



DMS NOTICE
QC – 11 - 06

October 10, 2011

Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: 99¢ Only Stores Settlement

Attached is a final judgment pursuant to stipulation issued by the District Attorney's Office of San Diego County, in conjunction with the District Attorney's Offices of the City of Santa Monica and Tulare County. The final judgment was filed against 99¢ Only Stores on August 30, 2011 for false and misleading advertising and unfair business practices pursuant to California Business and Professions Codes 17200 and 17500.

We gratefully acknowledge the fine work done on behalf of the people, by the prosecution team representing the various District Attorneys' Offices as well as the State and county investigators that documented and caused to be prosecuted these violations. 99¢ Only Stores paid \$347,372 for investigation and prosecution costs.

San Diego County should be sure to report these penalties in the County Monthly Report (CMR). All participating counties should separately record their individual investigative cost reimbursements in the appropriate columns in the report.

Sincerely,

Kristin J. Macey
Director

Attachments

Cc: Edmund Williams, Director, CDFA County Liaison Office



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15 Attorneys for Plaintiff the People of the State of California

16
17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE COUNTY OF SAN DIEGO
19

20 THE PEOPLE OF THE STATE OF CALIFORNIA,

21 Plaintiff,

22 v.
23

24 99¢ ONLY STORES, a California Corporation,

25 Defendant.
26

GENERAL CIVIL NO.

37-2011-00096939-CU-MC-CTL

**[PROPOSED] STIPULATED FINAL
JUDGMENT**

27 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, through its attorneys,
28 BONNIE M. DUMANIS, the District Attorney of San Diego County, by Deputy District

Exempt from fees pursuant to
Government Code §6103

F I L E D
Clerk of the Superior Court

AUG 30 '11

By: L. SAN NICOLAS, Deputy

1 Attorney Thomas A. Papageorge, PHILLIP J. CLINE, the District Attorney of Tulare County,
2 by Deputy District Attorney Rodney M. Blaco, and MARSHA JONES MOUTRIE, the City
3 Attorney of the City of Santa Monica, by Deputy City Attorney Adam Radinsky, and Defendant
4 99¢ ONLY STORES, a California Corporation, through its attorneys, Munger, Tolles & Olson,
5 LLP, have stipulated to the entry of this Stipulated Final Judgment without the Court taking
6 evidence, without the Defendant admitting any wrongdoing, and without this Stipulated Final
7 Judgment constituting an admission by any party regarding any issue of fact or law, and the
8 Court having considered the pleadings and good cause appearing:

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff have judgment
10 against Defendant as follows:

11 **JURISDICTION AND VENUE**

12 1. This action is brought under the laws of the State of California and this Court has
13 jurisdiction of the subject matter hereof and the parties hereto.

14 **APPLICABILITY**

15 2. All provisions of this Judgment are applicable to Defendant 99 ¢ Only Stores, a
16 California Corporation (sometimes hereinafter “99¢ Only Stores” or “Defendant”), and the
17 injunctive provisions of this Judgment (as set forth in paragraph 3 of this Judgment) are also
18 applicable to Defendant’s corporate officers, employees, corporate successors and corporate
19 assigns. Defendant 99¢ Only Stores shall within five (5) business days of its receipt of this
20 Judgment provide actual notice of this Judgment to its corporate officers.

21 **INJUNCTION**

22 3. Defendant 99¢ Only Stores and all those persons and entities to whom this injunction
23 applies pursuant to paragraph 2 of this Judgment, are enjoined and restrained from directly or
24 indirectly doing any of the following:

25 a. Advertising, representing on any in-store signage, or in any other manner
26 disseminating to the public, in connection with any effort to sell products, in any of Defendant’s
27 retail stores in California, or in any advertising medium (including without limitation television
28 or radio advertising) or other written or electronic advertising communications disseminated to

1 the California public, the message: “Nothing over 99.99 cents,” or any effectively identical
2 message, with regard to Defendant’s product pricing, such as, for example, “Nothing costs more
3 than 99.99 cents” or “You will not pay more than 99.99 cents.”

4 b. In connection with its operation of any retail store in California, failing to
5 disclose on a sign located at each checkstand register of each such retail store, in at least 40-
6 point bold-faced type and in a clear and conspicuous manner, the following: **“Prices are
7 rounded UP to the nearest cent at checkout. For example, an item marked “99.99¢” will
8 cost you \$1 at the register.”**

9 c. In connection with its operation of any retail store in California, failing to
10 disclose on a sign of at least 2’ x 3’ overall size, posted in a front-window (facing the outside of
11 the store) or similar location nearest to the store’s main entrance, in a clear and conspicuous
12 manner (such that this message is the principal message conveyed on such sign) and in bold-face
13 type easily readable within ten feet of such sign by a person of average vision, the following:
14 **All prices are rounded UP to the nearest cent at checkout. For example, an item marked
15 “99.99¢” will cost you \$1 at the register.**

16 d. Except for the disclosure requirements of Paragraphs 3(b) and 3(c) of
17 Judgment, nothing in this Judgment shall address or affect:

18 (1) Defendant’s use (in advertising or otherwise) of its existing name (“99¢
19 Only Stores”) or similar variations thereof, or any other names, slogans, advertising or
20 statements not explicitly addressed in this Judgment;

21 (2) Defendant’s use (in advertising or otherwise) of statements concerning
22 maximum price that are true after rounding applies, such as, for example, a statement under the
23 current 99.99 cents pricing structure of “Nothing over one dollar;” and

24 (3) Defendant’s use of fractional pricing (such as prices with 99/100 of a
25 cent) and the associated use of rounding fractional prices up or down according to its policies
26 published on the company website or otherwise.

