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9 JOHN MOORE and
10 ANTHONY E. HELD, PH.D., P.E.

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF MARIN
14 UNLIMITED CIVIL JURISDICTION
15

16 JOHN MOORE, *et al.*,

17 Plaintiff,

18 v.

19 UNILEVER UNITED STATES, INC., *et al.*,

20 Defendants.

Case No. CIV1500844

**[PROPOSED] CONSENT JUDGMENT
AS TO 99 CENTS ONLY STORES LLC**

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”) and 99 Cents Only Stores LLC (“99 Cents”), with Held and 99 Cents each individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Held is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances 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” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that 99 Cents manufactures, imports, sells, or distributes for sale in California, vinyl/PVC gloves that contain diisononyl phthalate (“DINP”) without first providing the exposure warning required by Proposition 65. DINP is listed pursuant to 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 the vinyl/PVC gloves containing DINP, identified as the *Pure Cleanse by Spic & Span Disposable Vinyl Gloves, Item #861A, UPC #8 12751 00861 3*, that are imported, sold, or distributed for sale in California by 99 Cents (the “Products”).

23 **1.6 Notice of Violation**

24 On or about December 22, 2014, Held served 99 Cents and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that 99 Cents violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to DINP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1 **1.7 Complaint**

2 On March 5, 2015, plaintiffs John Moore and Held filed an instant action (“Complaint”),
3 naming various defendants for Proposition 65 allegations concerning exposures to DINP in
4 California. Among them, 99 Cents was named for its alleged violations of Health and Safety Code
5 section 25249.6 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 it maintains that all of the products that it has sold and distributed for sale in
9 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
10 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
11 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
12 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. Nothing in
13 this consent judgment shall prejudice, waive, or impair any right, remedy, agreement, or defense, 99
14 Cents may have in this or any further legal proceedings. This Consent Judgment is the product of
15 negotiation and compromise and is accepted by 99 Cents for the purpose of settling, compromising
16 and resolving issues of dispute in this action. However, this Section shall not diminish or otherwise
17 affect 99 Cents’ obligations, responsibilities, and duties under this Consent Judgment.

18 **1.9 Jurisdiction**

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

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
25 the Motion for Approval of the Consent Judgment is granted by the Court.

26 **2. INJUNCTIVE RELIEF**

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

1 shall contain DINP in concentrations of less than 0.1 percent (1,000 parts per million) when analyzed
2 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other
3 methodology utilized by federal or state government agencies for the purpose of determining DINP
4 content in a solid substance.

5 **3. MONETARY SETTLEMENT TERMS**

6 **3.1 Civil Penalty Payments**

7 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
8 this Consent Judgment, 99 Cents shall pay \$3,500 in civil penalties. The civil penalty payment shall
9 be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five
10 percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment
11 (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Held.

12 **3.2 Reimbursement of Attorney’s Fees and Costs**

13 The parties acknowledge that Held and his counsel offered to resolve this dispute without
14 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
15 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
16 other settlement terms had been finalized, 99 Cents expressed a desire to resolve Held’s fees and
17 costs. The Parties then negotiated a resolution of the compensation due to Held and his counsel
18 under general contract principles and the private attorney general doctrine codified at California Code
19 of Civil Procedure section 1021.5 for all work performed through the mutual execution of this
20 Consent Judgment and the Court’s approval of same. 99 Cents shall reimburse Held and his counsel
21 \$18,000. The reimbursement shall cover all fees and costs incurred by Held investigating, bringing
22 this matter to 99 Cents’ attention, and negotiating a settlement in the public interest.

23 **3.3 Payments Held In Trust**

24 All payments required by this Consent Judgment shall be delivered to Held’s counsel at the
25 address provided in Section 3.4 within ten days of the Consent Judgment being signed by all parties.
26 Held’s counsel shall then have fourteen (14) days to deposit the funds into the firm’s trust account to
27 be held until such time as the Court grants the motion for approval of the Parties’ settlement
28 contemplated by Section 5. If this Consent Judgment is not approved by the Court, Held’s counsel

1 will return to 99 Cents at the address set forth in section 8 all payments made by 99 Cents pursuant to
2 Sections 3.1 and 3.2.

3 **3.4 Payment Address**

4 All payments required by this Consent Judgment shall be delivered to the following
5 address:

6 The Chanler Group
7 Attn: Proposition 65 Controller
8 2560 Ninth Street
9 Parker Plaza, Suite 214
10 Berkeley, CA 94710

11 **4. CLAIMS COVERED AND RELEASED**

12 **4.1 Held's Public Release of Proposition 65 Claims**

13 Held, acting on his own behalf and in the public interest, releases 99 Cents and its parents,
14 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
15 attorneys ("Releasees") and each entity to whom 99 Cents directly or indirectly distributes or sells
16 the Products including, but not limited to, its downstream distributors, wholesalers, customers,
17 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for
18 any violations arising under Proposition 65 for unwarned exposures to DINP from the Products sold
19 by 99 Cents prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this
20 Consent Judgment, specifically Section 2, constitutes compliance with Proposition 65 with respect
21 to the alleged failure to warn about exposure to DINP from the Products sold by 99 Cents after the
22 Effective Date.

