

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Gregory Alarcon

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

APS&EE, LLC, a limited liability company,

Plaintiff,

v.

99 CENTS ONLY STORES, LLC, a limited  
liability company, and DOES 1 through 100,  
inclusive,

Defendants.

CASE NO. 19STCV26365

**PLAINTIFF'S COMPLAINT FOR  
CIVIL PENALTIES AND INJUNCTIVE  
RELIEF**

(Health & Safety Code § 25249.6 et seq.)

Judge:

Dept.:

Compl. Filed:

Unlimited Jurisdiction

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## **INTRODUCTION**

1. This Complaint is brought by Plaintiff, APS&EE, LLC (“Plaintiff”) in the public interest of the citizens of the State of California, a representative action to enforce the People’s right to be informed of the presence of Di (2-ethylhexyl) Phthalate also known as Bis (2-ethylhexyl) Phthalate (“DEHP”) and Di-n-Butyl Phthalate (“DBP”), chemicals known to the State of California to cause cancer and/or reproductive toxicity, found in Tote Bags sold by Defendants; and Lead, a chemical known to cause cancer and birth defects or other reproductive harm, found in Garden Ease Metal Shovels sold by Defendants.

2. The purpose of this Complaint is to remedy Defendants’ continuing failure to warn California residents about the risk of exposure to DEHP and DBP in the tote bags and Lead in the shovels, that have been manufactured, distributed, sold, and/or offered for sale to consumers in California.

3. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell: (1) Tote Bags, including but not limited to including Chloe Alexis #46-736807, 1811, 6-33643-16835-8 (hereinafter “Tote Bags”) containing hazardous levels of DEHP and DBP; and (2) Garden Ease Metal Shovels, including #58-715977, 1811, 8-18068-05170-0 (hereinafter “Shovels”) containing hazardous levels of Lead. The Tote Bags and Shovels shall hereinafter collectively be referred to as the “Products”.

4. Children and adults are exposed to DEHP, DBP and/or Lead when they use, touch, handle, play with, repair, or maintain the Products.

5. Hazardous levels of DEHP, DBP, and/or Lead are found in the accessible surface areas of the Products manufactured, distributed, sold, and/or offered for sale by Defendants to consumers in California.

6. California Health and Safety Code section 25249.6 et seq. (“Proposition 65”) provides in pertinent part: “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual...”

7. Studies repeatedly conclude that exposure to DEHP, DBP and Lead are hazardous

1 to the health of children and adults. Accordingly, California has listed DEHP as a chemical  
2 known to the state to cause cancer and reproductive toxicity, DBP as known to cause birth defects  
3 and other reproductive harm, and Lead as known to cause cancer and birth defects or other  
4 reproductive harm, and therefore all chemicals subject to Proposition 65 warning requirements.

5 8. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell  
6 the Products without the required warnings. Defendants' conduct violates the warning  
7 requirements of Proposition 65.

### 8 **PARTIES**

9 9. Plaintiff is an organization based in California acting in the public interest.  
10 Plaintiff brings this action in the public interest pursuant to California Health and Safety Code  
11 section 25249.7(d).

12 10. Defendant, 99 CENTS ONLY STORES, LLC is a person in the course of doing  
13 business within the meaning of California Health and Safety Code section 25249.11. 99 CENTS  
14 ONLY STORES, LLC manufactures, distributes, and/or sells the Products for sale and use in  
15 California.

16 11. DOES 1 through 100 are each a person in the course of doing business within the  
17 meaning of California Health and Safety Code section 25249.11. DOES 1 through 100  
18 manufacture, distribute, and/or sell the Products for sale and use in California. The true names of  
19 DOES 1 through 100 are unknown to Plaintiff at this time. When their identities are discovered,  
20 Plaintiff's Complaint shall be amended to reflect their true names.

21 12. The defendants identified in paragraphs 10-11 shall collectively be referred to  
22 herein as "Defendants".

### 23 **JURISDICTION AND VENUE**

24 13. This Court has jurisdiction over this action pursuant to California Health and  
25 Safety Code section 25249.7, which allows enforcement in any court of competent jurisdiction,  
26 and pursuant to California Constitution Article VI, Section 10, because this lawsuit is based on a  
27 cause not given by statute to other trial courts. Moreover, this action belongs in unlimited  
28 jurisdiction since the amount in controversy exceeds \$25,000 and Plaintiff seeks permanent

1 injunctive relief.

2 14. This Court has jurisdiction over Defendants because each is a person, firm,  
3 corporation, or association with sufficient minimum contacts in the State of California, or  
4 otherwise purposefully avails itself to the California market as to render jurisdiction by the  
5 California courts consistent with traditional notions of fair play and substantial justice.

6 15. Venue is proper in Los Angeles County Superior Court because one or more  
7 occurrences of the wrongful conduct occurred, and continues to occur, in Los Angeles County,  
8 and/or because Defendants conducted, and continue to conduct, business in this County with  
9 respect to the Products.

10 **FIRST CAUSE OF ACTION**

11 **(Violations of Health & Safety Code Section 25249.6 et seq.)**

12 16. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,  
13 Paragraphs 1 through 15, inclusive.

