

1 Clifford A. Chanler, State Bar No. 135534
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 PAUL WOZNIAK

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

PAUL WOZNIAK,

Plaintiff,

v.

99 CENTS ONLY STORES LLC; and DOES
1-150, inclusive,

Defendants.

Case No. RG14744064

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Plaintiff**

7 Wozniak is an individual residing in California who seeks to promote awareness of exposures
8 to toxic chemicals and to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 99 Cents employs ten or more individuals and is a “person in the course of doing business”
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
13 Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Wozniak alleges that 99 Cents manufactures, imports, sells, or distributes for sale in
16 California, nylon cooking utensils that contain 4,4'-Methylenedianiline (“4,4'-MDA”) without first
17 providing the exposure warning required by Proposition 65. 4,4'-MDA is listed pursuant to
18 Proposition 65 as a chemical known to the State of California to cause cancer.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are nylon cooking utensil containing 4,4'-
21 MDA listed on Exhibit A hereto that are manufactured, imported, sold, or distributed for sale in
22 California by 99 Cents (the “Products”).

23 **1.6 Notice of Violation**

24 On or about July 30, 2014, Wozniak served 99 Cents and certain requisite public enforcement
25 agencies with a “60-Day Notice of Violation” (“Notice”) alleging that 99 Cents violated Proposition
26 65 by failing to warn its customers and consumers in California that the Products expose users to
27 4,4'-MDA. To the best of the Parties’ knowledge, no public enforcer has commenced and is
28 diligently prosecuting the allegations set forth in the Notice.

1 **1.7 Complaint**

2 On December 10, 2014, Wozniak filed the instant action (“Complaint”) naming 99 Cents as a
3 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
4 the Notice.

5 **1.8 No Admission**

6 99 Cents denies the material, factual, and legal allegations contained in the Notice and
7 Complaint, and it maintains that all of the products that it has sold and distributed for sale in
8 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
9 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
10 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
11 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. Nothing in
12 this consent judgment shall prejudice, waive, or impair any right, remedy, agreement, or defense, 99
13 Cents may have in this or any further legal proceedings. This Consent Judgment is the product of
14 negotiation and compromise and is accepted by 99 Cents for the purpose of settling, compromising
15 and resolving issues of dispute in this action. However, this Section shall not diminish or otherwise
16 affect 99 Cents’ obligations, responsibilities, and duties under this Consent Judgment.

17 **1.9 Jurisdiction**

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

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
24 the Motion for Approval of the Consent Judgment is granted by the Court.
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1 **2. INJUNCTIVE RELIEF**

2 As of the Effective Date, 99 Cents shall not offer the Products for sale in California unless
3 they are “Reformulated Products.” For purposes of this Consent Judgment, Reformulated Products
4 shall:

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

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

15 **3. MONETARY SETTLEMENT TERMS**

16 **3.1 Civil Penalty Payments**

17 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
18 this Consent Judgment, 99 Cents shall pay \$9,000 in civil penalties. The civil penalty payment shall
19 be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five
20 percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment
21 (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Wozniak.

22 **3.2 Reimbursement of Attorney’s Fees and Costs**

23 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without
24 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
25 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
26 other settlement terms had been finalized, 99 Cents expressed a desire to resolve Wozniak’s fees and
27 costs. The Parties then negotiated a resolution of the compensation due to Wozniak and his counsel
28 under general contract principles and the private attorney general doctrine codified at California Code

1 of Civil Procedure section 1021.5 for all work performed through the mutual execution of this
2 Consent Judgment and the Court's approval of same. 99 Cents shall reimburse Wozniak and his
3 counsel \$30,500. The reimbursement shall cover all fees and costs incurred by Wozniak
4 investigating, bringing this matter to 99 Cents' attention, and negotiating a settlement in the public
5 interest.

