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5 *Attorneys for Plaintiff, Evelyn Wimberley*

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

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

20  
 21 **1. INTRODUCTION**

22  
 23 **1.1 Evelyn Wimberley and Ontel Products Corporation**

24 This Stipulation and proposed Consent Judgment ("Consent Judgment") is entered into  
 25 by and between Plaintiff Evelyn Wimberley (hereafter "Wimberley" or "Plaintiff"), and  
 26 defendants Ontel Products Corporation (hereinafter "Ontel") and CVS Pharmacy, Inc. ("CVS").  
 27 Wimberley, Ontel, and CVS are collectively referred to as the "Parties" and individually as a  
 28 "Party."

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

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1 **1.2 Plaintiff Evelyn Wimberley**

2 Wimberley is an individual residing in California who seeks to promote awareness of  
3 exposure to toxic chemicals and improve human health by reducing or eliminating hazardous  
4 substances contained in consumer products.  
5

6 **1.3 Defendants Ontel Products Corporation and CVS**

7 Each of Ontel and CVS employs ten or more persons and is a person in the course of  
8 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
9 California health & Safety Code § 25249.6 *et seq.* (hereinafter "Proposition 65").  
10

11 **1.4 General Allegations**

12 Wimberley alleges that Ontel manufactured, distributed and/or sold Battery Operated LED  
13 Lights (referred to herein as the "Products") containing Lead (hereinafter "Lead") in the State of  
14 California without the requisite health warnings. Lead is listed pursuant to Proposition 65 as a  
15 chemical known to the State of California to cause birth defects and other reproductive harm.  
16 Lead shall be referred to hereinafter as the "Listed Chemical."  
17

18 **1.5 Product Description**

19 The Products that are covered by this Consent Judgment are defined as follows: Battery  
20 Operated Lights containing Lead, such as the *Stick "N" Click* (#7 3554110506 7).  
21

22 **1.6 Notice of Violation**

23 Wimberley asserts that on October 3, 2009, she served Ontel, CVS and the Office of the  
24 California Attorney General of the State of California counties' District Attorneys and all City  
25 Attorneys of California cities with populations exceeding 750,000, (collectively, "Public  
26 Enforcers") with a document entitled "60-Day Notice of Violation" (the "Original Notice") that  
27 provided Ontel, CVS and Public Enforcers with notice of alleged violations of Proposition 65 for  
28 failing to warn consumers that battery operated LED lights that Ontel sold allegedly exposed

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1 users in California to Lead. To the best of the Parties' knowledge, no Public Enforcer has  
2 diligently prosecuted any of the allegations set forth in the Notice.

3 **1.7 Complaint**

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

10 **1.8 No Admission**

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

22 **1.9 Consent to Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction  
24 over Ontel and CVS as to the allegations contained in the Complaint, that venue is proper in the  
25 County of San Diego and this Court has jurisdiction to enter and enforce this consent Judgment  
26 as a full and final binding resolution of all claims which were or could have been raised in the  
27 Complaint against Ontel and CVS based on the facts alleged therein and in the Notice.  
28

STIPULATION AND [PROPOSED] ORDER RE CONSENT JUDGMENT

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term "Effective Date" shall mean thirty days  
3 after the entry of this Consent Judgment.

4  
5 **1.11 Compliance with California Regulations** Plaintiff shall comply with 11 CCR Sections  
6 3003, 3004 and 3008.

7 **2. WARNINGS**

8 After the Effective Date, Ontel shall not sell, ship, or offered to be shipped in California  
9 Products containing Lead unless such Products are sold with the warning set out in Section 2.1 or  
10 are subject to one of the exceptions set forth in Section 2.2.

11  
12 **2.1 Product Warnings**

13 Any warning issued for Products pursuant to this Section shall bear the warning language  
14 set out in 27 Cal. Code of Regs. § 25603.2.

