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ENDORSED  
FILED  
ALAMEDA COUNTY

OCT 20 2017

CLERK OF THE SUPERIOR COURT  
By *[Signature]*  
JACKIE THOMAS, Deputy

5 *Attorneys for Plaintiff*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA

11 EMA BELL,  
12 Plaintiff,  
13 v.  
14 99 CENTS ONLY STORES LLC,  
15 Defendant.

Case No.: **RG17879470**  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
**(Violation of Health & Safety Code §25249.5  
et seq.)**

17 Plaintiff Ema Bell ("Plaintiff"), by and through her attorneys, alleges the following cause  
18 of action in the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

20 1. Plaintiff brings this representative action on behalf of all California citizens to  
21 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified  
22 at the Health and Safety Code § 25249.5 *et seq* ("Proposition 65"), which reads, in relevant part,  
23 "[n]o person in the course of doing business shall knowingly and intentionally expose any  
24 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
25 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

26 2. This complaint is a representative action brought by Plaintiff in the public interest  
27 of the citizens of the State of California to enforce the People's right to be informed of the health  
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BY FAX

1 hazards caused by exposure to (a) Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in  
2 Momentum Jump Ropes, and (b) di-n-butyl phthalate (DBP), a toxic chemical found in  
3 Momentum Bike Locks (collectively, the “Products”), both of which are manufactured, sold  
4 and/or distributed for sale in California by defendant 99 Cents Only Stores, I.I.C (“99 Cents  
5 Only” or “Defendant”) in California.

6 3. DEHP and DBP are harmful chemicals known to the State of California to cause  
7 cancer and/or reproductive toxicity. On January 1, 1988, the State of California listed DEHP as  
8 a chemical known to the State to cause cancer. October 24, 2003, and on December 5, 2005, the  
9 State of California listed DEHP and DBP, respectively, each as a chemical known to the State to  
10 cause reproductive toxicity. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§  
11 25249.8 & 25249.10(b). DEHP and DBP have each come under the purview of Proposition 65  
12 regulations since the time of their listing.

13 4. Proposition 65 requires all businesses with ten (10) or more employees that  
14 operate within California or sell products therein to comply with Proposition 65 regulations.  
15 Included in such regulations is the requirement that businesses must label any product containing  
16 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and  
17 intentionally” exposing any person to it.

18 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
19 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety  
20 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin  
21 the actions of a defendant which “violate[s] or threaten[s] to violate” the statute. Health &  
22 Safety Code § 25249.7.

23 6. Plaintiff alleges that Defendant manufactures, distributes, imports, sells, and/or  
24 offers for sale in California, without the required Proposition 65 exposure warning, the Products,  
25 that contain DEHP and/or DBP.

26 7. Defendant’s failure to warn consumers and other individuals in California of the  
27 health hazards associated with exposure to DEHP and DBP in conjunction with the sale,

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1 manufacture, and/or distribution of the Products is a violation of Proposition 65 and subjects  
2 Defendant to the enjoinder and civil penalties described herein.

3 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition  
4 65 in accordance with Health and Safety Code § 25249.7(b).

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
6 Defendant to provide purchasers or users of the Product with the required exposure warnings  
7 related to the dangers and health hazards associated with exposure to DEHP and DBP pursuant  
8 to Health and Safety Code § 25249.7(a).

9 **PARTIES**

10 10. Plaintiff is a citizen of the State of California acting in the interest of the general  
11 public to promote awareness of exposures to toxic chemicals in products sold in California and  
12 to improve human health by reducing hazardous substances contained in such items. He brings  
13 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

14 11. Defendant 99 Cents Only, through its business, effectively manufactures, imports,  
15 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies  
16 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale  
17 or use in the State of California. Defendant maintains a registered agent for service of process at  
18 c/o CT Corporation System, 818 W Seventh St., Ste. 930, Los Angeles, CA 90017.

19 12. Defendant 99 Cents Only is a "person" in the course of doing business within the  
20 meaning of Health & Safety Code sections 25249.6 and 25249.11.

21 **VENUE AND JURISDICTION**

22 13. Venue is proper in the County of Alameda because one or more of the instances  
23 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant  
24 conducted, and continues to conduct, business in the County of Alameda with respect to the  
25 Product.

26 14. This Court has jurisdiction over this action pursuant to California Constitution  
27 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
28 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the

1 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,  
2 this Court has jurisdiction over this lawsuit.

3 15. This Court has jurisdiction over Defendant because it is either a citizen of the  
4 State of California, has sufficient minimum contacts with the State of California, is registered  
5 with the California Secretary of State as foreign corporations authorized to do business in the  
6 State of California, and/or has otherwise purposefully availed itself of the California market.  
7 Such purposeful availment has rendered the exercise of jurisdiction by California courts  
8 consistent and permissible with traditional notions of fair play and substantial justice.

