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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,) Case No. RG 16-802667
a non-profit corporation,)

Plaintiff,)

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

vs.)

99 CENTS ONLY STORES LLC, et al.,)

Defendants.)

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center for Environmental Health, a California non-profit corporation (“CEH”) on the one hand, and 99 Cents Only Stores LLC (“Defendant”) on the other hand, to settle certain claims asserted by CEH against Defendant as set forth in the operative complaint in the matter entitled *Center for Environmental Health v. 99 Cents Only Stores LLC, et al.*, Alameda County Superior Court Case No. RG 16-802667 (the “Action”).

1.2 On November 12, 2015, CEH provided two Notices of Violation relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”) to the

1 California Attorney General, the District Attorneys of every county in California, the City
2 Attorneys of every California city with a population greater than 750,000, to Defendant, and to
3 Momentum Brands, Inc. regarding the presence of lead and lead compounds (collectively referred
4 to herein as “Lead”) in (1) painted metal clamps; and (2) mops with painted handles.

5 1.3 On February 3, 2016, CEH filed the Complaint in the Action naming
6 Defendant as a defendant in the Action.

7 1.4 Defendant manufactures, distributes, and/or sells (1) the Power +Plus 3” G-
8 Clamp, Item No. MU-34343, SKU No. 3-30341-13296-3; and (2) the Beslead Cotton Mop High-
9 End, SKU No. 8-76416-16499-1 (collectively, “Covered Products”) in the State of California.
10 Defendant represents that Momentum Brands is a dba registered to 99 Cents Only Stores.

11 1.5 For purposes of this Consent Judgment only, CEH and Defendant (the
12 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in
13 the Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint,
14 that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this
15 Consent Judgment as a full and final resolution of all claims which were or could have been
16 raised in the Complaint based on the facts alleged therein with respect to Covered Products
17 manufactured, distributed, and/or sold by Defendant.

18 1.6 CEH and Defendant enter into this Consent Judgment as a full and final
19 settlement of all claims that were raised in the Complaint, or which could have been raised in the
20 Complaint, arising out of the facts or conduct related to Defendant alleged therein. By execution
21 of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any
22 facts or conclusions of law including, but not limited to, any facts or conclusions of law
23 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law,
24 or equitable requirements. Nothing in this Consent Judgment is or shall be construed as an
25 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall
26 compliance with the Consent Judgment constitute or be construed as an admission by the Parties
27 of any fact, conclusion of law, issue of law, or violation of law. Defendant denies the material
28 factual and legal allegations in CEH’s Complaint and expressly denies any wrongdoing

1 whatsoever. Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
2 remedy, argument, or defense the Parties may have in this or any other pending or future legal
3 proceedings. This Consent Judgment is the product of negotiation and compromise and is
4 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
5 disputed in this action.

6 **2. INJUNCTIVE RELIEF**

7 2.1 **Reformulation of Covered Products.** As of the date of entry of this Consent
8 Judgment (the “Effective Date”), Defendant shall not manufacture, ship, sell, or offer for sale any
9 Covered Products in California unless such Covered Products comply with the following Lead
10 Limits:

11 2.1.1 “Paint or other Surface Coatings” as that term is defined in 16 C.F.R.
12 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million) (“ppm”).

13 2.1.2 Polyvinyl chloride (“PVC”): no more than 0.02 percent Lead by weight
14 (200 ppm).

15 2.1.3 All other materials other than cubic zirconia (sometimes called cubic
16 zirconium, CZ), crystal, glass or rhinestones: no more than 0.03 percent Lead by weight (300
17 ppm).

18 2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
19 Defendant shall withdraw any Covered Products that do not meet the Lead Limits (“Recall
20 Covered Products”) from the market in California. Defendant shall, at a minimum, send
21 instructions to any of its stores and/or customers that offer the Recall Covered Products for sale in
22 California to cease offering such Recall Covered Products for sale and to return all Recall
23 Covered Products to Defendant’s California distribution center. Defendant shall keep and make
24 available to CEH for inspection and copying records and correspondence regarding the market
25 withdrawal of the Recall Covered Products. If there is a dispute over the corrective action, the
26 Parties shall meet and confer before seeking any remedy in court.

