENT JUDGMENT**

Date: April 15, 2011

Time: 11:00AM

Dept. C-70

Judicial Officer: Randa Trapp

Action Filed: January 29, 2010

22 Plaintiff, Evelyn Wimberley and Defendants, Ontel Products, Inc and
23 CVS/Pharmacy, Inc., having agreed through their respective counsel that judgment be entered
24 pursuant to the terms of the Stipulation and Order Re: Consent Judgment entered into by the
25 parties, and attached to the Judgment pursuant to the terms of the Stipulation and Order Re:
26 Consent Judgment as Exhibit 1. After consideration of the papers submitted and arguments
27 presented, the Court finds that the settlement agreement set out in the attached Consent
28 Judgment meets the criteria established by Health & Safety Code §25249.7, in that:

- 1 a) the health hazard warning required by the Stipulation and Order Re: Consent
2 Judgment complies with Health & Safety Code §25249.7;
3 b) the reimbursement of fees and costs to be paid pursuant to the parties'
4 Stipulation and Order Re: Consent Judgment is reasonable under California
5 law; and
6 c) the civil penalty amount to be paid pursuant to the parties' Stipulation and
7 Order Re: Consent Judgment is reasonable
8

9 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that pursuant to Code of Civil
10 Procedure §664.6, judgment is entered in accordance with the Consent Judgment attached hereto
11 as Exhibit 1.
12

13 **IT IS SO ORDERED.**

14
15 **Dated: MAR 14 2011**

RANDA TRAPP

16 **JUDGE OF THE SAN DIEGO SUPERIOR COURT**
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EXHIBIT 1

1 Stephen Ure, Esq., (CSB# 188244)
2 **LAW OFFICES OF STEPHEN URE, PC**
3 1518 Sixth Avenue
4 San Diego, CA 92101
5 Telephone: 619-235-5400
6 Facsimile: 619-235-5404

7 *Attorneys for Plaintiff, Evelyn Wimberley*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10
11
12 **EVELYN WIMBERLEY,**) **CASE NO.: 37-2010-00084587-CU-MC-CTL**
13)
14 **Plaintiff,**) **AMENDED AND RESTATED**
15 **and**) **STIPULATION AND [PROPOSED]**
16) **ORDER RE CONSENT JUDGMENT**
17) **Complaint filed: January 29, 2010**
18 **ONTEL PRODUCTS, INC.**)
19 **CVS/Pharmacy; CVS Caremark**)
20 **Corporation; and DOES 1-150,**)
21 **inclusive**)
22 **Defendants.**)

23 **1. INTRODUCTION** This Stipulation and proposed Order re Consent Judgment (“Consent
24 Judgment”) amends and restates the agreement earlier entered into by the parties and last
25 signed on June 14, 2010. The only change made from the earlier agreement is in Section 2.3
26 (“Notice and Cure Requirements”) wherein the term “one hundred eighty days” has been
27 changed to “thirty days.” This change was made in consultation with the California Attorney
28 General’s Office.

STIPULATION AND [PROPOSED] ORDER RE CONSENT JUDGMENT

1
2 **1.1 Evelyn Wimberley and Ontel Products Corporation**

3 This Consent Judgment is entered into by and between Plaintiff Evelyn Wimberley
4 (hereafter “Wimberley” or “Plaintiff”), and defendants Ontel Products Corporation (hereinafter
5 “Ontel”) and CVS Pharmacy, Inc. (“CVS”). Wimberley, Ontel, and CVS are collectively
6 referred to as the “Parties” and individually as a “Party.”
7

8 **1.2 Plaintiff Evelyn Wimberley**

9 Wimberley is an individual residing in California who seeks to promote awareness of
10 exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
11 substances contained in consumer products.
12

13 **1.3 Defendants Ontel Products Corporation and CVS**

14 Each of Ontel and CVS employs ten or more persons and is a person in the course of
15 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
16 California health & Safety Code § 25249.6 *et seq.* (hereinafter “Proposition 65”).
17

