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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA
12 UNLIMITED CIVIL JURISDICTION

13 PAUL WOZNIAK,
14 Plaintiff,
15 v.
16 99 CENTS ONLY STORES LLC; and
17 DOES 1-150, inclusive,
18 Defendants.

Case No. 114CV273791

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Paul Wozniak (“Wozniak”)
4 and defendant 99 Cents Only Stores LLC. (“99 Cents”), with Wozniak and 99 Cents each referred
5 to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Wozniak is a resident of the State of California who seeks to promote awareness of
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
9 substances contained in consumer and commercial products.

10 **1.3 Defendant**

11 99 Cents employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Wozniak alleges that 99 Cents manufactures, imports, sells and/or distributes for sale in
16 California, earphones with vinyl/PVC cords containing di(2-ethylhexyl)phthalate (“DEHP”), and
17 that it does so without providing the exposure warning that Wozniak alleges is required by
18 Proposition 65.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are earphones with vinyl/PVC cords
21 containing DEHP manufactured and supplied to 99 Cents by Entuit, LLC, including but not limited
22 to the *Ennotek Handsfree w/ Microphone, ENNOBUD030, UPC #8 55954 00482 2* (hereinafter the
23 “Products”).

24 **1.6 Notice of Violation**

25 On March 26, 2014, Wozniak served 99 Cents and the requisite public enforcement
26 agencies with a 60-Day Notice of Violation (“Notice”), alleging that 99 Cents violated Proposition
27 65 when it failed to warn its customers and consumers in California that the Products expose users
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1 to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is
2 diligently prosecuting an action to enforce the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On December 3, 2014, Wozniak commenced the instant action, naming 99 Cents as a
5 defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

7 99 Cents denies the material, factual, and legal allegations contained in the Notice and
8 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,
9 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
10 Judgment shall be construed as an admission by 99 Cents of any fact, finding, conclusion of law,
11 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
12 construed as an admission by 99 Cents of any fact, finding, conclusion of law, issue of law, or
13 violation of law. Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
14 remedy, agreement, or defense, 99 Cents may have in this or any further legal proceedings. This
15 Consent Judgment is the product of negotiation and compromise and is accepted by 99 Cents for
16 purpose of settling, compromising and resolving issues of dispute in this action. However, this
17 Section shall not diminish or otherwise affect 99 Cents' obligations, responsibilities, and duties
18 under this Consent Judgment.

19 **1.9 Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over 99 Cents as to the allegations contained in the Complaint, that venue is proper in
22 the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of
23 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
26 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

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1 **2. INJUNCTIVE SETTLEMENT TERMS**

2 Commencing on the Effective Date and continuing thereafter, 99 Cents shall only
3 manufacture for sale, or purchase for sale in California, Reformulated Products. For purposes of
4 this Consent Judgment, “Reformulated Products” are defined as Products with a maximum DEHP
5 concentration 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
6 Protection Agency testing methodologies 3580A and 8270C, or other methodologies utilized by
7 state or federal agencies for the purpose of determining DEHP content in a solid substance. As of
8 the Effective Date, 99 Cents represents that it is not currently offering the Products for sale in
9 California, but agrees that if it recommences sales, it will only offer Reformulated Products. Before
10 recommencement of sales, an officer of 99 Cents will provide Wozniak with an original, signed
11 written certification that all of the Products it ships for sale or distributes for sale in California as of
12 the date of its certification are Reformulated Products, and that 99 Cents will continue to offer only
13 Reformulated Products in California in the future.

14 **3. MONETARY SETTLEMENT TERMS**

15 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

16 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
17 claims referred to in this Consent Judgment, 99 Cents shall pay \$4,000 in civil penalties in
18 accordance with this Section. The penalty payment will be allocated in accordance with California
19 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California
20 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
21 penalty remitted to Wozniak. Wozniak’s counsel shall be responsible for remitting 99 Cents’
22 penalty payment under this Consent Judgment to OEHHA. Within twenty (20) business days of the
23 execution of this Consent Judgment, 99 Cents shall make a civil penalty payment of \$4,000. 99
24 Cents shall provide its payment in a single check made payable to “Paul Wozniak, Client Trust
25 Account” to be delivered to the address provided in Section 3.3, below.

