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ORIGINAL FILED**
Superior Court of California
County of Los Angeles

FEB 25 2014

Sherri R. Carter, Executive Officer/Clerk
By Ingrid Flores, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10
11 ELISE NOVAK, an individual,
12 Plaintiff,
13 vs.
14 99¢ ONLY STORES, INC., a corporation, and
15 DOES 1 through 100, inclusive,
16 Defendants.

Case No. BC522200

**██████████ CONSENT JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT**

Judge: Hon. John L. Segal
Dept.: 50
Action Filed: September 24, 2013
Trial Date: None

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1 **1. RECITALS**

2 **1.1 The Parties**

3 1.1.1 This Consent Judgment is entered into by and between Plaintiff, Elise
4 Novak (“Plaintiff”) and Defendant, 99¢ Only Stores (sued as 99 Cents Only Stores, Inc.)
5 (“Defendant”). Plaintiff and Defendant shall hereinafter collectively be referred to as the “Parties.”

6 1.1.2 Plaintiff is a citizen of the state of California with an interest in protecting
7 the environment, improving human health and the health of ecosystems, and supporting
8 environmentally sound practices, which includes promoting awareness of exposure to toxic
9 chemicals and reducing exposure to hazardous substances found in consumer products.

10 1.1.3 Defendant employs ten (10) or more employees and is a person in the
11 course of doing business as the term is defined in California *Health & Safety Code* section
12 25249.6 et seq. (“Proposition 65”).

13 **1.2 Allegations**

14 1.2.1 Plaintiff alleges that Defendant manufactured, distributed, supplied, and/or
15 sold the “Torch” Flashlight (SKU 8-76416-09284-3) and similar flashlight products of various
16 colors from Momentum Brands (hereinafter, the “Flashlight Products”) in the State of California
17 causing users in California to be exposed to hazardous levels of lead without providing “clear and
18 reasonable warnings”, in violation of Proposition 65. Lead is subject to Proposition 65 warning
19 requirements because it is listed as known to cause cancer and birth defects and other reproductive
20 harm.

21 1.2.2 On July 20, 2013, a sixty-day notice of violation (“60-Day Notice”), along
22 with a Certificate of Merit, was provided by Plaintiff to Defendant and various public enforcement
23 agencies regarding the alleged violation of Proposition 65 with respect to the Products.

24 1.2.3 On September 24, 2013, in the interest of the general public, Plaintiff filed
25 the instant action in the Superior Court for the County of Los Angeles, alleging the sale of
26 Flashlight Products without a warning violated Proposition 65.

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1 **1.3 No Admissions**

2 Defendant denies all allegations in Plaintiff's 60-Day Notice and Complaint, and
3 maintains that the Products have been, and are, in compliance with all laws, and that
4 Defendant has not violated Proposition 65. This Consent Judgment shall not be construed as
5 an admission of liability by Defendant but to the contrary as a compromise of claims that are
6 expressly contested and denied. However, nothing in this section shall affect the Parties'
7 obligations, duties, and responsibilities under this Consent Judgment.

8 **1.4 No Waiver**

9 Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy,
10 argument, or defense the Parties may have in any other or future legal proceeding, except as
11 expressly provided in this Consent Judgment. By executing this Consent Judgment and
12 agreeing to provide the relief and remedies specified herein, Defendant does not admit that
13 this Action or any other action that may be filed against it in the future under Proposition 65
14 or any other cause of action is not preempted by Federal law. Defendant reserves all of its
15 rights and defenses with regard to any claim by any person under Proposition 65 or
16 otherwise, including the defense of federal preemption.

17 **1.5 Compromise Agreement**

18 This Consent Judgment is the product of negotiations during the litigation and is
19 accepted by the Parties, for purposes of settling, compromising, and resolving issues
20 disputed in this Action and shall not be used for any other purpose, or in any other matter.

21 **1.6 Jurisdiction and Venue**

22 For purposes of this Consent Judgment, the Parties stipulate that the above-entitled
23 Court has jurisdiction over Defendant as to the allegations of the Complaint, that venue is
24 proper in Los Angeles County, and that this Court has jurisdiction to enter and enforce this
25 Consent Judgment pursuant to California *Code of Civil Procedure* section 664.6.

