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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 Plaintiff, )  
12 v. )  
13 99 CENTS ONLY STORES LLC, a limited )  
14 liability company, and DOES 1 through 100, )  
15 inclusive, )  
16 Defendants. )

CASE NO. BC635005

**[PROPOSED] CONSENT JUDGMENT**

Judge: Hon. Elizabeth Feffer

Dept.: 39

Compl. Filed: September 26, 2016

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 1.1.1 This Proposed Consent Judgment (“Consent Judgment”) is entered into by  
4 and between APS&EE, LLC (“APS&EE”) and 99 Cents Only Stores LLC (“99 Cents”).  
5 APS&EE 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 99 Cents is a California limited liability company which employs ten (10)  
11 or more employees and is a person in the course of doing business as the term is defined in  
12 California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

13 **1.2 Allegations**

14 1.2.1 APS&EE alleges that 99 Cents sold the “Townsend” tape measures, 16-  
15 foot, 54-669965, 8-76416-18875-1 (hereinafter the “Products”) in the State of California causing  
16 users in California to be exposed to lead without providing “clear and reasonable warnings”, in  
17 violation of Proposition 65. Lead is potentially subject to Proposition 65 warning requirements  
18 because it is listed as known to cause cancer and birth defects or other reproductive harm.

19 1.2.2 On June 13, 2016, a Sixty-Day Notice of Violation (the “Notice”), along  
20 with a Certificate of Merit, was provided by APS&EE to 99 Cents and the various public  
21 enforcement agencies regarding the alleged violation of Proposition 65 with respect to the  
22 Products.

23 **1.3 No Admissions**

24 99 Cents denies all allegations in APS&EE’s Notice and maintains that the Products have  
25 been, and are, in compliance with all laws, and that 99 Cents has not violated Proposition 65.  
26 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,  
27 conclusion, law, or violation of law nor shall compliance with the Consent Judgment constitute  
28 or be construed as an admission by 99 Cents of any fact, finding, conclusion, issue or law, or

1 violation of law. Instead, the Parties enter into this Consent Judgment as a compromise of claims  
2 that are expressly contested and denied. However, nothing in this section shall affect the Parties'  
3 obligations, duties, and responsibilities under this Consent Judgment.

4 **1.4 No Waiver**

5 Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy,  
6 argument, or defense the Parties may have in any other or future legal proceeding, except as  
7 expressly provided in this Consent Judgment. By executing this Consent Judgment and agreeing  
8 to provide the relief and remedies specified herein, 99 Cents does not admit that the Notice or  
9 any other action that may be filed against it in the future under Proposition 65 or any other cause  
10 of action is not preempted by Federal law. 99 Cents reserves all of its rights and defenses with  
11 regard to any claim by any person under Proposition 65 or otherwise, including the defense of  
12 federal preemption.

13 **1.5 Compromise**

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

20 **1.6 Jurisdiction And Venue**

21 For purposes of this Consent Judgment, the Parties stipulate that the above-entitled Court  
22 has jurisdiction over 99 Cents as to the allegations of the Complaint and that venue is proper in  
23 Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of  
24 this Consent Judgment pursuant to California Code of Civil Procedure ("CCP") § 664.6 and  
25 Proposition 65.

26 **1.7 Effective Date**

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

1 **2. INJUNCTIVE RELIEF**

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

5 **“WARNING: This product contains a chemical known to the State of California**  
6 **to cause cancer and birth defects or other reproductive harm.”**

7 If it has reason to believe that the Products contain additional chemicals listed under  
8 Proposition 65, 99 Cents may elect to use the word “chemicals” in place of “a chemical”. Each  
9 unit shall carry said warning directly on each unit or its label or package in a sufficiently  
10 conspicuous manner reasonably calculated to be seen by the ordinary consumer prior to  
11 purchase.

12 **3. PAYMENTS**

13 **3.1 Civil Penalty Pursuant To Proposition 65**

14 In settlement of all claims referred to in this Consent Judgment, 99 Cents shall pay a total  
15 civil penalty of four thousand dollars (\$4,000.00) to be apportioned in accordance with *Health*  
16 *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00) for State of California  
17 Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25%  
18 (\$1,000.00) for APS&EE.