15  
16 **2.2 Exceptions To Warning Requirement**

17 The warning requirement set forth in Section 2.1 shall not apply to:

- 18 (i) Products received in inventory before the Effective Date; and
- 19 (ii) Products which satisfy either one of the following two conditions:
  - 20 (a) Products with respect to which the paint and plastic frames and see-  
21 through covers that are likely to be touched, contacted or handled by a user during  
22 ordinary installation, cleaning, maintenance, or use contain no more than 600  
23 parts per million Lead.
  - 24 (b) Products which do not subject consumers to exposures greater than the  
25 safe harbor levels established by the California Office of Environmental Health  
26 Hazard Assessment ("OEHHA") under the Proposition 65 statute and regulations.

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28 **STIPULATION AND [PROPOSED] ORDER RE CONSENT JUDGMENT**

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1 both (a) and (b) above being herein referred to as the "Compliance Standard."

2 **2.3 Existing and Future Products**

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

9 (b) Ontel shall periodically test newly manufactured or imported Products to be sold in  
10 California to assure that it either meets the Compliance Standard or carries the Warning.  
11

12 **3. MONETARY PAYMENTS**

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

18 **3.1 Payment Pursuant to Health & Safety Code § 25249.7**

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

24 Ontel shall issue two separate checks for the penalty payment: (a) one check made  
25 payable to "Law Offices of Stephen Ure, PC. in Trust For OEHHA" in the amount of \$750.00  
26 representing 75% of the total penalty; and (b) one check to "Law Offices of Stephen Ure, PC. in  
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1 Trust for Wimberley" in the amount of \$250.00 representing 25% of the total penalty. A Form  
2 1099 shall be issued for the above payment:

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

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

7 Payment shall be delivered to Mrs. Wimberley's counsel on or before June <sup>17</sup>~~16~~, 2010 at the  
8 following address:

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

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

13 **4.1 Attorney Fees and Costs**

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

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

23 Ontel shall reimburse Wimberley and her counsel the total of \$19,000.00 for fees and costs  
24 incurred as a result of investigating, bringing this matter to Ontel's attention and negotiating a  
25 settlement in the public interest. Law Offices of Stephen Ure, PC. will cause a complete W-9  
26 Form with respect to itself to be provided to Ontel or Ontel's counsel prior to payment. Ontel  
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1 shall issue a 1099 to Law Offices of Stephen Ure, PC. for the above fees and costs, plus the  
 2 payment to Wimberley under Section 3.1 (\$19,250.00 in total). The payment shall be made  
 3 payable to "Law Offices of Stephen Ure, PC" and shall be delivered on or before June <sup>17</sup> ~~16~~, 2010  
 4 to the following address:

5  
 6 Law Offices of Stephen Ure, PC.  
 7 1518 Sixth Avenue  
 8 San Diego, CA 92101

9 **5. RELEASE OF ALL CLAIMS**

10 **5.1 Release of Ontel, CVS and Ontel's Downstream Customers**

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

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

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

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

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

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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 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  
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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

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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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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 have 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**  
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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 Urc, 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).

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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  
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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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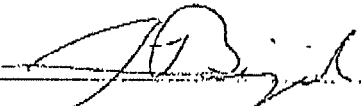
AGREED TO:

AGREED TO:

Date: 6-14-10


Date: 6/10/2010

By:   
EVELYN WIMBERLEY

By:   
ONTEL PRODUCTS CORPORATION  
JASON BIZJAK, VICE PRESIDENT

AGREED TO:

Date: 6/14/2010

By:   
CVS PHARMACY, INC.  
Karen L. Feisthamel, ASS'T SECRETARY

APPROVED AS TO FORM:

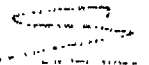
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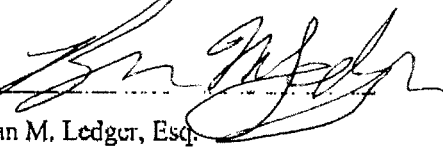
Date: 6/14/10

Date: 6/14/10

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