14 17. On May 2, 2019, Plaintiff served a sixty-day notice of violation (the “Shovels  
15 Notice”), along with a Certificate of Merit, to 99 CENTS ONLY STORES, LLC, and the various  
16 public enforcement agencies with respect to the Proposition 65 violations related to Lead in the  
17 Shovels. In addition, on said date, in compliance with Health & Safety Code section 25249.7(d),  
18 Plaintiff provided confidential factual information sufficient to establish the basis for the  
19 Certificate of Merit to the California Attorney General.

20 18. On May 20, 2019, Plaintiff also served a sixty-day notice of violation (the “Tote  
21 Bags Notice”), along with a Certificate of Merit, to 99 CENTS ONLY STORES, LLC and the  
22 various public enforcement agencies with respect to the Proposition 65 violations related to  
23 DEHP and DBP in the Tote Bags. In addition, on said date, in compliance with Health & Safety  
24 Code section 25249.7(d), Plaintiff provided confidential factual information sufficient to  
25 establish the basis for the Certificate of Merit to the California Attorney General. The Shovels  
26 Notice and the Tote Bags Notice shall hereinafter collectively be referred to as the “Notices.”

27 19. None of the public prosecutors with the authority to prosecute Proposition 65  
28 violations has commenced and/or is diligently prosecuting the causes of action against

1 Defendants based on the claims asserted in Plaintiff's Notices.

2 20. By placing the Products into the stream of commerce, each Defendant is a person  
3 in the course of doing business within the meaning of Health & Safety Code section 25249.11.

4 21. Defendants knew and intended that consumers, including children, will use,  
5 touch, handle, play with, repair, and/or maintain the Products.

6 22. Defendants knew that the Products contain DEHP, DBP, and/or Lead.  
7 Defendants, who are in the business of marketing consumer goods, also should have known or  
8 have constructive knowledge that the Products contain DEHP, DBP, and/or Lead from  
9 widespread media coverage and/or other channels of information concerning the presence of  
10 these chemicals in the types of consumer goods similar to the Products.

11 23. DEHP is a chemical listed by the State of California as known to cause cancer and  
12 reproductive toxicity. DBP is listed by the State of California as known to cause birth defects and  
13 other reproductive harm. Lead is a chemical listed by the State of California as known to cause  
14 cancer and birth defects or other reproductive harm.

15 24. Defendants' Products contain sufficient quantities of DEHP, DBP, and Lead such  
16 that consumers, including children, who use, touch, handle, play with, repair, or maintain the  
17 Products are exposed to unsafe levels of DEHP, DBP, and Lead. DEHP, DBP, and Lead are  
18 present in the Products in such a way as to expose individuals to each chemical, as exposure is  
19 defined by 27 CCR section 25600.1(e): "...that results from a person's acquisition, purchase,  
20 storage, consumption, or any reasonably foreseeable use of a consumer good..." Exposure  
21 occurs through inhalation, ingestion and/or dermal contact during the reasonably foreseeable use  
22 of the Products.

23 25. Defendants knew or should have known that the reasonably foreseeable use of the  
24 Products exposes individuals to DEHP, DBP, and/or Lead through inhalation, ingestion and/or  
25 dermal contact.

26 26. Defendants failed to provide a "clear and reasonable warning" to individuals in  
27 the State of California who were or could become exposed to DEHP, DBP, and/or Lead during  
28 the reasonably foreseeable use of the Products.

27. By committing the acts alleged in this Complaint, Defendants have violated California Health & Safety Code section 25249.6 et seq. by knowingly and intentionally exposing individuals to DEHP, DBP, and/or Lead without first giving clear and reasonable warnings to such individuals regarding the toxicity of DEHP, DBP, and/or Lead.

28. As a result of Defendants' wrongful conduct, individuals in the State of California have been exposed to DEHP, DBP, and/or Lead through the inhalation, ingestion and/or dermal contact during the reasonably foreseeable use of the Products without a "clear and reasonable warning", and have suffered and continue to suffer harm, each and every day since at least May 2, 2016.

### PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

1. That the Court, pursuant to California Health & Safety Code section 25249.7(b), assess civil penalties against Defendants in the amount of \$2,500 per day for each violation alleged herein;

2. That the Court, pursuant to California Health & Safety Code section 25249.7(a), preliminarily and permanently enjoin Defendants from manufacturing, distributing, or offering the Products for sale in California without providing “clear and reasonable warnings” as defined by 27 CCR section 25601;

3. That the Court, pursuant to California Health & Safety Code section 25249.7(a), order Defendants to take action to stop ongoing unwarned exposures to DEHP, DBP, and Lead resulting from use of Products sold by Defendants;

4. That the Court, pursuant to California Code of Civil Procedure section 1021.5, or any other applicable theory, grant Plaintiff's reasonable attorneys' fees and costs of suit; and

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1           5.       Such other and further relief as may be just and proper.

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3       Dated: July 26, 2019

LAW OFFICES OF LUCAS T. NOVAK

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5       By:   
6           LUCAS T. NOVAK  
7           Attorney for Plaintiff, APS&EE, LLC