

# SETTLEMENT AGREEMENT BETWEEN ISABEL RUGGERI AND 99¢ ONLY STORES

## 1. RECITALS

### 1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between Isabel Ruggeri (“Ruggeri”) and 99¢ Only Stores LLC (“99 Cents”). Ruggeri and 99 Cents shall hereinafter collectively be referred to as the “Parties.”

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

1.1.3 99 Cents employs ten (10) or more employees and is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

### 1.2 Allegations

1.2.1 Ruggeri alleges that 99 Cents manufactured, distributed, supplied, and/or sold the “Handybuddy” 8-in-1 screwdriver (SKU 620474; 0-69522-12138-9) from Aimco Enterprise, Inc. and/or Accent Enterprise in the State of California causing users in California to be exposed to lead without providing “clear and reasonable warnings”, in violation of Proposition 65. Ruggeri also alleges that 99 Cents manufactured, distributed, supplied, and/or sold the Power Plus Safety Goggles (SKU 618470 1305; 8-98956-32023-1) from Momentum Brands, Inc. in the State of California causing users in California to be exposed to Bis (2-ethylhexyl) phthalate, also known as Di (2-ethylhexyl) phthalate (“DEHP”) without providing “clear and reasonable warnings”, in violation of Proposition 65. The screwdrivers and safety goggles identified in this paragraph shall hereinafter be collectively referred to as the “Products.” Lead and DEHP are subject to

Proposition 65 warning requirements because they are listed as known to cause cancer and birth defects and other reproductive harm.

1.2.2 On October 20, 2014, a sixty-day notice of violation, along with a Certificate of Merit, was provided by Ruggeri to 99 Cents and various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the screwdrivers identified in paragraph 1.2.1; on August 18, 2014, a sixty-day notice of violation, along with a Certificate of Merit, was provided by Ruggeri to 99 Cents and various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the safety goggles identified in paragraph 1.2.1. The sixty-day notices identified in this paragraph shall hereinafter be collectively referred to as the "Notices."

### **1.3 No Admissions**

99 Cents denies all allegations in Ruggeri's Notices and maintains that the Products have been, and are, in compliance with all laws, and that 99 Cents has not violated Proposition 65. Nothing in this Agreement shall be construed as an admission of any fact, finding, conclusion, law, or violation of law nor shall compliance with the agreement constitute or be construed as an admission by 99 Cents of any fact, finding, conclusion, issue or law, or violation of law. Instead, the Parties enter into this agreement 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 Agreement.

### **1.4 No Waiver**

Nothing in this Agreement 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 Agreement. By executing this Agreement and agreeing to provide the relief and remedies specified herein, 99 Cents does not admit that the Notices 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. 99 Cents 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**

The Parties enter into this Agreement as a full and final settlement of all claims that were raised in the notices, or that could have been raised in the notices arising out of the facts or conduct alleged therein. This Agreement is intended to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered on behalf of the public interest and to avoid prolonged and costly litigation between them.

### **1.6 Effective Date**

The "Effective Date" shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party's counsel.

## **2. INJUNCTIVE RELIEF**

As of the Effective Date, 99 Cents shall not distribute, supply, and/or sell the Products in California unless clear and reasonable Proposition 65 warnings are provided with each unit with the following specific warning with the capitalized and emboldened wording:

**"WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm."

Each unit shall carry said warning directly on each unit or its label or package, near the product name, price, or UPC code, in a sufficiently conspicuous manner reasonably calculated to be seen by the ordinary consumer.

## **3. PAYMENTS**

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

In settlement of all claims referred to in this Agreement, 99 Cents shall pay a total civil penalty of five thousand dollars (\$5,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,750.00) paid to State of California Office of Environmental Health Hazard Assessment, and the

remaining 25% (\$1,250.00) paid to Ruggeri.

99 Cents shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to "Law Offices of Lucas T. Novak in Trust for Office of Environmental Health Hazard Assessment" in the amount of \$3,750.00; and (2) a check or money order made payable to "Law Offices of Lucas T. Novak in Trust for Isabel Ruggeri" in the amount of \$1,250.00. 99 Cents shall remit the payments within fifteen (15) business days of the Effective Date, to:

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

### **3.2 Reimbursement Of Ruggeri's Fees And Costs**

99 Cents shall reimburse Ruggeri's reasonable experts' and attorney's fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement. Accordingly, 99 Cents shall issue a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of thirty thousand dollars (\$30,000.00). 99 Cents shall remit the payment within fifteen (15) business days of the Effective Date, to:

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

## **4. RELEASES**

### **4.1 Ruggeri's Release Of 99 Cents**

Ruggeri, acting in her individual capacity, her past and current agents, representatives, attorneys, successors and assignees, in consideration of the promises and monetary payments contained herein, hereby releases 99 Cents, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, divisions, affiliates under common ownership and control, licensees, customers, distributors, wholesalers,

retailers, and all upstream and downstream entities in the distribution chain of the Products with 99 Cents, and all predecessors, successors and assignees of any of them, (collectively "Released Parties"), which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims liabilities, and demands by or of Ruggeri arising out of any alleged Proposition 65 violation regarding the Products distributed, sold, and/or offered for sale by 99 Cents in California before and up to the Effective Date.

#### **4.2 99 Cents' Release Of Ruggeri**

99 Cents on behalf of itself and on behalf of the Released Parties related to 99 Cents, by this Agreement, waives all rights to institute any form of legal action against Ruggeri, her past and current agents, representatives, attorneys, experts, successors and assignees, for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against 99 Cents in this matter.

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

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

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

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

discovery of such additional or different facts.

**5. SEVERABILITY**

Should any part or provision of this Agreement 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.

**6. GOVERNING LAW**

The terms of this Agreement shall be governed by the laws of the State of California.

**7. NOTICES**

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

<p>TO 99 CENTS: Patrick J. Cafferty, Jr., Esq. Munger, Tolles &amp; Olson, LLP 560 Mission Street, 27<sup>th</sup> Floor San Francisco, CA 94105</p>	<p>TO RUGGERI: Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069</p>
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**8. EXECUTION IN COUNTERPARTS**

This Agreement 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 Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Agreement shall have the same force and effect as the originals.

**9. AUTHORIZATION**

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

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

**AGREED TO:**

Date: March 30, 2015  
By: Isabel Ruggieri  
Ruggieri, Isabel Ruggieri

**AGREED TO:**

Date: March 30, 2015  
By: [Signature]  
Authorized Officer of 99 Cents, 99¢ Only Stores