1 **3. ENFORCEMENT**

2 **3.1 Enforcement Procedures.** Prior to bringing any motion or application for
3 order to show cause to enforce the terms of Section 2 of this Consent Judgment, a Party seeking
4 to enforce shall provide the violating party thirty (30) days advance written notice of the alleged
5 violation. The Parties shall meet and confer during such thirty (30) day period in an effort to try
6 to reach agreement on an appropriate cure for the alleged violation. After such thirty (30) day
7 period, the Party seeking to enforce may, by motion or application for order to show cause before
8 the Superior Court of Alameda, seek to enforce the terms and conditions contained in this
9 Consent Judgment.

10 **4. PAYMENTS**

11 **4.1 Payments from Defendant.** Within five (5) days of the entry of this Consent
12 Judgment, Defendant shall pay the total sum of \$50,000, as further set forth in this Section.

13 **4.2 Allocation of Payments.** The total settlement amount for Defendant shall be
14 paid in four separate checks in the amounts set forth below and delivered as set forth below. Any
15 failure by Defendant to comply with the payment terms herein shall be subject to a stipulated late
16 fee in the amount of \$50 for each day after the delivery date the payment is received. The late
17 fees required under this Section shall be recoverable in an enforcement proceeding brought
18 pursuant to Section 3 of this Consent Judgment. The funds paid by Defendant shall be allocated
19 as set forth below between the following categories and made payable as follows:

20 4.2.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b) in the
21 amount of \$6,600. The civil penalty payment shall be apportioned in accordance with Health &
22 Safety Code § 25249.12 (*i.e.*, 25% to CEH and 75% to the State of California’s Office of
23 Environmental Health Hazard Assessment (“OEHHA”)). Accordingly, the OEHHA portion of
24 the civil penalty payment in the amount of \$4,950 shall be made payable to OEHHA and
25 associated with taxpayer identification number 68-0284486. This payment to OEHHA shall be
26 delivered as follows:

27 For United States Postal Service Delivery:

28 Attn: Mike Gyurics

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Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

The CEH portion of the civil penalty payment in the amount of \$1,650 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment to CEH shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4.2.2 A payment in lieu of civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b) in the amount of \$9,900. CEH will use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds to monitor compliance with the reformulation requirements of this and other similar Consent Judgments and to purchase and test Covered Products to confirm compliance with such reformulation requirements. In addition, as part of its *Community Environmental Action and Justice Fund*, CEH will use four percent of such funds to award grants to grassroots environmental justice groups working to educate and protect people from exposures to toxic chemicals. The method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4.2.3 A reimbursement of a portion of CEH’s reasonable attorneys’ fees and costs in the amount of \$33,500. The attorneys’ fees and cost reimbursement check shall be made

1 payable to the Lexington Law Group and associated with taxpayer identification number 94-
2 3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
3 Francisco, CA 94117.

4 **5. MODIFICATION AND DISPUTE RESOLUTION**

5 5.1 **Modification.** This Consent Judgment may be modified from time to time by
6 express written agreement of the Parties, with the approval of the Court, or by an order of this
7 Court upon motion and in accordance with law.

8 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
9 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
10 motion to modify the Consent Judgment.

11 **6. CLAIMS COVERED AND RELEASE**

12 6.1 This Consent Judgment is a full, final, and binding resolution between CEH
13 and Defendant and Defendant's parents, shareholders, divisions, subdivisions, subsidiaries,
14 partners, sister companies, and their successors and assigns ("Defendant Releasees"), and all to
15 whom they distribute or sell Covered Products including, but not limited to, distributors,
16 wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream
17 Defendant Releasees"), of any violation of Proposition 65 or any other statutory or common law
18 claims that have been or could have been asserted in the public interest against Defendant,
19 Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to warn about
20 exposure to Lead arising in connection with Covered Products manufactured, distributed, or sold
21 by Defendant prior to the Effective Date.

22 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
23 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against
24 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
25 violation of Proposition 65 or any other statutory or common law claims that have been or could
26 have been asserted in the public interest regarding the failure to warn about exposure to Lead
27 arising in connection with Covered Products manufactured, distributed, or sold by Defendant
28 prior to the Effective Date.

1 6.3 Compliance with the terms of this Consent Judgment by Defendant and the
2 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the
3 Defendant Releasees, and their Downstream Defendant Releasees with respect to any alleged
4 failure to warn about Lead in Covered Products manufactured, distributed, or sold by Defendant
5 after the Effective Date.

