

06/14/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: J. Clavero Deputy

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7 Attorney for Plaintiff, APS&EE, LLC

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

10 APS&EE, LLC, a limited liability company,)
11)
12 Plaintiff,)
13)
14 v.)
15)
16 99 CENTS ONLY STORES, LLC, a limited)
17 liability company, and DOES 1 through 100,)
18 inclusive,)
19)
20 Defendants.)
21)
22)
23)
24)
25)
26)
27)
28)

CASE NO. 21STCV39998

~~PROPOSED~~ CONSENT JUDGMENT

Judge: Hon. Lawrence P. Riff
Dept.: 51
Compl. Filed: November 1, 2021

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 (“Plaintiff”) and 99 Cents Only Stores, LLC (“Defendant”). Plaintiff
5 and Defendant shall hereinafter collectively be referred to as the “Parties.”

6 **1.1.2** Plaintiff 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** Plaintiff alleges that Defendant 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** Plaintiff alleges that Defendant sold the Momentum Brands “Garden
15 Ease” long handle gardening tool #58-782053, 2012, 0-18068-07448-2 (hereinafter, the
16 “Products”) in the State of California causing users in California to be exposed to hazardous
17 levels of Di (2-ethylhexyl) Phthalate (“DEHP”) and Di-n-Butyl Phthalate (“DBP”, and
18 collectively with DEHP, the “Listed Chemicals”), without providing “clear and reasonable
19 warnings”, in violation of Proposition 65. DEHP is a chemical known to the state to cause cancer
20 and reproductive toxicity, and DBP as known to cause birth defects and other reproductive harm,
21 and therefore each chemical is subject to Proposition 65 warning requirements.

22 **1.2.2** On August 24, 2021, Plaintiff sent a Sixty-Day Notice of Violation (the
23 “Notice”) to Defendant and the various public enforcement agencies regarding the alleged
24 violation of Proposition 65 with respect to the Products. On November 1, 2021, Plaintiff, acting
25 in the public interest, filed the instant action (the “Complaint”) in the Superior Court for the
26 County of Los Angeles, alleging violations of Proposition 65.

27 **1.3 No Admissions**

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

7 **1.4 Compromise**

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

12 **1.5 Jurisdiction and Venue**

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

18 **1.6 Effective Date**

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

21 **2. INJUNCTIVE RELIEF**

22 **2.1 Reformulation Standard**

23 After the Effective Date, Defendant shall not distribute for sale in California, sell or offer
24 for sale the Products in California unless (a) the Product contains no more than 1,000 parts per
25 million (0.1%) of DEHP or DBP (“Reformulated Product”), or (b) the Product is distributed,
26 sold, or offered for sale with a clear and reasonable warning as described below in Section 2.2.

27 **2.2 Clear And Reasonable Warnings**

28 For any Products that are not Reformulated Products, such Products shall be

1 accompanied by a clear and reasonable warning. Defendant shall provide a warning statement
2 substantially similar to the Long-Form Warning or Short-Form Warning below:

3 a) **Long-Form Warning:**

4 **WARNING:** This product can expose you to chemicals, including Di (2-
5 ethylhexyl) Phthalate, which are known to the State of California to cause cancer
6 and birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

7 b) **Short-Form Warning.** Defendant may, but is not required to, use the alternative
8 short-form warning (“Short-Form Warning”) as follows:

9 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

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

15 The warning shall be affixed to or printed on the Product or on the Product’s label or
16 packaging provided that the warning is displayed with such conspicuousness, as compared with
17 other words, statements or designs, as to render it likely to be read and understood by an ordinary
18 consumer prior to sale. A Product that is sold by Defendant on the internet to persons located in
19 California shall also provide the warning message by a clearly marked hyperlink on the product
20 display page, or otherwise prominently displayed to the purchaser before the purchaser
21 completes his or her purchase of the Product. For Products that Defendant provides for a
22 downstream entity to sell on the internet, Defendant shall include an instruction that the entity
23 comply with the warning requirements of this section.

24 **2.3 Additional Warnings Required or Permitted By Law or Regulation**

25 In addition to the warning requirements set forth in Section 2.2 above, Defendant may
26 comply with this Consent Judgment by using other warning text and transmission methods set
27 forth in 27 Cal. Code Regs. § 25601, et seq., and amended subsequently thereafter, or other text
28

1 or methods authorized or mandated by those regulations, or other State of California regulations
2 or legislation pertaining to Proposition 65 warnings related to such Products.

3 **2.3 Sell Through**

4 Products that were in Defendant’s inventory prior to the Effective Date shall be deemed
5 exempted from the requirements of this Section 2 and shall be permitted to be sold through as
6 previously manufactured, packaged and labeled (the “Remaining Inventory”). Defendant shall
7 have sixty (60) calendar days from the date of the Effective Date to sell through the Remaining
8 Inventory.