18 **1.4 General Allegations**

19 Wimberley alleges that Ontel manufactured, distributed and/or sold Battery Operated LED
20 Lights (referred to herein as the “Products”) containing Lead (hereinafter “Lead”) in the State of
21 California without the requisite health warnings. Lead is listed pursuant to Proposition 65 as a
22 chemical known to the State of California to cause birth defects and other reproductive harm.
23 Lead shall be referred to hereinafter as the “Listed Chemical.”
24

25 **1.5 Product Description**

26 The Products that are covered by this Consent Judgment are defined as follows: Battery
27 Operated Lights containing Lead, such as the *Stick “N” Click (#7 3554110506 7)*.
28

1.6 Notice of Violation

1 Wimberley asserts that on October 3, 2009, she served Ontel, CVS and the Office of the
2 California Attorney General of the State of California counties' District Attorneys and all City
3 Attorneys of California cities with populations exceeding 750,000, (collectively, "Public
4 Enforcers") with a document entitled "60-Day Notice of Violation" (the "Original Notice") that
5 provided Ontel, CVS and Public Enforcers with notice of alleged violations of Proposition 65 for
6 failing to warn consumers that battery operated LED lights that Ontel sold allegedly exposed
7 users in California to Lead. To the best of the Parties' knowledge, no Public Enforcer has
8 diligently prosecuted any of the allegations set forth in the Notice.

9 **1.7 Complaint**

10 On January 29, 2010 Wimberley, who was and is acting in the interest of the general
11 public in California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for
12 the County of San Diego against Ontel, CVS Pharmacy, and CVS Caremark Corporation and
13 Does 1 through 150, alleging violations of Proposition 65 based on the allegations in the Original
14 Notice. Wimberley agrees to dismiss with prejudice CVS Caremark Corporation, upon filing the
15 Motion for Court approval of the Consent Judgment

16 **1.8 No Admission**

17 Ontel and CVS deny the material, factual and legal allegations contained in Wimberley's
18 Notice, and Ontel maintains that all Products that it has manufactured, sold and distributed in
19 California have been and are in compliance with all laws. Nothing in this Consent Judgment
20 shall be construed as an admission by Ontel or CVS of any fact, finding, issue of law, or
21 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
22 an admission by Ontel or CVS of any fact, finding, conclusion, issue of law, or violation of law,
23 such being specifically denied by Ontel and CVS. However, this section shall not diminish or
24 otherwise affect the obligations, responsibilities, and duties of Ontel or CVS under this Consent
25 Judgment.
26 Judgment.

27 **1.9 Consent to Jurisdiction**

1 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction
2 over Ontel and CVS as to the allegations contained in the Complaint, that venue is proper in the
3 County of San Diego and this Court has jurisdiction to enter and enforce this consent Judgment
4 as a full and final binding resolution of all claims which were or could have been raised in the
5 Complaint against Ontel and CVS based on the facts alleged therein and in the Notice.
6

7 **1.10 Effective Date**

8 For purposes of this Consent Judgment, the term “Effective Date” shall mean thirty days
9 after the entry of this Consent Judgment.
10

11 **1.11 Compliance with California Regulations** Plaintiff shall comply with 11 CCR Sections
12 3003, 3004 and 3008.

13 **2. WARNINGS**

14 After the Effective Date, Ontel shall not expose any residents of California to Products
15 containing Lead unless such Products are sold with the warning set out in Section 2.1 or are
16 subject to one of the exceptions set forth in Section 2.2.
17

18 **2.1 Product Warnings**

19 Any warning issued for Products pursuant to this Section shall bear the warning language
20 set out in 27 Cal. Code of Regs. § 25603.2 (the “Warning”).
21

22 **2.2 Exceptions To Warning Requirement**

23 The warning requirement set forth in Section 2.1 shall not apply to any Products which are
24 described in any one of subsections (i) and (ii) below (herein referred to as the “Compliance
25 Standard”):
26

- 27 (i) Products received in inventory before the Effective Date;
28

1 (ii) Products with respect to which the paint and plastic frames and see-through
2 covers that are likely to be touched, contacted or handled by a user during ordinary
3 installation, cleaning, maintenance, or use contain no more than 600 parts per million
4 Lead.
5

