DAVID LAVINE (State Bar. No. 166744)
DANIEL BORNSTEIN (State Bar. No. 181711)
HIRST & CHANLER LLP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

PATRICK J. CAFFERTY, JR. (State Bar No. 103417)
MUNGER, TOLLES & OLSON LLP
560 Mission Street
Twenty-Seventh Floor
San Francisco, CA 94105-2907
Telephone: (415) 512-4000
Facsimile: (415) 512-4077

Attorneys for Defendant
99 CENTS ONLY STORES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, Ph.D., P.E., Plaintiff, vs. 99 CENTS ONLY STORES; and DOES 1 through 150, inclusive, Defendants.	CASE NO. 07AS04683 **FIRST AMENDED STIPULATION AND [PROPOSED] ORDER RE: CONSENT JUDGMENT**

BY FAX

RECEIVED
SEP 16 2008
#34
L. M

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E., and 99 Cents Only Stores

This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E. ("Dr. Held" or "Plaintiff") and defendant 99 Cents Only Stores ("99 Cents" or "Defendant"), with Plaintiff and Defendant collectively referred to as the "parties."

1.2 Plaintiff

Dr. Held is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Defendant

99 Cents employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* (Proposition 65).

1.4 General Allegations

Dr. Held alleges that 99 Cents has manufactured, distributed and/or sold toys or other child care products containing di(2-ethylhexyl)phthalate (hereinafter "DEHP") in the State of California without the requisite health hazard warnings. DEHP is known to cause birth defects and other reproductive harm and is listed by its chemical nomenclature pursuant to Proposition 65. DEHP shall be referred to hereinafter as the "listed chemical."

1.5 Product Description

The products that are covered by this Consent Judgment are defined as follows: children's sport toy balls, bats and gloves, sipper bottles, watches and bibs. All such products containing DEHP are referred to hereinafter as the "Products".

1.6 Notices of Violation

On June 15, 2007, August 2, 2007, and January 11, 2008, Dr. Held served 99 Cents and various public enforcement agencies with documents entitled "60-Day Notice of Violation" (the "Notices") that provided 99 Cents and public enforcers with notice of alleged violations of California Health & Safety Code §25249.6 for failing to warn consumers that the Products that 99

Cents sold exposed users in California to the listed chemical.

Within fifteen (15) days following his execution of this Consent Judgment, Held will have served 99 Cents and the required public enforcement agencies with documents entitled "Supplemental Notice of Violation" ("Supplemental Notice") expressly alleging that 99 Cents is in violation of Health & Safety Code § 25249.6 with respect to exposures to the Listed Chemical arising from various children's toys. 99 Cents shall use its best efforts to provide Held with information necessary for him to issue it a Supplemental Notice and support a Certificate of Merit related thereto.

1.7 Complaints

On August 28, 2007 and October 12, 2007, Dr. Held, who was and is acting in the interest of the general public in California, filed complaints ("Complaints") in the Superior Court in and for the County of Sacramento against 99 Cents, 99 Cents Only Stores, case numbers 07AS03962 and 07AS04683 alleging violations of California Health & Safety Code §25249.6 based on the alleged exposures to the listed chemical contained in Products sold by 99 Cents. Upon entry of this Consent Judgment the Court shall consolidate the two actions into case number 07AS04683.

1.8 No Admission

99 Cents denies the material factual and legal allegations contained in Dr. Held's Notices and Complaints and maintains that all Products that it has sold and distributed in California have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by 99 Cents of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by 99 Cents of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by 99 Cents. However, this Section shall not diminish or otherwise affect 99 Cents' obligations, responsibilities, and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction over 99 Cents as to the allegations contained in the Complaints that venue is proper in the County of Sacramento and that this Court has jurisdiction to enter and enforce the provisions

of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term "effective date" shall mean June 30, 2008.

2. INJUNCTIVE RELIEF: PRODUCT REFORMULATION

2.1 Reformulation Standards

Reformulated Products are defined as those containing less than or equal to 1,000 parts per million ("ppm") of phthalate chemical.

99 Cents shall use Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C to determine whether the respective levels have been exceeded in its Products.

2.2 Reformulation Commitment

99 Cents herby commits that 100% of the Products that they purchase and offer for sale in California after July 31, 2008, shall qualify as Reformulated Products.

2.3 Recall of Noticed Products

99 Cents further commits that, as of the Effective Date, 99 Cents shall recall and not sell, in California, any of the Products specifically identified in the notice letters described in Paragraph 1.6 above, unless those products qualify as Reformulated Products.