9 **3. PAYMENTS**

10 **3.1 Civil Penalty Pursuant To Proposition 65**

11 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a
12 total civil penalty of Four Thousand Dollars and Zero Cents(\$4,000.00) to be apportioned in
13 accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00)
14 for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the
15 remaining 25% (\$1,000.00) for Plaintiff.

16 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
17 made payable to “OEHHA” in the amount of \$3,000.00; and (2) a check or money order made
18 payable to “Law Offices of Lucas T. Novak” in the amount of \$1,000.00. Defendant shall remit
19 the payments within five (5) business days of the Effective Date, to:

20 Lucas T. Novak, Esq.
21 LAW OFFICES OF LUCAS T. NOVAK
22 8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

23 Upon receipt of the above civil penalty checks, Law Offices of Lucas T. Novak shall
24 forward the payments to OEHHA and Plaintiff.

25 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

26 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs
27 incurred in prosecuting the instant action for all work performed through execution and approval
28 of this Consent Judgment. Accordingly, Defendant shall issue a check or money order made

1 payable to “Law Offices of Lucas T. Novak” in the amount of Twenty Thousand Dollars and
2 Zero Cents (\$20,000.00). Defendant shall remit the payment within five (5) business days of the
3 Effective Date, to:

4 Lucas T. Novak, Esq.
5 LAW OFFICES OF LUCAS T. NOVAK
6 8335 W Sunset Blvd., Suite 217
7 Los Angeles, CA 90069

7 **4. RELEASES**

8 **4.1 Plaintiff’s Release Of Defendant**

9 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of
10 the promises and monetary payments contained herein, hereby releases Defendant, its parents,
11 subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and
12 assignees, as well as its downstream and upstream manufacturers, distributors, retailers, and
13 franchisees, including but not limited to Dollar Sourcing Ltd. (collectively “Released Parties”),
14 from any alleged Proposition 65 violation claims asserted in Plaintiff’s Notice or Complaint
15 regarding failure to warn about exposure to the Listed Chemicals from the Products sold by
16 Defendant before and up to the Effective Date.

17 **4.2 Defendant’s Release Of Plaintiff**

18 Defendant, by this Consent Judgment, waives all rights to institute any form of legal
19 action against Plaintiff, its shareholders, directors, members, officers, employees, attorneys,
20 experts, successors and assignees for actions or statements made or undertaken, whether in the
21 course of investigating claims or seeking enforcement of Proposition 65 against Defendant in
22 this matter. If any Released Party should institute any such action, then Plaintiff’s release of said
23 Released Party in this Consent Judgment shall be rendered void and unenforceable.

24 **4.3 Waiver Of Unknown Claims**

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

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
28 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

1 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
2 DEBTOR OR RELEASED PARTY.

3 Each of the Parties waives and relinquishes any right or benefit it has or may have under
4 Section 1542 of California Civil Code or any similar provision under the statutory or non-
5 statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights
6 and benefits. The Parties acknowledge that each may subsequently discover facts in addition to,
7 or different from, those that it believes to be true with respect to the claims released herein. The
8 Parties agree that this Consent Judgment and the releases contained herein shall be and remain
9 effective in all respects notwithstanding the discovery of such additional or different facts.

10 **5. COURT APPROVAL**

11 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
12 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
13 Judgment is not effective until it is approved and entered by the Court. It is the intention of the
14 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such
15 approval, the Parties and their respective counsel agree to mutually employ their best efforts to
16 support the entry of this agreement in a timely manner, including cooperating on drafting and
17 filing any papers in support of the required motion for judicial approval.

18 **6. SEVERABILITY**

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

22 **7. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of
24 California.

25 **8. NOTICES**

26 All correspondence and notice required to be provided under this Consent Judgment shall
27 be in writing and delivered personally or sent by first class or certified mail addressed as follows:
28

1 TO DEFENDANT:

2 Carol Brophy, Esq.
3 Steptoe & Johnson LLP
4 Spear Tower, 1 Market St
#3900 San Francisco, CA
5 94105

TO PLAINTIFF:

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

6 9. COUNTERPARTS

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

12 10. AUTHORIZATION

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

18
19 AGREED TO:

20 Date:

2/17/22

21 By:

22 Authorized Representative of APS&EE, LLC

23
24 AGREED TO:

25 Date:

2/16/2022

26 By:

27 Authorized Representative of 99 Cents Only Stores, LLC

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IT IS SO ORDERED.

Dated: 06/14/2022



A handwritten signature in black ink, appearing to read "Wesley L. Hsu", written over a horizontal line.

Wesley L. Hsu
JUDGE OF THE SUPERIOR COURT