6 **2.3 Notice and Cure Requirements**

7 Any Person alleging that Ontel has not complied with Section 2.2 (ii) above must
8 meet the following requirements before asserting that Ontel has violated the terms of this
9 Consent Judgment.
10

11 (a) Notice must be provided pursuant to this Consent Judgment to Ontel in
12 writing of the alleged lack of compliance with Section 2.2 (ii);

13 (b) The required Notice must include all test results reflecting laboratory
14 analysis for Lead content of the Product;

15 (c) If only one test result is provided as part of the required Notice, the one
16 test result must show in excess of 1,800 parts per million Lead;

17 (c) The required Notice to Ontel must also include shipment of all Products to
18 Ontel that allegedly contained in excess of 1,800 ppm Lead.
19

20 If proper Notice is provided to Ontel, Ontel shall have the opportunity to cure any
21 alleged violation. Ontel shall be deemed to have cured any alleged violation of the terms
22 of this Consent Judgment, if it meets the following requirements:
23

24 (a) Within thirty days from receipt of the required Notice, including the test
25 results and the Product(s), Ontel has provided to the Party alleging the violations test
26 results which demonstrate 600 or fewer parts per million Lead in the tested Product; or
27
28

1 (b) Ontel produces evidence showing that it started including the Warning on
2 new shipments of the Product to residents of California within thirty days of receipt of
3 the required Notice.
4

5 **2.4 Existing and Future Products**

6 (a) Any Products that have been distributed, shipped, or sold, or that are otherwise in the
7 stream of commerce, prior to the Effective Date, shall be released from any claims that were
8 brought or that could be brought by Wimberley in the Complaint, as though they were Claims
9 within the meaning of Section 5.1, below. As a result, the obligations of this Section 2 do not
10 apply to such Products.
11

12 (b) Ontel shall periodically test newly manufactured or imported Products to be sold in
13 California to assure that it either meets the Compliance Standard or carries the Warning.
14

15 **3. MONETARY PAYMENTS**

16 In settlement of all claims referred to in this Consent Judgment, the total monetary
17 settlement payments to be paid by Ontel are set forth in section 3 and 4, which shall subsequently
18 and within a commercially reasonable time be distributed by Law Offices of Stephen Ure, PC as
19 specified herein.
20

21 **3.1 Payment Pursuant to Health & Safety Code § 25249.7**

22 Ontel shall pay \$1000.00 in civil penalties to be apportioned in accordance with California
23 Health & Safety Code §25192, with 75% of these funds remitted to the State of California's
24 OEHHA and the remaining 25% of the penalty remitted to Evelyn Wimberley as provided by
25 California Health & Safety Code § 25249.12(d).
26

27 Ontel shall issue two separate checks for the penalty payment: (a) one check made
28 payable to "Law Offices of Stephen Ure, PC. in Trust For OEHHA" in the amount of \$750.00

1 representing 75% of the total penalty; and (b) one check to “Law Offices of Stephen Ure, PC. in
2 Trust for Wimberley” in the amount of \$250.00 representing 25% of the total penalty. A Form
3 1099 shall be issued for the above payment:

4 (a) OEHHA, P.O. Box 4010, CA 95814 (EIN: 68-0284486); and

5
6 (b) The Law Offices of Stephen Ure, PC shall issue a Form 1099 to Evelyn Wimberley, for
7 the payment to Wimberley.

8 Payment shall be delivered to Mrs. Wimberley’s counsel on or before June 10, 2010 at the
9 following address:

10
11 Law Offices of Stephen Ure, PC.
12 1518 Sixth Avenue
13 San Diego, CA 92101

14 **4. REIMBURSEMENT OF FEES AND COSTS**

15 **4.1 Attorney Fees and Costs**

16 The parties acknowledge that Mrs. Wimberley and her counsel offered to resolve this
17 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
18 leaving this fee issue to be resolved after the material terms of the agreement had been settled.