9 **SATISFACTION OF NOTICE REQUIREMENTS**

10 16. On April 24, and on April 26, 2017, Plaintiff gave notice of alleged violation of  
11 Health and Safety Code § 25249.6 (collectively, the "Notices") to 99 Cents Only concerning the  
12 exposure of California citizens to DEHP and DBP contained in the Products without proper  
13 warning, subject to a private action to 99 Cents Only and to the California Attorney General's  
14 office and the offices of the County District attorneys and City Attorneys for each city with a  
15 population greater than 750,000 persons wherein the herein violations allegedly occurred.

16 17. The Notices complied with all procedural requirements of Proposition 65  
17 including the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted  
18 with at least one person with relevant and appropriate expertise who reviewed relevant data  
19 regarding DEHP exposure, and that counsel believed there was meritorious and reasonable cause  
20 for a private action.

21 18. After receiving the Notices, and to Plaintiff's best information and belief, none of  
22 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted  
23 a cause of action against 99 Cents Only under Proposition 65 to enforce the alleged violations  
24 which are the subject of Plaintiff's notice of violation.

25 19. Plaintiff is commencing this action more than sixty (60) days from the date of the  
26 Notice to 99 Cents Only, as required by law.

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1 **FIRST CAUSE OF ACTION**

2 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

3 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of  
4 this complaint as though fully set forth herein.

5 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,  
6 and/or retailer of the Products.

7 22. The Products contains DEHP and/or DBP, hazardous chemicals found on the  
8 Proposition 65 list of chemicals known to be hazardous to human health.

9 23. The Product does not comply with the Proposition 65 warning requirements.

10 24. Plaintiff, based on her best information and belief, avers that at all relevant times  
11 herein, and at least since March 19, 2017, continuing until the present, that 99 Cents Only has  
12 continued to knowingly and intentionally expose California users and consumers of the Products  
13 to DEHP and/or DBP without providing required warnings under Proposition 65.

14 25. The exposures that are the subject of the Notices result from the purchase,  
15 acquisition, handling and recommended use of the product. Consequently, with respect to the  
16 jump rope, the primary route of exposure to these chemicals is through dermal absorption. Users  
17 may potentially be exposed to DEHP by dermal absorption through direct skin contact with the  
18 jump rope during routine use when red cords is handled with bare hands. When the cord comes  
19 into contact with bare skin during jump rope exercise, direct dermal exposure to DEHP is  
20 possible. When the red cord comes into contact with clothing during jump rope exercise, DEHP  
21 from the red cord can absorb to clothes and these clothes will become a source of dermal  
22 exposure. The product can be expected to emit gas phase DEHP into the air over the lifetime of  
23 the product. If the jump rope is stored or transported in a carrier, DEHP that leaches from the  
24 cord may contaminate other articles contained within these closed spaces are subsequently  
25 handled, worn, mouthed, or consume. Finally, while direct mouthing of the product does not  
26 seem likely, some amount of exposure through ingestion can occur by touching the product with  
27 subsequent touching of the user's hand to mouth.

1           26.     With respect to the bike lock, , the primary route of exposure to these chemicals is  
2 through dermal exposure. Dermal exposure through the hands is possible when the user  
3 manipulates and grasps the cord with bare hands. Should the cord be handled while wet or with  
4 wet hands, aqueous phthalate skin permcation rates have been reported to be faster than neat  
5 phthalate permeation. If the bike lock is stored or transported in a carrier DBP that leaches from  
6 the cord may contaminate other articles contained within these closed spaces that are  
7 subsequently handled, worn, mouthed, or ingested by the user. Finally, while mouthing of the  
8 product does not seem likely, some amount of exposure through ingestion can occur by handling  
9 the product with subsequent touching of the user’s hand to mouth.

10           27.     Plaintiff, based on her best information and belief, avers that such exposures will  
11 continue every day until clear and reasonable warnings are provided to the Products’ purchasers  
12 and users or until these known toxic chemicals are removed from the Products.

13           28.     Defendant has knowledge that the normal and reasonably foreseeable use of the  
14 Products exposes individuals to DEHP and/or DBP, and Defendant intends that exposures to  
15 DEHP and/or DBP will occur by its deliberate, non-accidental participation in the manufacture,  
16 importation, distribution, sale and offering of the Products to consumers in California.

17           29.     Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
18 Complaint.

19           30.     Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above  
20 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

21           31.     Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
22 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

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24   PRAYER FOR RELIEF

25           WHEREFORE, Plaintiff demands judgment against Defendant and requests the  
26 following relief:


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- A. That the court assess civil penalties against Defendant in the amount of \$2,500 per day for each violation in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin Defendant mandating Proposition 65 compliant warnings on the Product;
- C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- D. That the court grant any further relief as may be just and proper.

Dated: October 18, 2017

BRODSKY & SMITH, LLC

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