27 e. Paragraphs 3(b) and 3(c), shall apply commencing ninety (90) days from
28 Notice of Entry of Judgment in this matter, and shall continue until the date that (i) is three years

1 thereafter; or (ii) Defendant changes its pricing structure in a manner that reasonably eliminates
2 the need for this notice (such as, for example, Defendant eliminates the use of ninety-nine one
3 hundredths of one cent, or similar, pricing), whichever comes first, and at that point, the
4 injunctive portions of Paragraphs 3(b) and 3(c) of this Judgment shall be deemed dissolved and
5 of no further force without need for any further action.

6 f. In the event that Plaintiff or its counsel or agents contend that Defendant is
7 violating Paragraphs 3(a), 3(b) and/or 3(c) of this Judgment, prior to seeking any judicial
8 remedies, Plaintiff or its counsel or agents shall expressly communicate such violation (and the
9 location thereof) to Defendant and provide it the opportunity to cure the alleged violation within
10 fifteen (15) business days.

11 COMPLIANCE

12 4. For the purpose of ensuring compliance with the injunctive provisions of this Final
13 Judgment, and so long as the injunctive provisions of Paragraphs 3(b) and 3(c) of this Judgment
14 are in force, Defendant 99¢ Only Stores shall:

15 a. Conduct periodic inspections of randomly selected California retail stores to
16 evaluate compliance with the injunctive provisions of this Judgment;

17 b. Maintain records of such periodic inspections; and

18 c. Permit duly authorized representatives of the District Attorneys of San Diego
19 and Tulare Counties and the City Attorney of Santa Monica to inspect such inspection records
20 upon reasonable notice and at reasonable times and places.

21 NO ADMISSION OF LIABILITY

22 5. This Judgment is not to be construed as an admission of liability by any party, or a
23 finding of liability against any party. This Judgment was entered into as a result of a stipulation
24 of the parties, without admissions or findings of fact or law, and without any admission by the
25 Defendant or by any party of liability, wrongdoing, illegality, or of any fact alleged in the
26 Complaint. Defendant denies any such wrongdoing. To the extent permitted by law, all
27 information and communications relating to the negotiations of the settlement reflected in this
28 Judgment shall remain confidential.

MONETARY RELIEF

6. Defendant shall, within ten days of the date of the filing of this Judgment, make payments in the total amount of \$347,372 for Plaintiff's investigation and prosecution costs and other remedies pursuant to Business and Professions Code sections 17206 and 17536, by checks made payable as follows:

a. The sum of \$112,006, payable to the San Diego County District Attorney's Office, which sum shall include an amount to be paid by the San Diego County District Attorney's Office to other entities within its jurisdiction which also incurred investigative costs as follows: The sum of \$756 payable to the San Diego County Agricultural Commissioner/Sealer of Weights and Measures;

b. The sum of \$115,460, payable to the Tulare County District Attorney's Office, which sum shall include amounts to be paid by the Tulare County District Attorney's Office to other entities which also incurred investigative costs as follows:

(1) The sum of \$3,080 payable to the Kern County Agricultural Commissioner/Sealer of Weights and Measures;

(2) The sum of \$587 payable to the Fresno County Agricultural Commissioner/Sealer of Weights and Measures;

(3) The sum of \$312 payable to the Madera County Agricultural Commissioner/Sealer of Weights and Measures; and

(4) The sum of \$230 payable to the Tulare County Agricultural Commissioner/Sealer of Weights and Measures;

c. The sum of \$119,906, payable to the City of Santa Monica, which sum shall include an amount to be paid by the City Attorney of Santa Monica to other entities within its jurisdiction which also incurred investigative costs as follows: The sum of \$8,656 payable to the Los Angeles County Agricultural Commissioner/Sealer of Weights and Measures.

7. Every payment required by this Judgment shall be delivered, except as otherwise required, to Thomas A. Papageorge, Head, Consumer Protection Unit, San Diego County District Attorney's Office, 330 West Broadway, Suite 750, San Diego, California, 92101.

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RETENTION OF JURISDICTION

8. Jurisdiction shall be retained by the Court for the purpose of enabling any party to this Stipulated Final Judgment to apply to the Court at any time for such further orders and directions as may be necessary and appropriate for the construction or carrying out of this Judgment, and for the enforcement of compliance with and the punishment of violations of the Judgment.

9. The clerk is ordered to enter this Judgment immediately, and to provide notice to Plaintiff through counsel.

Dated:

'AUG 30 2011

WILLIAM S. DATO

Judge of the Superior Court