19 The Parties then attempted to (and did) reach an accord on the compensation due to Wimberley
20 and her counsel under general contract principles and the private attorney general doctrine
21 codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through
22 the mutual execution of this agreement. The reimbursement of attorneys’ fees and costs under
23 Section 4.1 shall be paid as follows:

24
25 Ontel shall reimburse Wimberley and her counsel the total of \$19,000.00 for fees and costs
26 incurred as a result of investigating, bringing this matter to Ontel’s attention and negotiating a
27 settlement in the public interest. Law Offices of Stephen Ure, PC. will cause a complete W-9
28

1 Form with respect to itself to be provided to Ontel or Ontel's counsel prior to payment. Ontel
2 shall issue a 1099 to Law Offices of Stephen Ure, PC. for the above fees and costs, plus the
3 payment to Wimberley under Section 3.1 (\$19,250.00 in total). The payment shall be made
4 payable to "Law Offices of Stephen Ure, PC" and shall be delivered on or before June 10, 2010
5 to the following address:
6

7 Law Offices of Stephen Ure, PC.
8 1518 Sixth Avenue
9 San Diego, CA 92101

10 **5. RELEASE OF ALL CLAIMS**

11 **5.1 Release of Ontel, CVS and Ontel's Downstream Customers**

12 In further consideration of the promises and agreements herein contained, and for the
13 payments to be made pursuant to Sections 3 and 4, Wimberley on behalf of herself, her past and
14 current agents, representatives, attorneys, successors, and/or assignees, and on behalf of the
15 general public to the extent allowed by law, hereby waives all rights to institute or participate in,
16 directly or indirectly, any form of legal action and releases all claims, including without
17 limitation, all actions, and causes of action, in law or in equity, suits, liabilities demands,
18 obligations, damages, costs, fines penalties losses, or expenses (including but not limited to,
19 investigation fees, expert fees, and attorney's fees) or any nature whatsoever, whether known or
20 unknown, fixed or contingent (collectively "claims") against Ontel and CVS and each of Ontel's
21 downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees,
22 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates,
23 subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders,
24 agents, and employees, and sister and parent entities (collectively "Releasees"). This release is
25 limited to those claims that arise under Proposition 65, as such claims relate to Ontel's alleged
26
27
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STIPULATION AND [PROPOSED] ORDER RE CONSENT JUDGMENT

failure to warn about exposures to or identification of the Listed Chemical contained in the
 Products. This release is intended to be a full, final, and binding resolution of those claims that
 arise from or relate to facts alleged in the Original Notice and the Complaint, as against Ontel
 and CVS and Releasees, concerning Ontel's and CVS's alleged failure to warn about exposures
 to Lead contained in the Products.

Wimberley also, on behalf of herself, her past and current agents, representatives, attorneys,
 successors, and/or assignees, in her individual capacity only, provides a general release herein
 which shall be effective as a full and final accord and satisfaction, and as a bar to all claims of
 Wimberley against Ontel and CVS and the Releasees of any nature, character or kind, known or
 unknown, suspected or unsuspected, arising under Proposition 65 or an alleged failure to provide
 warnings for exposures to any Proposition 65-listed chemical from any products manufactured,
 distributed or sold by Ontel. Wimberley acknowledges that she is familiar with Section 1542 of
 the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor
 does not know or suspect to exist in his favor at the time of
 executing the release, which if known by him must have
 materially affected his settlement with the debtor.

Wimberley, in her individual capacity only, expressly waives and relinquishes any and all
 rights and benefits which she may have under, or which may be conferred on her by the
 provisions of Section 1542 of the California Civil Code as well as under any other state or
 federal statute or common law principle of similar effect, to the fullest extent that she may
 lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such
 intention, the release hereby given shall remain in effect as a full and complete release
 notwithstanding the discovery or existence of any such additional or different claims or facts
 arising out of the released matters.

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1 Notwithstanding the foregoing, this release shall not limit or affect Wimberley's right to
2 enforce the terms of this Consent Judgment.