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1 **3.2 Reimbursement of Attorneys’ Fees and Costs**

2 The Parties acknowledge that Wozniak and his counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
4 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
5 the other settlement terms had been finalized, 99 Cents expressed a desire to resolve Wozniak’s
6 fees and costs. The Parties then negotiated a resolution of the compensation due to Wozniak and
7 his counsel under general contract principles and the private attorney general doctrine codified at
8 California Code of Civil Procedure Section 1021.5 for all work performed through the mutual
9 execution of this agreement and the Court’s approval of the same, 99 Cents shall reimburse
10 Wozniak and his counsel \$33,000. 99 Cents’ payment shall be due within twenty (20) business
11 days of the execution of this Consent Judgement, and delivered to the address in Section 3.3 in the
12 form of a check payable to “The Chanler Group.” The reimbursement shall cover all fees and
13 costs incurred by Wozniak investigating, bringing this matter to 99 Cents’ attention, litigating, and
14 negotiating a settlement of the matter in the public interest.

15 **3.3 Payments Held In Trust**

16 All payments required by this Consent Judgment shall be delivered to Wozniak’s counsel at
17 the address provided in Section 3.4 on or before the date they are due. Wozniak’s counsel shall
18 then have fourteen (14) days to forward the funds to a third party escrow agent to be held until
19 such time as the Court grants the motion for approval of the Parties’ settlement contemplated by
20 Section 5. If this Consent Judgment is not approved by the Court, Wozniak’s counsel will return
21 to 99 Cents at the address set forth in section 8 all payments made by 99 Cents pursuant to
22 Sections 3.1 and 3.2.

23 **3.4 Payment Address**

24 All payments required by this Consent Judgment shall be delivered to the following

25 address: The Chanler Group
26 Attn: Proposition 65 Controller
27 2560 Ninth Street
28 Parker Plaza, Suite 214
 Berkeley, CA 94710

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Wozniak’s Release of Proposition 65 Claims**

3 Wozniak, acting on his own behalf and in the public interest, releases 99 Cents and its
4 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
5 and attorneys (“Releasees”) and each entity to whom 99 Cents directly or indirectly distributes or
6 sells the Products including, but not limited to, its downstream distributors, wholesalers, customers,
7 retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for
8 any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products
9 manufactured, imported, distributed or sold by 99 Cents prior to the Effective Date, as set forth in
10 the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
11 Proposition 65 by 99 Cents with respect to the alleged or actual failure to warn about exposures to
12 DEHP from the Products manufactured, sold or distributed for sale by 99 Cents after the Effective
13 Date.

14 **4.2 Wozniak’s Individual Release of Claims**

15 Wozniak, in his individual capacity only and *not* in his representative capacity, also
16 provides a release to 99 Cents, Releasees, and Downstream Releasees which shall be effective as a
17 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
18 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Wozniak of any
19 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
20 alleged or actual exposures to DEHP in Products manufactured, imported, distributed or sold by 99
21 Cents before the Effective Date. Wozniak, in his individual capacity only and *not* in his
22 representative capacity, expressly waives and relinquishes any and all rights and benefits which me
23 may have under, or which may be conferred upon him by the provisions of Section 1542 of the
24 California Civil Code which provides as follows:

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

1 Wozniak, in his individual capacity only and not in his representative capacity, expressly
2 waives and relinquishes any and all rights and benefits which he may have under, or which may be
3 conferred on him by the provisions of Section 1542 of the California Civil Codes as well as under
4 any other state of federal statute or common law principle of similar effect, to the fullest extent that
5 he may lawfully waive such rights or benefits pertaining to the alleged failure to warn about
6 exposures to DEHP in Products manufactured, imported, distributed or sold by 99 Cents after the
7 effective date. In furtherance of such intention, the release hereby given shall be and remain in
8 effect as a full and complete release notwithstanding the discovery or existence of any such
9 additional or different claims or facts arising out of the alleged failure to warn about exposures to
10 DEHP in Products manufactured, imported, distributed or sold by 99 Cents after the effective date.

11 **4.3 99 Cents' Release of Wozniak**

12 99 Cents, on its own behalf, and on behalf of its past and current agents, representatives,
13 attorneys, successors, and assignees, hereby waives any and all claims against Wozniak and his
14 attorneys and other representatives, for any and all actions taken or statements made by Wozniak
15 and his attorneys and other representatives, whether in the course of investigating claims,
16 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the
17 Products.

