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

01/28/2020

Sherri R. Carter, Executive Officer / Clerk of Court

By: C. Mason Deputy

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

10 APS&EE, LLC, a limited liability company, )

11 Plaintiff, )

12 v. )

13 99 CENTS ONLY STORES, LLC, a limited )  
14 liability company, and DOES 1 through 100, )  
inclusive, )

15 Defendants. )  
16 )

CASE NO. 19STCV26365

~~PROPOSED~~ CONSENT JUDGMENT

Judge: Hon. Gregory W. Alarcon

Dept.: 36

Compl. Filed: July 26, 2019

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment (“Consent Judgment”) is entered into by and  
4 between APS&EE, LLC (“APS&EE”) and 99 Cents Only Stores, LLC (“99 Cents”). APS&EE  
5 and 99 Cents shall hereinafter collectively be referred to as the “Parties.”

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

10 **1.1.3** APS&EE alleges that 99 Cents is a person in the course of doing business  
11 as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition  
12 65”).

13 **1.2 Allegations**

14 **1.2.1** APS&EE alleges that 99 Cents sold: (1) Chloe Alexis Tote Bags, #46-  
15 736807, 1811, 6-33643-16835-8 (hereinafter “Tote Bags”) containing hazardous levels of Di (2-  
16 ethylhexyl) Phthalate (“DEHP”) and Di-n-Butyl Phthalate (“DBP”); and (2) Garden Ease Metal  
17 Shovels, #58-715977, 1811, 8-18068-05170-0 (hereinafter “Shovels”) containing hazardous  
18 levels of Lead. The Tote Bags and Shovels shall hereinafter collectively be referred to as the  
19 “Products”. APS&EE alleges that 99 Cents sold the Products in the State of California causing  
20 users in California to be exposed to hazardous levels of DEHP, DBP, and Lead, without  
21 providing “clear and reasonable warnings”, in violation of Proposition 65. California has listed  
22 DEHP as a chemical known to the state to cause cancer and reproductive toxicity, DBP as known  
23 to cause birth defects and other reproductive harm, and Lead as known to cause cancer and birth  
24 defects or other reproductive harm, and therefore all chemicals subject to Proposition 65 warning  
25 requirements.

26 **1.2.2** On May 2, 2019, APS&EE sent a Sixty-Day Notice of Violation (the  
27 “Shovels Notice”) to 99 Cents and the various public enforcement agencies regarding the alleged  
28 violation of Proposition 65 related to Lead in the Shovels. On May 20, 2019, Plaintiff also served

1 a sixty-day notice of violation (the “Tote Bags Notice”), to 99 Cents and the various public  
2 enforcement agencies with respect to the Proposition 65 violations related to DEHP and DBP in  
3 the Tote Bags. The Shovels Notice and the Tote Bags Notice shall hereinafter collectively be  
4 referred to as the “Notices.” On July 26, 2019, acting in the public interest, Plaintiff filed the  
5 instant action (the “Complaint”) in the Superior Court for the County of Los Angeles, alleging  
6 violations of Proposition 65 related to the Products.

### 7 **1.3 No Admissions**

8 99 Cents denies all allegations in APS&EE’s Notices and Complaint and maintains that  
9 the Products have been, and are, in compliance with all laws, and that 99 Cents has not violated  
10 Proposition 65. This Consent Judgment shall not be construed as an admission of liability by 99  
11 Cents but to the contrary as a compromise of claims that are expressly contested and denied.  
12 However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities  
13 under this Consent Judgment.

### 14 **1.4 Compromise**

15 The Parties enter into this Consent Judgment in order to resolve the controversy  
16 described above in a manner consistent with prior Proposition 65 settlements and consent  
17 judgments that were entered in the public interest and to avoid prolonged and costly litigation  
18 between them.

### 19 **1.5 Jurisdiction and Venue**

20 For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled  
21 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper  
22 in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of  
23 this Consent Judgment pursuant to California Code of Civil Procedure Section 664.6 and  
24 Proposition 65.

