

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Paul Wozniak (“Wozniak”) and 99 Cents Only Stores LLC (“99 Cents”), with Wozniak and 99 Cents each individually referred to as a “Party” and collectively as the “Parties.” Wozniak is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Wozniak alleges that 99 Cents employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Wozniak alleges that 99 Cents manufactures, sells, and/or distributes for sale in California, glass bottles with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Wozniak alleges that 99 Cents failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to lead from the exterior designs on its glass bottles.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are glass bottles with exterior designs containing lead described as *Clear Glass Oil and Vinegar Bottles, #190630, #1304, UPC #8 76416 08840 2*, manufactured, sold or distributed for sale in California by 99 Cents (“Products”).

### 1.4 Notice of Violation

On or about October 24, 2014, Wozniak served 99 Cents and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that

99 Cents violated Proposition 65 when it failed to warn its customers and consumers in California that its glass bottles with exterior designs expose users to lead. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

99 Cents denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by 99 Cents of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by 99 Cents of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by 99 Cents. Nothing in this Settlement Agreement shall prejudice, waive, or impair any rights, remedy, agreement, or defense, 99 Cents may have in this or any further legal proceedings. This Settlement Agreement is the product of negotiation and compromise and is accepted by 99 Cents for purposes of settling, compromising, and resolving issues of dispute in this action. However, this Section shall not diminish or otherwise affect 99 Cents' obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which it is executed by all parties.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

### **2.1 Reformulation Commitment**

Commencing on the Effective Date and continuing thereafter, 99 Cents agrees to only manufacture for sale or purchase for sale in California, "Reformulated Products". For purposes of this Settlement Agreement, "Reformulated Products" are Products that: (a) contain no more than to 90 parts per million ("ppm") lead when analyzed pursuant to

U.S. Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; and (b) yield no more than 1.0 microgram (“ug”) of lead when a wipe is applied to all surfaces according to NIOSH Test Method No. 9100.

**3. MONETARY SETTLEMENT TERMS**

**3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(6)**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this settlement Agreement, 99 Cents agrees to pay \$2,000 in civil penalties. This penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Wozniak.

Within ten (10) business days after the Effective Date, 99 Cents shall pay the \$2,000 civil penalty in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “Paul Wozniak, Client Trust Account” in the amount of \$500. Wozniak counsel shall be responsible for remitting the 99 Cents’ payment to OEHHA.

**3.2 Attorneys’ Fees and Costs**

The Parties reached an accord on the compensation due to Wozniak and his counsel under the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under this provision and general contract principles, 99 Cents agrees to pay \$18,000 to Wozniak and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of 99 Cents’ management, and negotiating a settlement in the public interest. 99 Cents’ payment shall be due within ten (10) business days after the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to “The Chanler Group.”

### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to the following address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Wozniak's Release of 99 Cents**

This Settlement Agreement is a full, final and binding resolution between Wozniak, as an individual and not on behalf of the public, and 99 Cents, of any violation of Proposition 65 that was or could have been asserted by Wozniak, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees ("Releasers"), and Releasers hereby release any such claims, against 99 Cents, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity from whom 99 Cents purchased the Products and or to whom 99 Cents directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the failure to warn about alleged exposures to lead contained in Products manufactured, distributed, sold or offered for sale by 99 Cents in California before the Effective Date of this Settlement Agreement.

In further consideration of the promises and agreements herein contained, Wozniak, on his own behalf, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby covenants not to sue and waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, whether known or unknown, suspected or unsuspected, including without limitation all actions and causes of action in law and in equity, all suits,

liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including without limitation investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to the Products manufactured, distributed, sold and/or offered for sale by 99 Cents before the Effective Date of this Settlement Agreement.

#### **4.2 99 Cents's Release of Wozniak**

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

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

#### **6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, as to 99 Cents specifically as a result of a statutory exemption, or as to the Products, then 99 Cents may provide written notice to Wozniak of any asserted change in the law, or its applicability to 99 Cents or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, 99 Cents or the Products are so affected.

#### **7. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal

delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

**99 Cents**

Michael B. Green  
Interim General Counsel  
99 Cents\_Only Stores, LLC  
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

**Wozniak**

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

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

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

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

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

**10. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

Date: May 21, 2015

By:   
PAUL WOZNIAK

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Michael B. Green  
Interim General Counsel  
99 CENTS ONLY STORES LLC

11. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

Date: \_\_\_\_\_

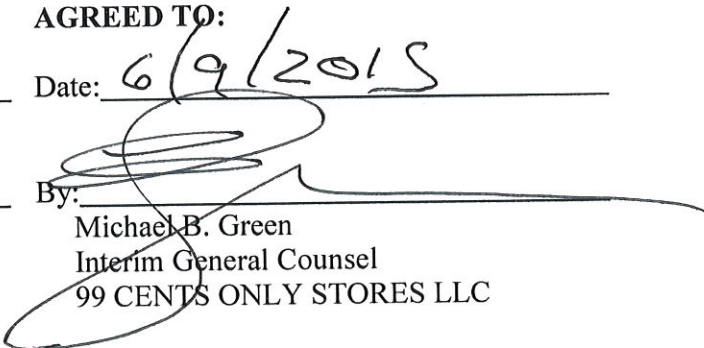
By: \_\_\_\_\_

PAUL WOZNIAK

**AGREED TO:**

Date: 6/9/2015

By: \_\_\_\_\_

  
Michael B. Green  
Interim General Counsel  
99 CENTS ONLY STORES LLC