26 **1.7 Effective Date**

27 The "Effective Date" shall be the date upon which this Consent Judgment is
28 approved and entered by the Court.

1 **2. INJUNCTIVE RELIEF AND REFORMULATION**

2 As of the Effective Date, Defendant shall not sell or offer for sale in California the
3 Flashlight Products if they contain more than 100 parts per million (“ppm”) of lead when
4 analyzed pursuant to Environmental Protection Agency testing methodologies 3050B or
5 equivalent.

6 **3. PAYMENTS**

7 **3.1 Civil Penalty Pursuant To Proposition 65**

8 3.1.1 In settlement of all causes of action in Plaintiff’s Complaint, Defendant
9 shall pay a civil penalty of four thousand dollars (\$4,000.00) to be apportioned in accordance with
10 *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3000) paid to State of
11 California Office of Environmental Health Hazard Assessment, and the remaining 25% (\$1000)
12 paid to Plaintiff.

13 3.1.2 Defendant shall issue two (2) checks for the civil penalty: (1) a check or
14 money order made payable to “Law Offices of Lucas T. Novak in Trust for Office of
15 Environmental Health Hazard Assessment” in the amount of \$3,000; and (2) a check or money
16 order made payable to “Law Offices of Lucas T. Novak in Trust for Elise Novak” in the amount of
17 \$1,000. Defendant shall remit the payments within ten (10) business days of the Effective Date, to:

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19 Law Offices of Lucas T. Novak
20 Attn: Lucas T. Novak
21 8335 W Sunset Blvd., Suite 217
22 Los Angeles, CA 90069

23 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

24 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and
25 costs incurred in prosecuting the instant action, for all work performed through execution of
26 this agreement and entry of this Consent Judgment. Accordingly, Defendant shall issue a
27 check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of
28 twenty one thousand dollars (\$21,000.00). Defendant shall remit the payment within ten
(10) business days of the Effective Date, to:

1 Law Offices of Lucas T. Novak
2 Attn: Lucas T. Novak
3 8335 W Sunset Blvd., Suite 217
4 Los Angeles, CA 90069

4 **4. ENFORCEMENT**

5 **4.1 Enforcement Procedures**

6 Prior to bringing any motion or order to show cause to enforce the terms of this Consent
7 Judgment, a Party seeking to enforce shall provide the violating party thirty (30) days advanced
8 written notice of the alleged violation. The Parties shall meet and confer during such thirty (30)
9 day period in an effort to try to reach agreement on an appropriate cure for the alleged violation.
10 After such thirty (30) day period, the Party seeking to enforce may, by new action, motion or order
11 to show cause before the Superior Court for Los Angeles County, seek to enforce the terms and
12 conditions contained in this Consent Judgment.
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14 **5. RELEASES**

15 **5.1 Plaintiff's Release Of Defendant**

16 Plaintiff, acting in her individual capacity, her past and current agents,
17 representatives, attorneys, successors, and/or assignees, and in the interest of the general
18 public, in consideration of the promises and monetary payments contained herein, hereby
19 releases Defendant, its parents, subsidiaries, shareholders, directors, members, officers,
20 employees, attorneys, downstream distributors, retailers, franchisees, and purchasers and the
21 vendors or manufacturers of the Flashlight Products to the extent those Flashlight Products
22 were sold by Defendant (collectively "Released Parties"), from all claims for alleged
23 violations of Proposition 65 or any other statutory or common law claims that could have
24 been asserted in the public interest against the Released Parties with respect to the Flashlight
25 Products.

26 **5.2 Defendant's Release Of Plaintiff**

27 Defendant, by this Consent Judgment, waives all rights to institute any form of legal action
28 against Plaintiff, her past and current agents, representatives, attorneys, experts, successors, and/or

1 assignees, for actions or statements made or undertaken, whether in the course of investigating
2 claims or seeking enforcement of Proposition 65 against Defendant in this matter.