### 25 **1.6 Effective Date**

26 The “Effective Date” shall be the date this Consent Judgment is approved and entered by  
27 the Court.

## 28 **2. INJUNCTIVE RELIEF**

1           **2.1     Reformulation Standard**

2           After the Effective Date, 99 Cents shall not distribute for sale in California, sell, or offer  
3 for sale the Products in California unless (a) the Product contains no more than 1,000 parts per  
4 million (0.1%) of DEHP, and no more than 100 parts per million (0.01%) of DBP and Lead  
5 (“Reformulated Product”), or (b) the Product is distributed, sold, or offered for sale with a clear  
6 and reasonable warning as described below in Section 2.2.

7           **2.2     Proposition 65 Warnings**

8                 **2.2.1** Whenever a clear and reasonable warning is required under Section 2.1,  
9 99 Cents shall comply with 27 Cal. Code Regs. § 25601, et seq. (operative Aug. 30, 2018) and  
10 use a warning with the capitalized and emboldened wording substantially similar to the  
11 following:

12                 **WARNING:** This product can expose you to chemicals including [DEHP, DBP,  
13                                 and/or Lead]<sup>1</sup> which are known to the State of California to cause  
14                                 cancer and birth defects or other reproductive harm. For more  
                                      information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

15           The warning shall be accompanied by a symbol consisting of a black exclamation point  
16 in a yellow equilateral triangle with a bold black outline. Where the label for the product is not  
17 printed using the color yellow, the symbol may be printed in black and white. The symbol shall  
18 be placed to the left of the text of the warning, in a size no smaller than the height of the word  
19 “WARNING”.

20                 **2.2.2** Each unit shall carry said warning directly on each unit or its label or  
21 package, with such conspicuousness as compared with other words, statements or designs as to  
22 render it likely to be read and understood by an ordinary consumer prior to sale.

23 **3.     PAYMENTS**

24           **3.1     Civil Penalty Pursuant To Proposition 65**

25           In settlement of all claims referred to in this Consent Judgment, 99 Cents shall pay a total  
26 civil penalty of four thousand dollars (\$4,000.00) to be apportioned in accordance with *Health*

27 \_\_\_\_\_  
28 <sup>1</sup> In accordance with 27 Cal. Code Regs., section 25603, operative Aug. 30, 2018, the warning must expressly  
identify at least one of the listed chemicals present in the Product, as applicable.

1 *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00) for State of California  
2 Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25%  
3 (\$1,000.00) for APS&EE.

4 99 Cents shall issue two (2) checks for the civil penalty: (1) a check or money order made  
5 payable to “OEHHA” in the amount of \$3,000.00; and (2) a check or money order made payable  
6 to “Law Offices of Lucas T. Novak” in the amount of \$1,000.00. 99 Cents shall remit the  
7 payments within ten (10) business days of the Effective Date, to:

8 Lucas T. Novak, Esq.  
9 LAW OFFICES OF LUCAS T. NOVAK  
10 8335 W Sunset Blvd., Suite 217  
11 Los Angeles, CA 90069

### 12 **3.2 Reimbursement Of APS&EE’s Fees And Costs**

13 99 Cents shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs  
14 incurred in prosecuting the instant action, for all work performed through execution of this  
15 Consent Judgment. Accordingly, 99 Cents shall issue a check or money order made payable to  
16 “Law Offices of Lucas T. Novak” in the amount of twenty-six thousand dollars (\$26,000.00). 99  
17 Cents shall remit the payment within ten (10) business days of the Effective Date, to:

18 Lucas T. Novak, Esq.  
19 LAW OFFICES OF LUCAS T. NOVAK  
20 8335 W Sunset Blvd., Suite 217  
21 Los Angeles, CA 90069