3 **5.2 Effect of Consent Judgment**
4

5 Compliance with the terms of this Consent Judgment resolves any issue, now and in the
6 future, concerning compliance by Ontel, CVS, and the Releasees with the requirements of
7 Proposition 65 with respect to alleged exposure to Lead from the Products distributed or sold by
8 Ontel, CVS, and the Releasees.

9 **5.3 Ontel's Release of Wimberley**
10

11 Ontel waives any and all claim against Wimberley, her attorney and other representatives
12 for any and all actions taken or statements made (or those that could have been taken or made)
13 by Wimberley and her attorneys and other representatives, whether in the course of investigating
14 claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or
15 with respect to the Products. Ontel provides a general release herein which shall be effective as a
16 full and final accord and satisfaction, and as a bar to all released claims described herein that it
17 may have against Wimberley, of any nature, character or kind, known or unknown, and
18 suspected or unsuspected. Ontel acknowledges that it is familiar with Section 1542 of the
19 California civil Code, which provides as follows:
20

21 A general release does not extend to claims which the creditor
22 does not know or suspect to exist in his favor at the time of
23 executing the release, which if known by him must have
24 materially affected his settlement with the debtor.

25 Ontel expressly waives and relinquishes any and all rights and benefits which it may have
26 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil
27 Code as well as under any other state or federal statute or common law principles of similar
28 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the

1 released matters. In furtherance of such intention, the release hereby given shall be and remain in
2 effect as a full and complete release notwithstanding the discovery or existence of any such
3 additional or different claims or facts arising out of the released matters.
4

5 Notwithstanding the foregoing, this release shall not limit or affect Ontel's and CVS'
6 right to enforce the terms of this Consent Judgment.

7 **6. COURT APPROVAL**

8 This Consent Judgment is not effective until it is approved and entered by the Court and shall
9 be null and void if, for any reason, it is not approved and entered by the Court within one year
10 after it has been fully executed by all Parties. If the Court does not approve the Consent
11 Judgment, the Parties shall meet and confer as to (and jointly agree on) whether to modify the
12 language or appeal the ruling. If the Parties do not jointly agree on a course of action to take,
13 then the case shall proceed in its normal course on the trial court's calendar, and any monies that
14 have been provided to Plaintiff, or her counsel, pursuant Section 3 and/or Section 4 above, shall
15 be refunded within thirty (30) days of Ontel providing written notice thereof. In the event that
16 this Consent Judgment is entered by the Court and subsequently overturned by any appellate
17 court, any monies that have been provided to Plaintiff, or her counsel pursuant to Section 3
18 and/or Section 4 above, shall be refunded within fifteen (15) days of the appellate decision
19 becoming final. If the Court's approval is ultimately overturned by an appellate court, the Parties
20 shall meet and confer as to (and jointly agree on) whether to modify the terms of the Consent
21 Judgment. If the Parties do not jointly agree on a course of action to take, then the case shall
22 proceed in its normal course on the trial court's calendar.
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26 **7. ENTRY OF CONSENT JUDGMENT**
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28

1 The parties hereby request that the Court promptly enter this Consent Judgment. Upon entry of
2 the Consent Judgment, the Parties waive their respective rights to a hearing or trial on the
3 allegations of the Complaint.
4

5 **8. SEVERABILITY**

6 If, subsequent to the execution of this Consent Judgment, any of the provision of this
7 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
8 provisions remaining shall not be adversely affected.
9

10 **9. ENTIRE AGREEMENT**

11 This Consent Judgment contains the sole and entire agreement and understanding of the
12 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
13 negotiations, commitments, and understandings related hereto. No. representations, oral or
14 otherwise, express or implied, other than those contained herein haven been made by any Party
15 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
16 deemed to exist or to bind any of the Parties.
17

18 **10. 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 or is
21 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Ontel
22 shall provide written notice to Wimberley of any asserted change in the law, and shall have no
23 further obligation pursuant to this Consent Judgment with respect to and to the extent that, the
24 Products are so affected.
25

