

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Ecological Alliance, LLC and 99 Cents Only Stores LLC

This Settlement Agreement is entered into by and between Ecological Alliance, LLC ("Ecological"), on the one hand, and 99 Cents Only Stores LLC ("99 Cents" or "Defendant"), on the other hand, with Ecological and 99 Cents collectively referred to as the "Parties."

1.2. General Allegations

Ecological alleges that 99 Cents manufactured and/or distributed and/or offered for sale in the State of California pliers in tool kits containing Di(2-ethylhexyl)phthalate (DEHP) and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). California has identified and listed DEHP under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3. Product Description

The products that are covered by this Settlement Agreement are defined as the pliers in Holiton tool kits bearing UPC #818068108091 that 99 Cents has sold, offered for sale or distributed in California. All such items shall be referred to herein as the "Products."

1.4. Notice of Violation

On August 13, 2019, Ecological served Momentum Brands, Inc., 99 Cents, and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with documents entitled "60-Day Notice of Violation" ("Notice") that provided 99 Cents and such public enforcers with notice that 99 Cents was

allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Products exposed users in California to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5. No Admission

The parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning 99 Cents's compliance with Proposition 65. Specifically, 99 Cents denies the material factual and legal allegations contained in Ecological's Notice and maintains that the Products are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by 99 Cents of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by 99 Cents of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by 99 Cents. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of 99 Cents under this Settlement Agreement.

1.6. Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed.

2. INJUNCTIVE RELIEF: WARNING

2.1. Warning

Beginning no later than 90 days after the Effective Date, the Products shall be accompanied by a warning as described in Section 2.2 below. The warning requirements set

forth in Section 2.2 below shall apply only to Products that are distributed, marketed, sold or shipped for sale in the State of California. The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date or that 99 Cents places into the stream of commerce within 90 days of the Effective Date.

2.2. Warning Language

Where required, 99 Cents shall provide Proposition 65 warnings as follows:

(a) 99 Cents may use either of the following warning statements, each of which shall be in full compliance with this Section:

(1) **WARNING:** This product can expose you to DEHP, which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov; or

(2) **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

(b) If 99 Cents elects to use the warning statements identified in either 2.2(a)(1), (2), it may also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word "WARNING".

(c) The requirements for warnings, set forth in subsection (a) above are imposed pursuant to the terms of this Settlement Agreement. The Parties

recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations, as Health and Safety Code § 25249.6 provides that the warning requirements of Proposition 65 are satisfied by any warning that is clear and reasonable.

(d) If Proposition 65 warnings for DEHP should no longer be required, 99 Cents shall have no further obligations pursuant to paragraph 2.2 of this Settlement Agreement.

(e) In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations permitting warning text and/or methods of transmission different than those currently set forth and defined in 27 C.C.R. § 25602 and above, 99 Cents shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, 99 Cents shall pay a total of \$500 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Ecological. Ecological's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to Ecological and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, 99 Cents shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to 99 Cents's attention. 99 Cents shall pay Ecological's counsel \$15,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

By December 6, 2019, 99 Cents shall make a total payment of Fifteen Thousand Five Hundred Dollars (\$15,500) for the civil penalties and attorney's fees / costs by wire transfer to Plaintiff's counsel Custodio & Dubey LLP:

For wire transfers:

Bank: Bank of America, N.A.

Routing No.: 026009593

Account No.: 325104702031

Beneficiary: Custodio & Dubey LLP

Other than this payment, each side is to bear its own attorneys' fees and costs.

If payment is made by check, the check must be issued to:

Custodio & Dubey LLP, client trust account

Custodio & Dubey LLP

448 S. Hill St., Suite 615

Los Angeles, CA 90013

6. RELEASE OF ALL CLAIMS

6.1. Release of 99 Cents, Downstream Customers and Upstream Vendors

This Settlement Agreement is a full, final, and binding resolution between Ecological, on behalf of itself, and (a) 99 Cents, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, members, officers, directors, insurers, agents, attorneys, predecessors, successors, and assigns (collectively the "Defendant Releasees"), and (b) all entities from whom they obtain and to whom they directly or indirectly distribute or sell the Products, including but not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensee retailers, franchisees, and cooperative members, such as Holiton, (collectively, "Upstream and Downstream Releasees"), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been, or may in the future be asserted against the Defendant Releasees and/or Upstream and Downstream Releasees regarding exposing persons to DEHP and the failure to warn about exposure to the DEHP arising in connection with the Products manufactured, shipped, and/or otherwise distributed prior to the Effective Date, even if sold by any downstream releasees after the Effective Date. The Parties agree that compliance with the terms of this Settlement Agreement by Defendant shall be deemed to be compliance with Proposition 65 by the Upstream and Downstream Releasees with respect to any exposures to DEHP in the Products manufactured, distributed, or sold by Defendant after the Effective Date. Ecological also, in its capacity, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general release herein 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 of any nature, character or kind, known or unknown, suspected or unsuspected, against 99 Cents and the Releasees. Ecological acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE 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 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Ecological, in its capacity only, and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

6.2. 99 Cents's Release of Ecological

99 Cents waives any and all claims against Ecological, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Ecological and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California, exclusive of its conflict of laws rules. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then 99 Cents shall have no further obligations pursuant to this Settlement Agreement.

8. NOTICES

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

For 99 Cents: Carol R. Brophy, Esq.
Steptoe & Johnson LLP
1 Market Street | Spear Tower, Suite 3900
San Francisco, CA 94105

For Ecological: Vineet Dubey, Esq.
Custodio & Dubey LLP
448 S. Hill St., Suite 615
Los Angeles, CA 90013

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

9. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

Ecological agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions,



negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

12. MODIFICATION

This Settlement Agreement may be modified only by a written agreement signed by the Parties.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

<p style="text-align: center;">AGREED TO:</p> <p>Date: November <u>19</u>, 2019</p> <p>By: </p> <p>On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: November <u>19</u>, 2019</p> <p>By: </p> <p>On Behalf of 99 Cents Only Stores LLC</p>
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