## 22 **4. RELEASES**

### 23 **4.1 APS&EE’s Release Of 99 Cents**

24 APS&EE, acting in its individual capacity, and in the public interest, in consideration of  
25 the promises and monetary payments contained herein, hereby releases 99 Cents, and its parents,  
26 subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and  
27 assignees (collectively, “Defendant Releasees”), and all entities from whom they obtain and to  
28 whom they directly or indirectly distribute or sell the Products, including but not limited to  
manufacturers, suppliers, distributors, wholesales, customers, licensors, licensee retailers,  
franchisees, and cooperative members (collectively, “Upstream and Downstream Releasees”) ,

1 from any alleged Proposition 65 violation claims asserted in APS&EE's Notices or Complaint  
2 regarding exposures to DEHP, DBP, and Lead from the Products sold by 99 Cents in California  
3 before and up to the Effective Date.

#### 4 **4.2 99 Cents' Release Of APS&EE**

5 99 Cents, and on behalf of the Released Parties, by this Consent Judgment, waives all  
6 rights to institute any form of legal action against APS&EE, its shareholders, directors, members,  
7 officers, employees, attorneys, experts, successors and assignees for actions or statements made  
8 or undertaken, whether in the course of investigating claims or seeking enforcement of  
9 Proposition 65 against 99 Cents in this matter.

#### 10 **4.3 Waiver Of Unknown Claims**

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

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
14 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
15 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
16 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
17 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
18 DEBTOR OR RELEASED PARTY.

19 Each of the Parties waives and relinquishes any right or benefit it has or may have in their  
20 individual capacities, and not their representative capacities, under Section 1542 of California  
21 Civil Code or any similar provision under the statutory or non-statutory law of any other  
22 jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties  
23 acknowledge that each may subsequently discover facts in addition to, or different from, those  
24 that it believes to be true with respect to the claims released herein. The Parties agree that this  
25 Consent Judgment and the releases contained herein shall be and remain effective in all respects  
26 notwithstanding the discovery of such additional or different facts.

#### 27 **5. COURT APPROVAL**

28 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed  
Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent  
Judgment is not effective until it is approved and entered by the Court. It is the intention of the

Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such approval, the Parties and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement in a timely manner, including cooperating on drafting and filing any papers in support of the required motion for judicial approval.

**6. SEVERABILITY**

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

**7. GOVERNING LAW**

The terms of this Consent Judgment shall be governed by the laws of the State of California, exclusive of its conflict of law principles.

**8. INTEGRATION**

This Consent Judgment contains the sole and entire agreement of the Parties and any and all prior agreements, negotiations and understandings related to the Products shall be deemed to have been merged within it, and shall not be enforceable against any Party hereto. Both Parties represent and warrant that, in entering into this Consent Judgment, they are not relying on any representation, promise or assurance not expressly set forth herein.

**9. MODIFICATION**

This Consent Judgment may be modified only by further stipulation of the Parties with the approval of the Court or upon the granting of a motion brought to the Court by either Party. The Court shall retain jurisdiction of the matter to implement or modify this Consent Judgment.

**8. NOTICES**

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

TO 99 CENTS:

Joseph D. Lee, Esq.  
Munger, Tolles & Olson LLP  
350 South Grand Avenue  
50th Floor  
Los Angeles, CA 90071

TO APS&EE:

Lucas Novak, Esq.  
Law Offices of Lucas T. Novak  
8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

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9. **COUNTERPARTS**

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

10. **AUTHORIZATION**

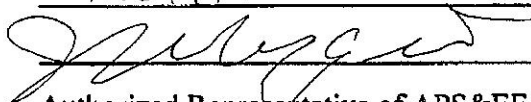
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Consent Judgment. Each Party warrants to the other that it is free to enter into this Consent Judgment and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Consent Judgment by said Party.

**AGREED TO:**

Date:

11/21/19

By:



Authorized Representative of APS&EE, LLC

**AGREED TO:**

Date:

11/18/19

By:



Authorized Representative of 99 Cents Only Stores, LLC

**IT IS SO ORDERED.**

Dated: €FEB 18€



**Gregory W. Alarcon**

JUDGE OF THE SUPERIOR COURT  
Gregory W. Alarcon / Judge