6 **3.3 Payments Held In Trust**

7 99 Cents shall deliver all payments required by this Consent Judgment to its counsel within
8 one week of the date that this agreement is fully executed by the Parties. 99 Cents' counsel shall
9 confirm receipt of settlement funds in writing to Wozniak's counsel and, thereafter, hold the amounts
10 paid in trust until such time as the Court grants the motion for approval of the Parties' settlement
11 contemplated by Section 5. Within two days of the Effective Date, 99 Cents' counsel shall deliver
12 the settlement payments to Wozniak's counsel at the address provided in Section 3.4.

13 **3.4 Payment Address**

14 All payments required by this Consent Judgment shall be delivered to the following
15 address:

16 The Chanler Group
17 Attn: Proposition 65 Controller
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Wozniak's Public Release of Proposition 65 Claims**

23 Wozniak, acting on his own behalf and in the public interest, releases 99 Cents and its
24 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
25 and attorneys ("Releasees") and each entity to whom 99 Cents directly or indirectly distributes or
26 sells the Products including, but not limited to, its downstream distributors, wholesalers, customers,
27 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for
28 any violations arising under Proposition 65 for unwarned exposures to 4,4'-MDA from the Products
sold by 99 Cents prior to the Effective Date, as set forth in the Notice. Compliance with the terms
of this Consent Judgment constitutes compliance with Proposition 65 with respect to the alleged

1 failure to warn about exposure to 4,4'-MDA from the Products sold by 99 Cents after the Effective
2 Date, as set forth in the Notice.

3 **4.2 Wozniak's Individual Release of Claims**

4 Wozniak, in his individual capacity only and *not* in his representative capacity, also provides
5 a release to 99 Cents, Releasees, and Downstream Releasees which shall be effective as a full and
6 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
7 attorneys' fees, damages, losses, claims, liabilities and demands of Wozniak of any nature, character
8 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
9 exposures to 4,4'-MDA in the Products sold or distributed for sale by 99 Cents before the Effective
10 Date. Wozniak, in his individual capacity only and *not* in his representative capacity, expressly
11 waives and relinquishes any and all rights and benefits which he may have under, or which may be
12 conferred upon him by the provisions of Section 1542 of the California Civil Code which provides as
13 follows:

14 Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil
15 Code which provides as follows:

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

19 Wozniak, in his individual capacity only and not in his representative capacity, expressly waives and
20 relinquishes any and all rights and benefits which he may have under, or which may be conferred on
21 him by the provisions of Section 1542 of the California Civil Codes as well as under any other state
22 of federal statute or common law principle of similar effect, to the fullest extent that he may lawfully
23 waive such rights or benefits pertaining to the alleged failure to warn about exposure to 4,4'-MDA
24 from the Products sold by 99 Cents before the Effective Date, as set forth in the Notice. In
25 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
26 complete release notwithstanding the discovery or existence of any such additional or different claims
27 or facts arising out of the alleged failure to warn about exposure to 4,4'-MDA from the Products sold
28 by 99 Cents before the Effective Date.

1 **4.3 99 Cents’ Release of Wozniak**

2 99 Cents, on its own behalf, and on behalf of its past and current agents, representatives,
3 attorneys, successors, and assignees, hereby waives any and all claims against Wozniak and his
4 attorneys and other representatives, for any and all actions taken or statements made by Wozniak
5 and his attorneys and other representatives, whether in the course of investigating claims, otherwise
6 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

7 **5. COURT APPROVAL**

8 **5.1** By this Consent Judgment and upon the Court’s approval of the same in its entirety
9 and without modification, unless such a modification is agreed to by the Parties in writing, the Parties
10 waive their right to a trial on the merits, and waive their rights to initiate appellate review of this
11 Consent Judgment, and of any and all interim rulings, including all pleading, procedural, and
12 discovery orders.

13 The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
14 noticed motion is required to obtain judicial approval of this Consent Judgment, which Wozniak shall
15 file and 99 Cents shall support as reasonably necessary.