26 **11. NOTICES**
27
28

1 Unless specified herein, all correspondence and notices required to be provided pursuant to
2 this Consent Judgment shall be in writing and personally delivered or sent by (i) first-class mail
3 or (ii) overnight courier on any Party by the other Party at the following addresses:

4 To Ontel Products Corporation:

5
6 President
7 Ontel Products Corporation
8 21 Law Drive
9 Fairfield, New Jersey 07004

10 To CVS:

11 Legal Department - Intellectual Property
12 CVS Pharmacy, Inc.
13 One CVS Drive
14 Woonsocket, Rhode Island 02895

15 To Evelyn Wimberley:

16 Proposition 65 Controller
17 Law Offices of Stephen Ure, PC.
18 1518 Sixth Avenue
19 San Diego, CA 92101

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

22 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

23 This Consent Judgment may be executed in counterparts and by facsimile or pdf (scanning),
24 each of which shall be deemed an original and all of which, when taken together, shall constitute
25 one and the same document.

26 **13. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)**

27 Wimberley agrees to comply with the reporting form requirements referenced in California
28 Health and Safety Code § 25249.7(f).

1 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

2 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
3 noticed motion is required to obtain judicial approval of this Consent Judgment. Wimberley,
4 Ontel and CVS agree to mutually employ their best efforts to support the entry of this agreement
5 as a Consent Judgment by the trial court and defend the agreement against any appellate review.
6 Accordingly, Wimberley agrees to prepare and file a motion to approve the Consent Judgment, at
7 her own cost, and Ontel and CVS agree to support it.
8

9 **15. MODIFICATION AND ENFORCEMENT**

10 This Consent Judgment may be modified only: (1) by written agreement of the parties and
11 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion
12 of any Party and entry of a modified consent judgment by the Court. In the event that, after the
13 Parties' execution of this Consent Judgment: (1) a dispute arises with respect to any provisions
14 of this Consent Judgment; or (2) either Party seeks to enforce the terms of this Consent
15 Judgment, the prevailing party shall be entitled to reasonable attorneys' fees and costs.
16

17 **16. EFFECT OF CONSENT JUDGMENT**

18 This Consent Judgment shall apply to, be binding upon, and inure to the benefit of, the
19 Parties and their respective successors and assigns.
20

21 **17. AUTHORIZATION**

22 The undersigned are authorized to execute this Consent Judgment on behalf of their
23 respective parties and have read, understood, and agree to all of the terms and conditions of this
24 Consent Judgment.
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AGREED TO:

AGREED TO:

Date: _____

Date: 24/NOVEMBER/2010

By: _____

EVELYN WIMBERLEY

By: 

ONTEL PRODUCTS CORPORATION
JASON BIZJAK

AGREED TO:

Date: November 24, 2010

By: 

CVS PHARMACY, INC.
Karen L. Feisthame

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____

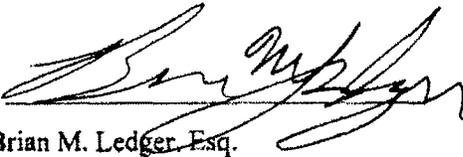
Date: 11/24/10

LAW OFFICES OF STEPHEN URE, PC.

GORDON & REES LLP

By: _____

Stephen Ure, Esq.
Attorneys for
EVELYN WIMBERLEY

By: 

Brian M. Ledger, Esq.
Attorneys for
ONTEL PRODUCTS CORPORATION and CVS
PHARMACY, INC.

STIPULATION AND [PROPOSED] ORDER RE CONSENT JUDGMENT

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AGREED TO:

Date: 11-29-10

Date: _____

By: 

By: _____

EVELYN WIMBERLEY

ONTEL PRODUCTS CORPORATION

AGREED TO:

Date: _____

By: _____

CVS PHARMACY, INC.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 11.29.10

Date: _____

LAW OFFICES OF STEPHEN URE, PC.

GORDON & REES LLP

By: 

By: _____

Stephen Ure, Esq.
Attorneys for
EVELYN WIMBERLEY

Brian M. Ledger, Esq.
Attorneys for
ONTEL PRODUCTS CORPORATION and CVS
PHARMACY, INC.