

1 Evan Smith (Bar No. SBN 242352)  
2 BRODSKY & SMITH, LLC.  
3 9595 Wilshire Blvd., Ste. 900  
4 Beverly Hills, CA 90212  
5 Tel: (877) 534-2590  
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

11 EMA BELL,

12 Plaintiff,

13 v.

14 99 CENTS ONLY STORES LLC,

15 Defendant.

Case No.: RG17879470

**CONSENT JUDGMENT**

Judge: Ronni MacLaren

Dept.: 25

Hearing Date: May 17, 2018

Hearing Time: 9:00 AM

Reservation #: R-1946622

1           **1. INTRODUCTION**

2           **1.1 The Parties.** This Consent Judgment is entered into by and between Ema Bell  
3 acting on behalf of the public interest and on her own behalf (hereinafter “Bell”) and 99 Cents Only  
4 Stores LLC (“99 Cents Only” or “Defendant”) with Bell and Defendant collectively referred to as  
5 the “Parties” and each of them as a “Party.” Bell is an individual residing in California that seeks  
6 to promote awareness of exposures to toxic chemicals and improve human health by reducing or  
7 eliminating hazardous substances contained in consumer products. 99 Cents Only is alleged to be  
8 a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code  
9 §§ 25249.6 et seq.

10           **1.2 Allegations and Representations.** Bell alleges that Defendant has exposed  
11 individuals to (a) Di(2-ethylhexyl) phthalate (DEHP), a chemical found in Momentum Brands  
12 Jump Ropes (UPC No. 8-76416-11639-9, Item No. 623903) (“Momentum Jump Ropes”), and (b)  
13 di-n-butyl phthalate (DBP), a chemical found in Momentum Brands Bike Locks (UPC No. 8-  
14 180680-1102-5-1609, Item No. 695631 (“Momentum Bike Locks”) without providing clear and  
15 reasonable exposure warnings under Proposition 65. DEHP and DBP are each listed under  
16 Proposition 65 as a chemical known to the State of California to cause reproductive toxicity. DEHP  
17 is also known to the State as a carcinogen

18           **1.3 Notices of Violation/Complaint.** On or about April 24, 2017, and on April 26,  
19 2017, Bell served 99 Cents Only, and various public enforcement agencies with documents entitled  
20 “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notices”),  
21 alleging that Defendant was in violation of Proposition 65 for failing to warn consumers and  
22 customers that Momentum Brands Jump Ropes and Bike Locks exposed users in California to  
23 DEHP and DBP, respectively. No public enforcer has brought and is diligently prosecuting the  
24 claims alleged in the Notices. On October 20, 2017, Bell filed a complaint (the “Complaint”) in  
25 the matter.

26           **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
27 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that  
28

1 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,  
2 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all  
3 claims which were or could have been raised in the Complaint based on the facts alleged therein  
4 and/or in the Notices.

5 1.5 Defendant denies the material allegations contained in Bell's Notices and Complaint  
6 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be  
7 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor  
8 shall compliance with this Consent Judgment constitute or be construed as an admission by  
9 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically  
10 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,  
11 responsibilities, and duties of Defendant under this Consent Judgment.

12 **2. DEFINITIONS**

13 2.1 **Covered Products.** The term "Covered Products" means Momentum Jump Ropes  
14 and Momentum Bike Locks that are manufactured, distributed and/or offered for sale in California  
15 by 99 Cents Only.

16 2.2 **Effective Date.** The term "Effective Date" means the date on which notice of entry  
17 of this Consent Judgment by the Court is served upon Defendant.

18 **3. INJUNCTIVE RELIEF: WARNINGS**

19 3.1 As of the date this Consent Judgment is signed by both Parties, 99 Cents Only shall  
20 not manufacture or order from any supplier Covered Products intended for retail sale in California  
21 that contains DEHP and/or DBP in any component to which consumers are exposed in excess of  
22 0.1% (1,000 ppm) (hereinafter "Reformulated Products") unless the Covered Product is  
23 accompanied by a warning that complies with Article 6 of Title 27 of the California Code of  
24 Regulations. Covered Products purchased by 99 Cents Only before the date this Consent Judgment  
25 is signed by both Parties may sell through without a warning even if not Reformulated Products.