3. MONETARY PAYMENTS

3.1 In settlement of all the claims referred to in this Consent Judgment against 99 Cents, 99 Cents shall pay $15,000.00 in civil penalties to be apportioned in accordance with California Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies remitted to Dr. Held as provided by California Health & Safety Code §25249.12(d). 99 Cents shall issue two separate checks for the penalty payment: (a) one check made payable to Hirst & Chanler LLP in Trust for the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of $11,250.00, representing 75% of the total penalty and (b) one check to Hirst & Chanler LLP in Trust for Dr. Held in the amount of $3,750.00, representing 25% of the total penalty. Two separate 1099s shall be issued

for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of $11,250.00. The second 1099 shall be issued to Dr. Held in the amount of $3,750.00, whose address and tax identification number shall be furnished, upon request, five calendar days before payment is due.

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee and cost issue to be resolved after the material terms of the agreement had been settled. 99 Cents then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties reached an accord on the compensation due to Dr. Held and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles 99 Cents shall reimburse Dr. Held's counsel $48,000.00 for fees and costs, incurred as a result of investigating, bringing this matter to 99 Cents' attention, and negotiating a settlement in the public interest. The payment shall be made payable to "Hirst & Chanler LLP" and shall be delivered within ten (10) days of the effective date, at the following address:

Hirst & Chanler LLP
Attn: Proposition 65 Controller
455 Capitol Mall, Suite 605
Sacramento, CA 95814

99 Cents shall issue a separate 1099 for fees and cost paid in the amount of $48,000.00 to Hirst & Chanler LLP, 455 Capitol Mall, Suite 605, Sacramento, CA 95814 (EIN: 20-3929984).

5. RELEASE OF ALL CLAIMS

5.1 Dr. Held's Release of 99 Cents

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,

penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"), against 99 Cents and each of its downstream licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to 99 Cents' alleged failure to warn about exposures to DEHP contained in the Products.

The parties further understand and agree that this release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to 99 Cents.

5.2 <u>99 Cents' Release of Dr. Held</u>

99 Cents waives any and all claims against Dr. Held, his attorneys, and other representatives for any and all actions taken or statements made (or those that could have been taken or made) by Dr. Held and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Products.

6. <u>COURT APPROVAL</u>

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all parties, in which event any monies that have been provided to Plaintiff, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen days after receiving written notice from 99 Cents that the one-year period has expired.

7. <u>SEVERABILITY</u>

If, subsequent to the execution of this Consent Judgment, any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable

provisions remaining shall not be adversely affected.

8. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then 99 Cents shall provide written notice to Dr. Held of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

To 99 Cents:

Patrick J. Cafferty, Jr.
MUNGER, TOLLES & OLSON, LLP
33 New Montgomery Street, 19th Floor
San Francisco, CA 94105-9781

To Dr. Held:

Proposition 65 Coordinator
HIRST & CHANLER LLP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Dr. Held agrees to comply with the reporting form requirements referenced in California Health & Safety Code §25249.7(f).

12. ADDITIONAL POST EXECUTION ACTIVITIES

Dr. Held and 99 Cents agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the court in a timely manner. The parties acknowledge that, pursuant to California Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, Plaintiff agrees to file a Motion to Approve the Agreement ("Motion"). 99 Cents shall have no additional responsibility to Plaintiff's counsel pursuant to Code of Civil Procedure § 1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with respect to the preparation and filing of the Motion or with regard to Plaintiff's counsel appearing for a hearing thereon.

13. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen days in advance of its consideration by the Court.

///

14. AUTHORIZATION

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

AGREED TO:	AGREED TO:
Date: 9/12/08	Date:
By: Anthony E. Held	By:
Plaintiff, ANTHONY E. HELD, Ph.D., P.E.	Defendant, 99 CENTS ONLY STORES

11. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Dr. Held agrees to comply with the reporting form requirements referenced in California Health & Safety Code §25249.7(f).

12. **ADDITIONAL POST EXECUTION ACTIVITIES**

Dr. Held and 99 Cents agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the court in a timely manner. The parties acknowledge that, pursuant to California Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, Plaintiff agrees to file a Motion to Approve the Agreement ("Motion"). 99 Cents shall have no additional responsibility to Plaintiff's counsel pursuant to Code of Civil Procedure § 1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with respect to the preparation and filing of the Motion or with regard to Plaintiff's counsel appearing for a hearing thereon.

13. **MODIFICATION**

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen days in advance of its consideration by the Court.

///

14. **AUTHORIZATION**

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

AGREED TO:	AGREED TO:
Date: 9/11/08	Date: 9/11/08
By: Patrick J. Coffey, Jr.	By: [illegible]
	Defendant, 99 CENTS ONLY STORES

APPROVED AS TO FORM:	APPROVED AS TO FORM:
Date: 9/15/08	Date:
HIRST & CHANLER LLP	MUNGER, TOLLES & OLSON LLP
By:	By:
Daniel Bornstein Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E.	Patrick J. Cafferty, Jr. Attorneys for Defendant 99 CENTS ONLY STORES

IT IS SO ORDERED.

Date: _____

_____
JUDGE OF THE SUPERIOR COURT