6 **7. PROVISION OF NOTICE**

7 7.1 When any Party is entitled to receive any notice under this Consent Judgment,
8 the notice shall be sent by first class and electronic mail as follows:

9 7.1.1 **Notices to Defendant.** The person for Defendant to receive notices
10 pursuant to this Consent Judgment shall be:

11 Patrick J. Cafferty, Jr.
12 MUNGER, TOLLES & OLSON, LLP
13 560 Mission Street, 27th Floor
14 San Francisco, CA 94105
15 patrick.cafferty@mto.com

16 7.1.2 **Notices to Plaintiff.** The person for CEH to receive notices pursuant to
17 this Consent Judgment shall be:

18 Howard Hirsch
19 LEXINGTON LAW GROUP
20 503 Divisadero Street
21 San Francisco, CA 94117
22 hhirsch@lexlawgroup.com

23 7.2 Any Party may modify the person and address to whom the notice is to be sent
24 by sending the other Party notice by first class and electronic mail.

25 **8. COURT APPROVAL**

26 8.1 This Consent Judgment shall become effective on the Effective Date, provided
27 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
28 Defendant shall support approval of such Motion.

 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
effect and shall not be introduced into evidence or otherwise used in any proceeding for any
purpose.

1 **9. ATTORNEYS' FEES**

2 9.1 The prevailing party on any motion or application to enforce this Consent
3 Judgment shall be entitled to its reasonable attorney's fees and costs incurred as a result of such
4 motion or application.

5 9.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
6 its own attorneys' fees and costs.

7 9.3 Nothing in this Section 9 shall preclude a Party from seeking an award of
8 sanctions pursuant to law.

9 **10. GOVERNING LAW AND CONSTRUCTION**

10 10.1 The terms of this Consent Judgment shall be governed by the laws of the State
11 of California.

12 **11. ENTIRE AGREEMENT**

13 11.1 This Consent Judgment contains the sole and entire agreement and
14 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
15 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
16 merged herein and therein. There are no warranties, representations, or other agreements between
17 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
18 implied, other than those specifically referred to in this Consent Judgment have been made by any
19 Party hereto. No other agreements not specifically contained or referenced herein, oral or
20 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
21 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
22 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
23 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
24 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
25 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
26 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

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1 **12. RETENTION OF JURISDICTION**

2 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

5 13.1 Each signatory to this Consent Judgment certifies that he or she is fully
6 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
7 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
8 Party.

9 **14. NO EFFECT ON OTHER SETTLEMENTS**

10 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
11 claim against another entity on terms that are different than those contained in this Consent
12 Judgment.


13 **15. EXECUTION IN COUNTERPARTS**

14 15.1 The stipulations to this Consent Judgment may be executed in counterparts
15 and by means of facsimile, which taken together shall be deemed to constitute one document.

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IT IS SO STIPULATED:

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| <p>Dated: <u>17 JUNE</u>, 2016</p> | <p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p></p> <p>Signature</p> <p><u>CHARLIE PIZARRO</u></p> <p>Printed Name</p> <p><u>ASSOCIATE DIRECTOR</u></p> <p>Title</p> |
| <p>Dated: _____, 2016</p> | <p>99 CENTS ONLY STORES LLC</p> <p>Signature</p> <p>Printed Name</p> <p>Title</p> |

**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

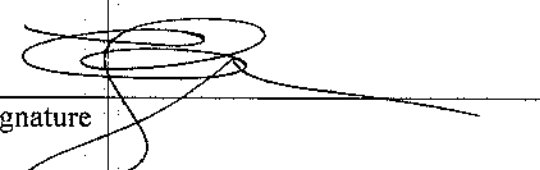
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JUDGE OF THE SUPERIOR COURT OF THE
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IT IS SO STIPULATED:

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| Dated: _____, 2016 | <p>CENTER FOR ENVIRONMENTAL HEALTH</p> <hr/> <p>Signature</p> <hr/> <p>Printed Name</p> <hr/> <p>Title</p> |
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| Dated: <u>June 15</u> , 2016 | <p>99 CENTS ONLY STORES LLC</p> <hr/>  <p>Signature</p> <hr/> <p><u>Michael B Gurevich</u></p> <p>Printed Name</p> <hr/> <p><u>SVP / General Counsel</u></p> <p>Title</p> |
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**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

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| Dated: _____ | <p>_____ JUDGE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA</p> |
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