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6 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
San Francisco County Superior Court

SEP 30 2009

GORDON PARK-LI, Clerk
BY: JOCELYN C. ROQUE
Deputy Clerk

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

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13 CENTER FOR ENVIRONMENTAL HEALTH,)
14 a non-profit corporation,)

15 Plaintiff,)

16 v.)

17 DOLLAR EMPIRE, LLC, and Defendant DOES)
18 1 through 200, inclusive,)

19 Defendants.)
20 _____)

Case No. CGC-09-489839

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1** On June 25, 2009, plaintiff the Center for Environmental Health (“CEH”),
3 a non-profit corporation acting in the public interest, filed a complaint in San Francisco County
4 Superior Court, entitled *Center for Environmental Health v. Dollar Empire, LLC*, San Francisco
5 County Superior Court Case Number CGC-09-489839 (the “Action”), for civil penalties and
6 injunctive relief pursuant to the provisions of California Health & Safety Code §25249.5 *et seq.*
7 (“Proposition 65”).

8 **1.2** Defendant Dollar Empire, LLC (“Dollar Empire”) is a “person in the
9 course of doing business” under Proposition 65 and manufacture, distribute and/or sell CD and
10 DVD wallets and organizers (the “Products”) in the State of California. Dollar Empire and CEH
11 are referred to collectively herein as the Parties.

12 **1.3** On or about April 7, 2009, CEH served Dollar Empire and the appropriate
13 public enforcement agencies with the requisite 60-day notice that Dollar Empire is in violation of
14 Proposition 65. CEH’s notice and the Complaint in this Action allege that Dollar Empire
15 exposes individuals who use or otherwise handle the Products to lead and/or lead compounds
16 (referred to interchangeably herein as “Lead”), chemicals known to the State of California to
17 cause cancer, birth defects and other reproductive harm, without first providing clear and
18 reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity of
19 Lead. The notice and Complaint allege that Dollar Empire’s conduct violates Health & Safety
20 Code §25249.6, the warning provision of Proposition 65.

21 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this
22 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and
23 personal jurisdiction over Dollar Empire as to the acts alleged in CEH’s Complaint, that venue is
24 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent
25 Judgment as a full and final resolution of all claims which were or could have been raised in the
26 Complaint based on the facts alleged therein.

27 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of
28 certain disputed claims between the Parties as alleged in the Complaint. By executing this

1 Consent Judgment, the Parties do not admit any facts or conclusions of law. Nothing in this
2 Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the
3 Parties may have in this or any other or future legal proceedings. Dollar Empire denies the
4 material factual and legal allegations contained in CEH's Notice and Complaint and maintains
5 that all products that it has sold and distributed in California, including the Products, have been
6 and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
7 admission by the Parties of any fact, finding, issue of law, or violation of law; nor shall
8 compliance with this Consent Judgment constitute or be construed as an admission by Dollar
9 Empire of any fact, finding, conclusion, issue of law or violation of law, such being specifically
10 denied by Dollar Empire. However, this section shall not diminish or otherwise affect the
11 obligations, responsibilities and duties of Dollar Empire under this Consent Judgment. This
12 Consent Judgment is the product of negotiation and compromise and is accepted by the parties,
13 for purposes of settling, compromising and resolving issues disputed in this action, including
14 future compliance by Dollar Empire with Section 2 of this Consent Judgment, and shall not be
15 used for any other purpose, or in any other matter.

16 **1.6** For purposes of this Consent Judgment, the term "Effective Date" shall
17 mean July 1, 2009.

18 **2. COMPLIANCE - REFORMULATION**

19 **2.1 Lead Reformulation.** After the Effective Date, Dollar Empire shall not
20 manufacture, distribute, ship, or sell, or cause to be manufactured, distributed, shipped, or sold,
21 any Product that contains Lead in concentrations that exceed 100 parts per million ("ppm") or is
22 comprised of any material that contains Lead in concentrations that exceed 100 ppm. Products
23 that Dollar Empire has manufactured, distributed, shipped, or sold, or caused to be
24 manufactured, distributed, shipped, or sold prior to the Compliance Date shall not be subject to
25 this requirement or any of the other requirements of section 2.

26 **2.2 Certification of level from suppliers.** Dollar Empire shall obtain written
27 certification with corresponding test results from its suppliers of the Products certifying that
28 neither the Products nor any materials of which the Products are comprised contain Lead

1 concentrations exceeding 100 ppm.

2 **2.3 Confirmatory testing by CEH.** CEH intends to conduct periodic testing
3 of the Products. Any such testing will be limited to Products sold in California. In the event that
4 CEH's testing demonstrates Lead levels in excess of 100 ppm for one or more Products, CEH
5 shall inform Dollar Empire of the violation(s), including information sufficient to permit Dollar
6 Empire to identify the Product(s). Dollar Empire shall, within 10 days following such notice,
7 provide CEH, at the address listed in section 10, with its supplier certification and testing
8 information demonstrating its compliance with section 2.2 of this Consent Judgment.

9 **3. SETTLEMENT PAYMENTS**

10 **3.1** Dollar Empire shall pay a total of \$17,500 as a settlement payment. This
11 total shall be paid as follows: (a) \$6,000 shall be due on or before August 1, 2009; (b) \$6,000
12 shall be due on or before September 1, 2009; and (c) \$5,500 shall be due on or before October 1,
13 2009. Each of these payments shall be by check payable to Lexington Law Group and delivered
14 to the offices of the Lexington Law Group at the address set forth in section 10 below. Any
15 failure by Dollar Empire to comply with the payment terms herein shall be subject to a stipulated
16 late fee in the amount of \$100 for each day after the delivery date the payment is received. The
17 late fees required under this section shall be recoverable, together with reasonable attorneys'
18 fees, in an enforcement proceeding brought pursuant to section 5 of this Consent Judgment. The
19 total amount paid by Dollar Tree shall be allocated by CEH as follows.

