

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information

Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) Elise Novak			
	DEFENDANT(S) INVOLVED IN SETTLEMENT 99C Only Stores			
CASE INFO	COURT DOCKET NUMBER BC522200		COURT NAME Los Angeles County Superior Court	
	SHORT CASE NAME Elise Novak v. 99C Only Stores, et al.			
REPORT INFO	INJUNCTIVE RELIEF Defendant shall not sell Flashlight Products if more than 100 ppm lead.			
	PAYMENT: CIVIL PENALTY \$4,000		PAYMENT: ATTORNEYS FEES \$21,000	
	PAYMENT: OTHER 		For Internal Use Only	
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL		
COPY OF SETTLEMENT MUST BE ATTACHED				
FILER INFO	NAME OF CONTACT Lucas T. Novak			
	ORGANIZATION Law Offices of Lucas T. Novak		TELEPHONE NUMBER ((323)) 337-9015	
	ADDRESS 8335 W Sunset Blvd, Suite 217		FAX NUMBER ()	
	CITY Los Angeles	STATE CA	ZIP 90069	E-MAIL ADDRESS lucas.nvk@gmail.com

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

1 Lucas Novak (SBN 257484)
LAW OFFICES OF LUCAS T. NOVAK
2 8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069
3 Telephone: (323) 337-9015
Email: lucas.nvk@gmail.com
4 Attorney for Plaintiff, Elise Novak
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES
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11 ELISE NOVAK, an individual,

12 Plaintiff,

13 vs.

14 99¢ ONLY STORES, INC., a corporation, and
DOES 1 through 100, inclusive,

15 Defendants.
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Case No. BC522200

[PROPOSED] CONSENT JUDGMENT

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

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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1.3 No Admissions

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

1.4 No Waiver

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

1.5 Compromise Agreement

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

1.6 Jurisdiction and Venue

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

1.7 Effective Date

The "Effective Date" shall be the date upon which this Consent Judgment is 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:

18
19 Law Offices of Lucas T. Novak
20 Attn: Lucas T. Novak
21 8335 W Sunset Blvd., Suite 217
22 Los Angeles, CA 90069

22 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

23 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and
24 costs incurred in prosecuting the instant action, for all work performed through execution of
25 this agreement and entry of this Consent Judgment. Accordingly, Defendant shall issue a
26 check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of
27 twenty one thousand dollars (\$21,000.00). Defendant shall remit the payment within ten
28 (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
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.
13

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 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*
8 Plaintiff, Elise Novak

9
10 **AGREED TO:**

11 Date: _____

12 By: _____
13 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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5 **AGREED TO:**

6 Date: _____

7 By: _____
Plaintiff, Elise Novak

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10 **AGREED TO:**

11 Date: 12-20-2013

12 By: [Signature] Euphonia [Signature]
Authorized Agent of Defendant, 99¢ Only Stores

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