18 **5. COURT APPROVAL**

19 **5.1** By this consent judgment and upon the Court's approval of the same in its entirety
20 and without modification, unless such a modification is agreed to by the Parties in writing, the
21 Parties waive their right to a trial on the merits and waive their rights to initiate appellate review of
22 this Consent Judgment and of any and all interim rulings, including all pleadings, procedural, and
23 discovery orders.

24 **5.2** This Consent Judgment is not effective until it is approved and entered by the Court
25 and shall be null and void if, for any reason, it is not approved and entered by the Court within one
26 year after it has been fully executed by all Parties. If the Court does not approve the Consent
27 Judgment, the Parties shall meet and confer as to whether to modify the language or appeal the
28 ruling. If the Parties do not jointly agree on a course of action, then the case shall proceed in its

1 normal course on the Court's trial calendar. If the Court's approval is ultimately overturned by an
2 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
3 Judgment. If the Parties do not jointly agree on a course of action to take, then the case shall
4 proceed in its normal course on the Court's trial calendar. In the event that this Consent Judgment
5 is entered by the Court and subsequently overturned by any appellate court, any monies that have
6 been provided to OEHHA or to Wozniak or his counsel pursuant to Section 3, above, shall be
7 refunded within 15 days of the appellate decision becoming final.

8 **5.3** Wozniak and 99 Cents agree to support the entry of this agreement as a judgment,
9 and to obtain the Court's approval of their settlement in a timely manner. The Parties acknowledge
10 that, pursuant to California Health and Safety Code section 25249.7(f), a noticed motion is required
11 for judicial approval of this Consent Judgment, which motion Wozniak shall draft and file and 99
12 Cents shall support, appearing at the hearing if so requested. If any third-party objection to the
13 motion is filed, Wozniak and 99 Cents agree to work together to file a reply and appear at any
14 hearing. This provision is a material component of the Consent Judgment and shall be treated as
15 such in the event of a breach.

16 **6. SEVERABILITY**

17 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment,
18 any provision is held by a court to be unenforceable, the validity of the remaining provisions shall
19 not be adversely affected.

20 **7. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of California
22 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
23 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then 99 Cents
24 may provide with written notice to Wozniak of any asserted change in the law, and shall have no
25 further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
26 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve 99 Cents
27 from its obligation to comply with any pertinent state or federal law or regulation.

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1 **8. NOTICE**

2 Unless specified herein, all correspondence and notice required by this Consent Judgment
3 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,
4 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
5 following addresses:

6 To 99 Cents:
7
8 Michael Green, Senior Vice
9 President/General Counsel/Secretary
10 99 Cents Only Stores, LLC
4000 Union Pacific Avenue
City of Commerce, CA 90023

11 with a copy to:

12
13 Patrick J. Cafferty, Esq.
14 Munger, Tolles & Olson, LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105

15 To Wozniak:
16
17 Attn: Proposition 65 Coordinator
18 The Chanler Group
2560 Ninth Street
19 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

22 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

23 This Consent Judgment may be executed in counterparts and by facsimile or portable
24 document format (pdf) signature, each of which shall be deemed an original and, all of which, when
25 taken together, shall constitute one and the same document.
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1 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

2 Wozniak and his counsel agree to comply with the reporting form requirements referenced
3 in California Health and Safety Code section 25249.7(f).

4 **11. MODIFICATION**

5 **11.1** This Consent Judgment may be modified only by: (i) a written agreement of the
6 Parties and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a
7 successful motion of any party and the entry of a modified Consent Judgment by the Court thereon.

8 **11.2 Subsequent Legislation.** If, subsequent to the Effective Date, legislation or
9 regulation is adopted that addresses the DEHP content of Covered Products sold in California
10 hereunder, any Party shall be entitled to request that the Court modify the reformulation standard in
11 Section 3.1 of this Consent Judgment for good cause shown.

12 **11.3 Notice: Meet and Confer.** Any party seeking to modify this Consent Judgment or to
13 allege a violation thereof shall first attempt in good faith to meet and confer with the other Party
14 prior to filing a motion to modify the Consent Judgment.

15 **12. AUTHORIZATION**

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

19
20 **AGREED TO:**

21 
22 _____
23 PAUL WOZNIAK

24 Dated: 9/28/2015

25 **AGREED TO:**

26 
27 _____
28 99 CENTS ONLY STORES LLC

By: Michael Green

Its: Senior Vice President/General
Counsel/Secretary

Dated: 10/12/2015