

**SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND 99 CENTS  
ONLY STORES, LLC**

**1. RECITALS**

**1.1 The Parties**

**1.1.1** This Settlement Agreement (“Agreement”) is entered into by and between 99 Cents Only Stores, LLC (“99 Cents”) and APS&EE, LLC (“APS&EE”) (each individually referred to as a “Party” and collectively as the “Parties”).

**1.1.2** APS&EE is an organization based in 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** APS&EE alleges that 99 Cents 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** APS&EE alleges that 99 Cents sold the Parko brand of hammers, including but not limited to claw hammer 16oz., 1207220801300 (hereinafter, the “Products”) in the State of California causing users in California to be exposed to hazardous levels of Di (2-ethylhexyl) Phthalate (“DEHP”) and Di-n-Butyl Phthalate (“DBP”) without providing “clear and reasonable warnings”, in violation of Proposition 65. DEHP is listed by the State of California as known to cause cancer and reproductive toxicity; DBP is listed as known to cause birth defects and other reproductive harm.

**1.2.2** On September 14, 2023, APS&EE sent a Sixty-Day Notice of Violation (the “Notice”), along with a Certificate of Merit, to 99 Cents and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

### **1.3 No Admissions**

99 Cents denies all allegations in APS&EE's Notice and maintains that the Products have been, and are, in compliance with all laws, and that 99 Cents has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by 99 Cents 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 Agreement.

### **1.4 Compromise**

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

### **1.5 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 or its counsel.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Standard**

As of the Effective Date, 99 Cents shall not distribute for sale in California, sell or offer for sale the Products in California unless (a) the Products contain no more than 1,000 parts per million (0.1%) of DEHP and DBP, and the Products produce a test result no higher than 1.0 microgram of DEHP and DBP based on a wipe sample collected using NIOSH Method 9100 or equivalent ("Reformulated Product"), or (b) the Product is accompanied by a clear and reasonable warning as described below in Section 2.2.

### **2.2 Proposition 65 Warnings**

For any Products that are not Reformulated Products, such Products shall be accompanied by a clear and reasonable warning. 99 Cents shall provide a warning statement substantially similar to the following:

**WARNING:** This product can expose you to chemicals, including [Di (2-ethylhexyl) Phthalate and/or Di-n-Butyl Phthalate],<sup>1</sup> which [is/are] known to the State of California to cause [cancer and birth defects or other reproductive harm]. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The bracketed language may vary based on the identified listed chemical(s). Alternatively, Defendant may use the Short-Form warning in compliance with 27 Cal. Code Regs §25602, et seq.:

**WARNING:** Cancer and Reproductive Harm. [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label 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”. Additionally, if the Product contains consumer information in a foreign language, the warning must be provided in the foreign language.

The Products shall carry said warning directly on each unit, label, or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale. A Product that is sold by 99 Cents on the internet to persons located in California shall also provide the warning message by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product. For Products that 99 Cents provides for a downstream entity to sell on the internet, 99 Cents shall include an instruction that the entity comply with the warning requirements of this section.

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<sup>1</sup> In accordance with 27 Cal. Code Regs., section 25603, operative Aug. 30, 2018, the warning must expressly identify at least one of the Listed Chemicals present in the Product, as applicable.

### **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 one thousand dollars (\$1,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$750.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$250.00) for APS&EE.

99 Cents shall issue these payments collectively as part of the total payment described below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the wire transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective payments to OEHHA and APS&EE.

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

99 Cents shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs incurred in prosecuting the instant action for all work performed through execution and approval of this Consent Judgment, in the amount of thirteen thousand dollars (\$13,000.00). Accordingly, 99 Cents shall remit total payment via wire transfer to Law Offices of Lucas T. Novak in the amount of fourteen thousand dollars (\$14,000.00), which includes the civil penalty described in Section 3.1, within seven (7) business days of the Effective Date. Wire instructions have been exchanged between the Parties’ counsel.

### **4. RELEASES**

#### **4.1 APS&EE’s Release Of 99 Cents**

APS&EE, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, parents, subsidiaries, successors and/or assignees (collectively, the “Releasers”) in consideration of the promises and monetary payments contained herein, hereby releases 99 Cents, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as its upstream suppliers including, without limitation, International Trade LLC , and 99

Cents' downstream distributors, retailers, and franchisees (collectively "Released Parties"), from any alleged Proposition 65 violation claims asserted in APS&EE's Notice regarding failure to warn about DEHP and/or DBP exposure from the Products that 99 Cents has sold or caused to be sold in California before and up to the Effective Date. For the sake of clarity, such release of upstream suppliers is limited to Products sold, delivered or otherwise provided to Defendant.

#### **4.2 99 Cents' Release Of APS&EE**

99 Cents, by this Agreement, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, 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. If any Released Party should institute any such action, then Releasers' release of said Released Party in this Agreement shall be rendered void and unenforceable.

#### **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 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.

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, with respect to the claims released by this Agreement. 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. NOTICE**

All correspondence and notice 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: Joseph D. Lee, Esq. Munger, Tolles &amp; Olson LLP 350 South Grand Ave, 50th Fl. Los Angeles, CA 90071</p>	<p>TO APS&amp;EE: 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. 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 that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

**AGREED TO:**

Date: Jan. 9, 2024

By:   
Authorized Representative of APS&EE, LLC

**AGREED TO:**

Date: 1/8/24

By:   
Authorized Representative of 99 Cents Only Stores, LLC