26 3.1.1 Until August 30, 2018, the warning for the Momentum Jump Ropes shall  
27 consist of either:  
28

1 (a) The statement: "WARNING: This product contains a chemical known to the State  
2 of California to cause cancer, birth defects and other reproductive harm."; or

3 (b) (1) A symbol consisting of a black exclamation point in a yellow equilateral triangle  
4 with a bold black outline to the left of the word "warning" in bold all capital letters, followed  
5 by the statement "This product can expose you to chemicals including Di(2-ethylhexyl)  
6 phthalate (DEHP), which is known to the State of California to cause cancer, birth defects  
7 and other reproductive harm. For more information, go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)"; or  
8 (2) a warning consisting of a symbol that is a black exclamation point in a yellow equilateral  
9 triangle with a bold black outline to the left of the word "warning" in bold all capital letters,  
10 followed by the statement "Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)."<sup>1</sup>

11 3.1.2 Until August 30, 2018, the warning for the Momentum Bike Locks shall  
12 consist of either:

13 (a) The statement: "WARNING: This product contains a chemical known to the State  
14 of California to cause birth defects and other reproductive harm."; or

15 (b) (1) A symbol consisting of a black exclamation point in a yellow equilateral triangle  
16 with a bold black outline to the left of the word "warning" in bold all capital letters, followed  
17 by the statement "This product can expose you to chemicals including di-n-butyl phthalate  
18 (DBP), which is known to the State of California to cause birth defects and other  
19 reproductive harm. For more information, go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)"; or (2) a  
20 warning consisting of a symbol that is a black exclamation point in a yellow equilateral  
21 triangle with a bold black outline to the left of the word "warning" in bold all capital letters,  
22 followed by the statement "Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)."<sup>2</sup>

23 3.1.3 For Covered Products manufactured on and after August 30, 2018, the  
24 warnings set forth in Sections 3.1.1(b) and Section 3.1.2(b) shall be used.

25  
26 <sup>1</sup> The triangular symbol need only be in yellow where the sign, label, shelf tag or other  
transmission format is being printed in color for purposes of other language, symbols or designs.

27 <sup>2</sup> The triangular symbol need only be in yellow where the sign, label, shelf tag or other  
28 transmission format is being printed in color for purposes of other language, symbols or designs.

1           3.2     The warnings provided pursuant to Section 3.1 shall be affixed to or printed on the  
2 Covered Products' packaging or labeling, or on a placard, shelf tag, sign or electronic device or  
3 automatic process and the warning shall be displayed with such conspicuousness, as compared with  
4 other words, statements, or designs as to render it likely to be read and understood by an ordinary  
5 individual under customary conditions of purchase or use. A warning may be contained in the same  
6 section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,  
7 concerning the use of the product and shall be at least the same size as those other safety warnings.

8           **4.     MONETARY TERMS**

9           4.1     **Civil Penalty.** 99 Cents Only shall pay a Civil Penalty of \$4,000.00 pursuant to  
10 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health  
11 & Safety Code § 25192, with 75% of the Civil Penalty (\$3000.00) remitted to the State of  
12 California's Office of Environmental Health Hazard Assessment and the remaining 25% of the  
13 Civil Penalty (\$1000.00) remitted to Bell, as provided by California Health & Safety Code  
14 § 25249.12(d).

15                 4.1.1   Within fifteen (15) business days of the Effective Date, 99 Cents Only shall  
16 issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of  
17 \$3,000.00; and (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$1,000.00.  
18 Payment owed to Bell pursuant to this Section shall be delivered to the following payment  
19 address:

20                                 Evan J. Smith, Esquire  
21                                 Brodsky & Smith, LLC  
22                                 Two Bala Plaza, Suite 510  
                                      Bala Cynwyd, PA 19004

23           Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly  
24 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

25                 For United States Postal Service Delivery:

26   Mike Gyurics  
27   Fiscal Operations Branch Chief  
  Office of Environmental Health Hazard Assessment  
28   P.O. Box 4010  
  Sacramento, CA 95812-4010

1 For Non-United States Postal Service Delivery:

2 Mike Gyurics  
3 Fiscal Operations Branch Chief  
4 Office of Environmental Health Hazard Assessment  
5 1001 I Street  
6 Sacramento, CA 95814

7 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the  
8 address set forth above as proof of payment to OEHHA.

9 4.2 **Attorneys' Fees.** Within fifteen (15) business days of the Effective Date, 99 Cents  
10 Only shall pay \$36,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete  
11 reimbursement for Plaintiff Bell's attorneys' fees and costs incurred as a result of investigating,  
12 bringing this matter to 99 Cents Only's attention, litigating and negotiating and obtaining judicial  
13 approval of a settlement in the public interest, pursuant to Code of Civil Procedure section 1021.5.  
14 Payment owed to Brodsky Smith pursuant to this Section shall be mailed to Brodsky Smith at the  
15 address set forth in Section 4.1, above

16 **5. RELEASE OF ALL CLAIMS**

17 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting  
18 on her own behalf, and on behalf of the public interest, and 99 Cents Only, and its parents,  
19 shareholders, members, directors, officers, managers, employees, representatives, agents,  
20 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
21 predecessors, successors and assigns (collectively with 99 Cents Only, "Defendant Releasees"),  
22 and all entities from whom they obtain and to whom they directly or indirectly distribute or sell  
23 Covered Products, including but not limited to manufacturers, suppliers, distributors, wholesalers,  
24 customers, licensors, licensees retailers, franchisees, and cooperative members (collectively,  
25 "Upstream and Downstream Releasees"), of all claims for violations of Proposition 65 based on  
26 exposure to DEHP and DBP from Covered Products as set forth in the Notice, with respect to  
27 Covered Products manufactured, distributed, or sold by 99 Cents Only prior to the Effective Date.  
28 This Consent Judgment shall have preclusive effect such that no other person or entity, whether  
purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and/or

1 take any action with respect to any violation of Proposition 65 that was alleged in the Complaint,  
2 or that could have been brought pursuant to the Notice against Defendant Releasees or the Upstream  
3 and Downstream Releasees including but not limited to Proposition 65 Claims.