19 99 Cents shall issue two (2) checks for the civil penalty: (1) a check or money order made  
20 payable to “OEHHA” in the amount of \$3,000.00; and (2) a check or money order made payable  
21 to “Law Offices of Lucas T. Novak” in the amount of \$1,000.00. 99 Cents shall remit the  
22 payments within fifteen (15) business days of the Effective Date, to:

23 Lucas T. Novak, Esq.  
24 LAW OFFICES OF LUCAS T. NOVAK  
25 8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

26 **3.2 Reimbursement Of APS&EE’s Fees And Costs**

27 99 Cents shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs  
28 incurred in prosecuting the instant action, for all work performed through execution of this

1 Consent Judgment. Accordingly, 99 Cents shall issue a check or money order made payable to  
2 “Law Offices of Lucas T. Novak” in the amount of twenty thousand dollars (\$20,000.00). 99  
3 Cents shall remit the payment within fifteen (15) business days of the 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 APS&EE’s Release Of 99 Cents**

9 APS&EE, acting in its individual capacity, its past and current agents, shareholders,  
10 directors, members, officers, employees, attorneys, successors and assignees, and in the public  
11 interest, in consideration of the promises and monetary payments contained herein, hereby  
12 releases 99 Cents, its parents, subsidiaries, shareholders, directors, members, officers,  
13 employees, attorneys, successors and assignees, as well as its downstream distributors, retailers,  
14 and franchisees, and all upstream entities in the distribution chain of the Products with 99 Cents  
15 (collectively “Released Parties”), from any alleged Proposition 65 violation claims asserted in  
16 APS&EE’s Notice regarding the Products sold and/or offered for sale by 99Cents in California  
17 before and up to the Effective Date.

18 **4.2 99 Cents’s Release Of APS&EE**

19 99 Cents and on behalf of all of the other Released Parties, by this Consent Judgment,  
20 waives all rights to institute any form of legal action against APS&EE, its shareholders,  
21 directors, members, officers, employees, attorneys, experts, successors and assignees for actions  
22 or statements made or undertaken, whether in the course of investigating claims or seeking  
23 enforcement of Proposition 65 against 99 Cents in this matter.

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 which the creditor does not know or  
28 suspect to exist in his or her favor at the time of executing the release, which if

1 known by him or her must have materially affected his or her settlement with the  
2 debtor.”

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, APS&EE 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 notices required to be provided under this Consent Judgment  
27 shall be in writing and delivered personally or sent by first class or certified mail addressed as  
28 follows:

1 TO 99 CENTS:

2 Patrick J. Cafferty, Jr., Esq.  
3 Munger, Tolles & Olson, LLP  
4 560 Mission Street, 27<sup>th</sup> Floor  
5 San Francisco, CA 94105

TO APS&EE:

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

6 **9. EXECUTION IN 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.

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1 **10. AUTHORIZATION**

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

7

8 **AGREED TO:**

9 Date: Sept. 28, 2016

10  
11 By: [Signature]  
12 Authorized Officer of APS&EE, LLC

13

14 **AGREED TO:**

15  
16 Date: \_\_\_\_\_

17

18 By: \_\_\_\_\_  
19 Authorized Officer of 99 Cents Only Stores LLC

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21 **IT IS SO ORDERED.**

22

23 Dated: \_\_\_\_\_  
24  
25  
26  
27  
28  
JUDGE OF THE SUPERIOR COURT



1 **10. AUTHORIZATION**

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

7  
8 **AGREED TO:**

9 Date: \_\_\_\_\_

10  
11 By: \_\_\_\_\_

12 Authorized Officer of APS&EE, LLC

13  
14 **AGREED TO:**

15 Date: 9/28/16

16  
17  
18 By:  \_\_\_\_\_

19 Authorized Officer of 99 Cents Only Stores LLC

20 **IT IS SO ORDERED.**

21  
22 Dated: \_\_\_\_\_

23 \_\_\_\_\_  
24 JUDGE OF THE SUPERIOR COURT