16 **5.2** This Consent Judgment is not effective until it is approved and entered by the Court
17 and shall be null and void if, for any reason, it is not approved and entered by the Court within one
18 year after it has been fully executed by the Parties. If the Court does not approve the Consent
19 Judgment, the Parties shall meet and confer as to whether to modify the language or appeal the ruling.
20 If the Parties do not jointly agree on a course of action, then the case shall proceed in its normal
21 course on the Court’s trial calendar. If the Court’s approval is ultimately overturned by an appellate
22 court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment.
23 If the Parties do not jointly agree on a course of action to take, then the case shall proceed in its
24 normal course on the Court’s trial calendar. In the event that this Consent Judgment is entered by the
25 Court and subsequently overturned by any appellate court, any monies that have been provided to
26 OEHHA or to Wozniak or his counsel pursuant to Section 3, above, shall be refunded within 15 days
27 of the appellate decision becoming final.
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1 **5.3** Wozniak and 99 Cents agree to support the entry of this agreement as a judgment, and
2 to obtain the Court’s approval of their settlement in a timely manner. The Parties acknowledge that,
3 pursuant to California Health and Safety Code section 25249.7(f), a noticed motion is required for
4 judicial approval of this Consent Judgment, which motion Wozniak shall draft and file and 99 Cents
5 shall support, appearing at the hearing if so requested. If any third-party objection to the motion is
6 filed, Wozniak and 99 Cents agree to work together to file a reply and appear at any hearing. This
7 provision is a material component of the Consent Judgment and shall be treated as such in the event
8 of a breach.

9 **6. SEVERABILITY**

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

13 **7. GOVERNING LAW**

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

21 **8. NOTICE**

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

25 **99 Cents**

26 Michael B. Green, Interim General Counsel
27 99 Cents Only Stores, LLC
28 4000 Union Pacific Avenue
 City of Commerce, CA 90023

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

1 **Wozniak**

2 Proposition 65 Coordinator
3 The Chanler Group
4 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

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

7 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

8 This Consent Judgment may be executed in counterparts and by facsimile or portable
9 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
10 taken together, shall constitute one and the same document.

11 **10. COMPLIANCE WITH SETTLEMENT REPORTING REQUIREMENTS**

12 Wozniak agrees to comply with the reporting form requirements referenced in Health and
13 Safety Code section 25249.7(f).

14 **11. MODIFICATION**

15 **11.1** This Consent Judgment may be modified only by: (i) a written agreement of the
16 Parties and entry of a modified consent judgment by the Court; or (ii) a successful motion or
17 application of any Party, and the entry of a modified consent judgment by the Court.

18 **11.2** Subsequent Legislation. If, subsequent to the Effective Date, legislation or regulation
19 is adopted that addresses the 4,4'-MDA content of the Products sold in California hereunder, any
20 Party shall be entitled to request that the Court modify the reformulation standard in Section 2 of this
21 Consent Judgment for good cause shown.

22 **11.3** Notice: Meet and Confer. Any party seeking to modify this Consent Judgment or to
23 allege a violation thereof shall first attempt in good faith to meet and confer with the other Party prior
24 to filing a motion to modify the Consent Judgment.

25 **12. AUTHORIZATION**

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

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AGREED TO:

Date: May 21, 2015 _____

By:  _____
PAUL WOZNIAK

AGREED TO:

Date: _____

By: _____
Michael B. Green, Interim General Counsel
99 CENTS STORES, LLC

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AGREED TO:

Date: _____

By: _____
PAUL WOZNIAK

AGREED TO:

Date: 5/20/15

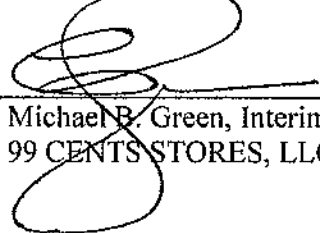
By:  _____
Michael B. Green, Interim General Counsel
99 CENTS STORES, LLC

Exhibit A

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- 3 **1.** Ladle, #1888451104 (UPC No. 8 76416 08657 6);
- 4 **2.** Spoon, #188471104 (UPC No. 8 76416 08658 3), and
- 5 **3.** Slotted Spoon, #1888491104 (UPC No. 8 76416 08659 0).
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