20 **3.1.1 Penalty:** The sum of \$1,000 in penalties pursuant to Health and
21 Safety Code § 25249.7(b). CEH shall apportion the penalties in accordance with Health and
22 Safety Code § 25249.12.

23 **3.1.2 Monetary Payment in Lieu of Penalty:** The sum of \$5,750 shall
24 be paid to CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). CEH
25 shall use such funds to continue its work protecting people from exposures to toxic chemicals.
26 As part of this work, CEH intends to conduct periodic testing of the Products as set forth in
27 section 2.3.

28 **3.1.3 Attorneys' Fees and Costs:** The sum of \$10,750 shall be used to

1 reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees,
2 and any other costs incurred as a result of investigating, bringing this matter to Dollar Empire's
3 attention, litigating and negotiating a settlement in the public interest.

4 **4. MODIFICATION OF CONSENT JUDGMENT**

5 **4.1** This Consent Judgment may be modified by written agreement of CEH
6 and Dollar Empire, or upon motion of CEH or Dollar Empire as provided by law.

7 **5. ENFORCEMENT OF CONSENT JUDGMENT**

8 **5.1** CEH may, by motion or application for an order to show cause before the
9 Superior Court of the County of San Francisco, enforce the terms and conditions contained in
10 this Consent Judgment. Should CEH prevail on any motion or application under this section,
11 CEH shall be entitled to recover its reasonable attorneys' fees and costs associated with such
12 motion or application.

13 **6. APPLICATION OF CONSENT JUDGMENT**

14 **6.1** This Consent Judgment shall apply to and be binding upon the Parties
15 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
16 them.

17 **7. RELEASE**

18 **7.1** This Consent Judgment is a full, final and binding resolution
19 between CEH and Dollar Empire of any violation of Proposition 65 that was or could have been
20 asserted in the Complaint against Dollar Empire or its parents, subsidiaries, affiliates, directors,
21 officers, employees, agents, attorneys, downstream distributors, or customers based on failure to
22 warn about alleged exposure to Lead contained in the Products, with respect to any Products
23 manufactured, distributed or sold by Dollar Empire on or prior to the date of entry of this
24 Consent Judgment. This release does not limit or effect the obligations of any party created
25 under this Consent Judgment.

26 **8. GOVERNING LAW**

27 **8.1** The terms of this Consent Judgment shall be governed by the laws of the
28 State of California. In the event that Proposition 65 is repealed or is otherwise rendered

1 inapplicable by reason of law generally, or as to the Products, then Dollar Empire shall provide
2 written notice to CEH of any asserted change in the law. The Parties shall meet and confer
3 regarding any alleged change in law asserted by Dollar Empire. If the Parties are unable to
4 agree, Dollar Empire may seek to terminate its obligations under this Consent Judgment by
5 moving the Court for a modification of the Consent Judgment as provided in section 4.

6 **9. RETENTION OF JURISDICTION**

7 **9.1** This Court shall retain jurisdiction of this matter to implement and enforce
8 the terms this Consent Judgment.

9 **10. PROVISION OF NOTICE**

10 **10.1** All notices required pursuant to this Consent Judgment and
11 correspondence shall be sent to the following:

12 For CEH:

13 Howard Hirsch
14 Lexington Law Group, LLP
15 1627 Irving Street
16 San Francisco, CA 94122

17 For Dollar Empire:

18 Wai Kai (Kelly) Wu
19 Dollar Empire, LLC
20 4423 Bandini Boulevard
21 Vernon, CA 90058

22 **11. COURT APPROVAL**

23 **11.1** If this Consent Judgment is not approved by the Court, it shall be of no
24 further force or effect. The Parties agree to support a Motion for Approval of this Consent
25 Judgment.

26 **12. EXECUTION AND COUNTERPARTS**

27 **12.1** The stipulations to this Consent Judgment may be executed in
28 counterparts and by means of facsimile, which taken together shall be deemed to constitute one

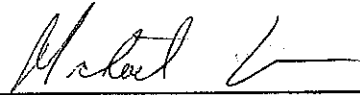
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2 **13. AUTHORIZATION**

3 **13.1** Each signatory to this Consent Judgment certifies that he or she is fully
4 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter
5 into and execute the Consent Judgment on behalf of the party represented and legally bind that
6 party. The undersigned have read, understand and agree to all of the terms and conditions of this
7 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and
8 costs.

9 **AGREED TO:**

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11 CENTER FOR ENVIRONMENTAL HEALTH

12 
13 _____
14 Michael Green, Executive Director
Center for Environmental Health

15 DOLLAR EMPIRE, LLC

16
17
18 _____
Signature

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20 _____
Printed Name

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22 _____
Title

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1 document.

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11 CENTER FOR ENVIRONMENTAL HEALTH

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14 Michael Green, Executive Director
Center for Environmental Health

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16 DOLLAR EMPIRE, LLC

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17 Michael Wu

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Signature

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19 MICHAEL WU

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Printed Name

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21 MANAGER

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Title

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between the Parties, the settlement is approved and judgment is hereby entered according to the terms herein.

SEP 30 2009

Dated: _____

PETER J. BUSCH

Judge, Superior Court of the State of California