3 **5.3 Waiver of Unknown Claims**

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

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

10 Each of the parties waives and relinquishes any right or benefit it has or may have
11 under Section 1542 of California *Civil Code* or any similar provision under the statutory or
12 non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all
13 such rights and benefits pertaining to the claims in this Consent Judgment. The Parties
14 acknowledge that each may subsequently discovery facts in addition to, or different from,
15 those that it believes to be true with respect to the claims released herein. The Parties agree
16 that this Consent Judgment and the releases contained herein shall be and remain effective in
17 all respects notwithstanding the discovery of such additional or different facts.

18 **6. COURT APPROVAL**

19 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
20 Motion for Approval & Entry of Consent Judgment in the above-entitled Court. This
21 Consent Judgment is not effective until it is approved and entered by the Court and shall be
22 null and void if, for any reason, it is not approved and entered by the Court within one (1)
23 year after its full execution by all Parties. It is the intention of the Parties that the Court
24 approve this Consent Judgment, and in furtherance of obtaining such approval, the Parties
25 and their respective counsel agree to mutually employ their best efforts to support the entry
26 of this agreement in a timely manner, including cooperating on drafting and filing any papers
27 in support of the required motion for judicial approval.
28

1 **7. SEVERABILITY**

2 Subsequent to Court approval of this Consent Judgment, should any part or provision
3 of this Consent Judgment, for any reason, be declared by a Court to be invalid, void or
4 unenforceable, the remaining portions and provisions shall continue in full force and effect.

5 **8. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of
7 California.

8 **9. NOTICES**

9 All correspondence and notices required to be provided under this Consent Judgment
10 shall be in writing and delivered personally or sent by first class or certified mail addressed
11 as follows:

12 TO DEFENDANT: 13 Patrick J. Cafferty, Jr., Esq. 14 Munger, Tolles & Olson, LLP 15 560 Mission Street, 27 th Floor 16 San Francisco, CA 94105	TO PLAINTIFF: Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
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17 **10. INTEGRATION**

18 This Consent Judgment constitutes the entire agreement between the parties with
19 respect to the subject matter hereof and may not be amended or modified except in writing.

20 **11. COUNTERPARTS**

21 This Consent Judgment may be executed in counterparts, each of which shall be
22 deemed an original, and all of which, when taken together, shall constitute the same
23 document. Execution and delivery of this Consent Judgment by e-mail, facsimile, or other
24 electronic means shall constitute legal and binding execution and delivery. Any photocopy of
25 the executed Consent Judgment shall have the same force and effect as the originals.

26 **12. AUTHORIZATION**

27 The undersigned are authorized to execute this Consent Judgment on behalf of their
28 respective Parties. Each Party has read, understood, and agrees to all of the terms and

1 conditions of this Consent Judgment. Each Party warrants to the other that it is free to enter
2 into this Consent Judgment and not subject to any conflicting obligation which will or might
3 prevent or interfere with the execution or performance of this Consent Judgment by said party.

4
5 **AGREED TO:**

6 Date: 12/13/13

7 By: *Elise Novak*
Plaintiff, Elise Novak

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10 **AGREED TO:**

11 Date: _____

12 By: _____
Authorized Agent of Defendant, 99¢ Only Stores

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1 conditions of this Consent Judgment. Each Party warrants to the other that it is free to enter
2 into this Consent Judgment and not subject to any conflicting obligation which will or might
3 prevent or interfere with the execution or performance of this Consent Judgment by said party.

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AGREED TO:

Date: _____

By: _____
Plaintiff, Elise Novak

AGREED TO:

Date: 12-20-2013


By: [Signature] EUP/LMO [Signature]
Authorized Agent of Defendant, 99¢ Only Stores

1 Plaintiff, Elise Novak and Defendant, 99C Only Stores have agreed through their
2 respective counsel that judgment entered pursuant to the terms of their settlement agreement in
3 Case No. BC522200, and following this Court's issuance of an Order approving this Proposition
4 65 settlement,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to *Health and*
6 *Safety Code* section 25249.7(f)(4), and *Code of Civil Procedure* section 664.6, judgment is hereby
7 entered in accordance with the terms of the settlement described herein. By stipulation of the
8 parties, the Court will retain jurisdiction to enforce the settlement under *Code of Civil Procedure*
9 section 664.6.

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11 **IT IS SO ORDERED.**

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13 Dated: 2.25.14



JUDGE OF THE SUPERIOR COURT
JOSEPH R. KALIN

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