23 **4.2 Held's Individual Release of Claims**

24 Held, in his individual capacity only and *not* in his representative capacity, also provides a
25 release to 99 Cents, Releasees, and Downstream Releasees which shall be effective as a full and final
26 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
27 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
28 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
exposures to DINP in the Products sold or distributed for sale by 99 Cents before the Effective Date.
Held, in his individual capacity only and *not* in his representative capacity, expressly waives and

1 relinquishes any and all rights and benefits which he may have under, or which may be conferred
2 upon him by the provisions of Section 1542 of the California Civil Code which provides as follows:

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

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

8 Held, in his individual capacity only and not in his representative capacity, expressly waives and
9 relinquishes any and all rights and benefits which he may have under, or which may be conferred on
10 him by the provisions of Section 1542 of the California Civil Codes as well as under any other state
11 of federal statute or common law principle of similar effect, to the fullest extent that he may lawfully
12 waive such rights or benefits pertaining to the alleged failure to warn about exposure to DINP from
13 the Products sold by 99 Cents before the Effective Date, as set forth in the Notice. In furtherance of
14 such intention, the release hereby given shall be and remain in effect as a full and complete release
15 notwithstanding the discovery or existence of any such additional or different claims or facts arising
16 out of the alleged failure to warn about exposure to DINP from the Products sold by 99 Cents before
17 the Effective Date.

18 **4.3 99 Cents' Release of Held**

19 99 Cents, on its own behalf, and on behalf of its past and current agents, representatives,
20 attorneys, successors, and assignees, hereby waives any and all claims against Held and his
21 attorneys and other representatives, for any and all actions taken or statements made by Held and
22 his attorneys and other representatives, whether in the course of investigating claims, otherwise
23 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

24 **5. COURT APPROVAL**

25 **5.1** By this Consent Judgment and upon the Court's approval of the same in its entirety
26 and without modification, unless such a modification is agreed to by the Parties in writing, the Parties
27 waive their right to a trial on the merits, and waive their rights to initiate appellate review of this
28

1 Consent Judgment, and of any and all interim rulings, including all pleading, procedural, and
2 discovery orders.

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

6 **5.2** This Consent Judgment is not effective until it is approved and entered by the Court
7 and shall be null and void if, for any reason, it is not approved and entered by the Court within one
8 year after it has been fully executed by the Parties. If the Court does not approve the Consent
9 Judgment, the Parties shall meet and confer as to whether to modify the language or appeal the ruling.
10 If the Parties do not jointly agree on a course of action, then the case shall proceed in its normal
11 course on the Court's trial calendar. If the Court's approval is ultimately overturned by an appellate
12 court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment.
13 If the Parties do not jointly agree on a course of action to take, then the case shall proceed in its
14 normal course on the Court's trial calendar. In the event that this Consent Judgment is entered by the
15 Court and subsequently overturned by any appellate court, any monies that have been provided to
16 OEHHA or to Held or his counsel pursuant to Section 3, above, shall be refunded within 15 days of
17 the appellate decision becoming final.

18 **5.3** Held and 99 Cents agree to support the entry of this agreement as a judgment, and to
19 obtain the Court's approval of their settlement in a timely manner. The Parties acknowledge that,
20 pursuant to California Health and Safety Code section 25249.7(f), a noticed motion is required for
21 judicial approval of this Consent Judgment, which motion Held shall draft and file and 99 Cents shall
22 support, appearing at the hearing if so requested. If any third-party objection to the motion is filed,
23 Held and 99 Cents agree to work together to file a reply and appear at any hearing. This provision is
24 a material component of the Consent Judgment and shall be treated as such in the event of a breach.

25 **6. SEVERABILITY**

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

1 **7. GOVERNING LAW**

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

9 **8. NOTICE**

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

13 **99 Cents**

14 Michael B. Green
15 Senior Vice President,
16 General Counsel, Secretary
17 99 Cents Only Stores LLC
18 4000 Union Pacific Avenue
19 City of Commerce, CA 90023

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

18 **Held**

19 Proposition 65 Coordinator
20 The Chanler Group
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710-2565

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

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

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

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

2 Held agrees to comply with the reporting form requirements referenced in Health and Safety
3 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 entry of a modified consent judgment by the Court; or (ii) a successful motion or
7 application of any Party, and the entry of a modified consent judgment by the Court.

8 **11.2** Subsequent Legislation. If, subsequent to the Effective Date, legislation or regulation
9 is adopted that addresses the DINP content of the Products sold in California hereunder, any Party
10 shall be entitled to request that the Court modify the reformulation standard in Section 2 of this
11 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 prior
14 to filing a motion to modify the Consent Judgment.

15 **12. AUTHORIZATION**

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

18 **AGREED TO:**

AGREED TO:

19
20 Date: February 22, 2016

Date: 3/14/16

21
22 By: Anthony E. Held

ANTHONY E. HELD, PH.D., P.E.

By: Michael B. Green

Michael B. Green
Senior Vice President,
General Counsel, Secretary
99 CENTS ONLY STORES LLC