4         5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,  
5 representatives, attorneys, and successors and/or assignees, and not in her representative capacity,  
6 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action  
7 action against Defendant Releasees and Upstream and Downstream Releasees and releases  
8 Defendant Releasees, and Upstream and Downstream Releasees from any and all manner of  
9 actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,  
10 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature  
11 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with  
12 respect to any alleged violations of Proposition 65 or other statutory or common law claims related  
13 to or arising from Covered Products manufactured, distributed, or sold by 99 Cents Only or  
14 Upstream and Downstream Releasees. With respect to the foregoing waivers and releases in this  
15 paragraph, Bell hereby specifically waives any and all rights and benefits which she now has, or in  
16 the future may have, conferred by virtue of the provisions of Section 1542 of the California Civil  
17 Code, which provides as follows:

18             A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
19 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR  
20 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY  
21 HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH  
22 THE DEBTOR.

23         5.3 Compliance with the terms of this Consent Judgment constitutes compliance with  
24 Proposition 65 with regard to any alleged failure to warn about DEHP and/or DBP in the Covered  
25 Products manufactured, distributed, or sold by 99 Cents Only after the Effective Date.

26         5.4 99 Cents Only waives any and all claims against Bell, her attorneys and other  
27 representatives, for any and all actions taken or statements made (or those that could have been  
28 taken or made) by Bell and her attorneys and other representatives, whether in the course of

1 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
2 and/or with respect to Covered Products.

3 **6. INTEGRATION**

4         6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
5 any and all prior negotiations and understandings related hereto shall be deemed to have been  
6 merged within it. No representations or terms of agreement other than those contained herein exist  
7 or have been made by any Party with respect to the other Party or the subject matter hereof.

8 **7. GOVERNING LAW**

9         7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
10 California and apply within the State of California. In the event that Proposition 65 is repealed or  
11 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
12 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
13 to the extent that, Covered Products are so affected.

14 **8. NOTICES**

15         8.1 Unless specified herein, all correspondence and notices required to be provided  
16 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
17 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
18 by the other party at the following addresses:

19 For Defendant:

20         Mary M. Kasper  
21         Chief Legal Officer, General Counsel & Secretary  
22         99 Cents Only Stores  
23         4000 Union Pacific Avenue  
24         Commerce CA 90023

25         With a copy to:

26         Patrick J. Cafferty, Jr.  
27         Munger, Tolles & Olson LLP  
28         560 Mission St.  
            San Francisco, CA 94105

And

For Bell:



1 Evan Smith  
2 Brodsky & Smith, LLC  
3 9595 Wilshire Blvd., Ste. 900  
4 Beverly Hills, CA 90212

5 Any party, from time to time, may specify in writing to the other party a change of address to  
6 which all notices and other communications shall be sent.

7 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

8 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
9 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
10 the same document.

11 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**  
**APPROVAL**

12 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety  
13 Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
14 Defendant agrees it shall support approval of such Motion.

15 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
16 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,  
17 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within  
18 30 days, the case shall proceed on its normal course.

19 10.3 If the Court approves this Consent Judgment and the approval is later reversed or  
20 vacated by an appellate court, the Parties shall meet and confer as to whether to modify the terms  
21 of this Consent Judgment. If the Parties do not jointly agree on a course of action to take, the case  
22 shall proceed on its normal course on the trial court's calendar.

23 **11. MODIFICATION**

24 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
25 with the approval of the Court or upon the granting of a motion brought to the Court by either Party.

26 **12. ATTORNEY'S FEES**

27 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
28 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

1 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
2 pursuant to law.

3 **13. RETENTION OF JURISDICTION**

4 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
5 Consent Judgment.

6 **14. AUTHORIZATION**

7 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
8 respective Parties and have read, understood and agree to all of the terms and conditions of this  
9 document and certify that he or she is fully authorized by the Party he or she represents to execute  
10 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
11 explicitly provided herein each Party is to bear its own fees and costs.

12  
13 **AGREED TO:**

**AGREED TO:**

14  
15 Date:

3/23/18

Date:

3/20/18

16 By:

EMA BELL

By:

CHO  
99 CENTS ONLY STORES LLC

17  
18  
19 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

20  
21 Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court