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7 Consumer Advocacy Group, Inc.

ORIGINAL FILED

AUG X 2 2011

**LOS ANGELES
SUPERIOR COURT**

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

10
11 CONSUMER ADVOCACY GROUP, INC., in
12 the interest of the Public,

13 Plaintiff,

14 v.

15 GREENBRIER INTERNATIONAL, INC., a
16 Delaware Corporation; DOLLAR TREE
STORES, INC., a Virginia Corporation, and
17 DOES 1-50;

18 Defendants.

CASE NO. BC437596

~~PROPOSED~~ STIPULATED CONSENT
JUDGMENT AND [PROPOSED] ORDER

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: May 12, 2010

TRIAL DATE: August 23, 2011

19
20 **1. INTRODUCTION**

21 1.1 On May 12, 2010, Plaintiff, the Consumer Advocacy Group, Inc. (“CAG”), filed a
22 complaint in the Los Angeles Superior Court entitled *Consumer Advocacy Group, Inc. v.*
23 *Greenbrier International, Inc., et al*, Case No. BC437596 (the “Action”), for civil penalties and
24 injunctive relief pursuant to the provisions of California Health & Safety Code § 25249.5, *et seq.*
25 (“Proposition 65”) against Greenbrier International, Inc. (“Greenbrier”) and Dollar Tree Stores,
26 Inc. (“Dollar Tree”) (collectively “Defendants”). CAG and Defendants are collectively referred to
27 hereinafter as “Parties.”
28

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1 1.2 Defendants are corporations that employ 10 or more persons. Defendants allegedly
2 have made available for distribution in the State of California the following products: (1) Pizza
3 Cutters; (2) Pastry Brushes ; (3) Basting Brushes ; (4) Paper Clips ; and (5) Decorative Pine Pick
4 including Christmas House® Crafts Decorative Pine Pick (hereinafter collectively referred to as
5 “Products”). The Products allegedly contain Lead, a chemical known to the State of California to
6 cause cancer and birth defects or other reproductive harm (“Noticed Chemical”).

7 1.3 On or about May 27, 2009 and November 23, 2009, CAG served Defendants and
8 the appropriate public enforcement agencies with notice claiming that Defendants were in
9 violation of Proposition 65 in regard to the Products. CAG's notice and the Complaint in this
10 Action allege that Defendants exposed people who handle the Products to the Noticed Chemical,
11 without first providing clear and reasonable warnings, in violation of California Health & Safety
12 Code § 25249.6.

13 1.4 Defendants deny the material allegations of the notices and the Complaint, and
14 deny liability for the cause of action alleged in the Complaint and in connection with the Action.

15 1.5 For purposes of this Stipulated Consent Judgment only, the Parties stipulate that
16 this Court has jurisdiction over the allegations of violations contained in CAG's Complaint and
17 personal jurisdiction over Defendants as to the acts alleged in CAG's Complaint, that venue is
18 proper in the County of Los Angeles, and that this Court has jurisdiction to enter this Stipulated
19 Consent Judgment as a full and final resolution of all claims which were or could have been raised
20 in the Complaint based on the facts alleged therein.

21 1.6 The Parties enter into this Stipulated Consent Judgment pursuant to a settlement of
22 certain disputed claims as alleged in the Complaint for the purpose of avoiding prolonged and
23 costly litigation.

24 1.7 Nothing in this Stipulated Consent Judgment shall be construed as an admission by
25 the Parties of any fact, conclusion of law, issue of law or violation of law, including without
26 limitation, any admission concerning any violation of Proposition 65 or any other statutory,
27 regulatory, common law, or equitable doctrine, or the meaning of the terms "knowingly and
28 intentionally expose" or "clear and reasonable warning" as used in California Health and Safety

1 Code section 25249.6. Nothing in this Stipulated Consent Judgment, nor compliance with its
2 terms, shall constitute or be construed as an admission by the Parties of any fact, conclusion of
3 law, issue of law, or violation of law, or of fault, wrongdoing, or liability by Defendants, their
4 officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or
5 admitted as evidence in any administrative or judicial proceeding or litigation in any court,
6 agency, or forum, except for purposes of issue or claim preclusion or any other similar defense.

7 1.8 Nothing in this Stipulated Consent Judgment shall prejudice, waive or impair any
8 right, remedy, argument, or defense the Parties may have in any other or future legal proceeding,
9 except as expressly provided in this Stipulated Consent Judgment.

10 1.9 This Stipulated Consent Judgment is the product of negotiation and compromise
11 and is accepted by the Parties, for purposes of settling, compromising, and resolving issues
12 disputed in this action, including future compliance by Defendants with Section 2 of this
13 Stipulated Consent Judgment.

14 **2. COMPLIANCE – REFORMULATION**

15 2.1 Ninety (90) days after the date of entry of this Stipulated Consent Judgment,
16 Defendants shall not sell, ship or offer to be shipped for sale in California any Products that
17 contain more than 40 parts per million Lead by weight.

18 **3. SETTLEMENT PAYMENT**

19 3.1 Within ten (10) days of the approval and entry of this Stipulated Consent Judgment
20 by the Court, Defendants shall pay a total of one hundred twenty-six thousand dollars (\$126,000)
21 to Consumer Advocacy Group, Inc. and Yeroushalmi & Associates. The payment shall be made
22 by two separate checks apportioned as follows:

23 3.1.1 Monetary Payment in Lieu of Civil Penalty: Thirteen thousand dollars
24 (\$13,000) shall be paid to CAG in lieu of any civil penalty pursuant to California Health and
25 Safety Code § 25249.7(b). CAG will use the payment for such projects and purposes related to
26 environmental protection, worker health and safety, or reduction of human exposure to hazardous
27 substances (including administrative and litigation costs arising from such projects), as CAG may
28

1 choose. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100
2 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

3 3.1.2 Attorneys' Fees and Costs: One hundred and thirteen thousand dollars
4 (\$113,000) of such payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for
5 reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
6 investigating, bringing this matter to Defendants' attention, litigating, and negotiating a settlement
7 in the public interest.

8 **4. MODIFICATION OF STIPULATED CONSENT JUDGMENT**

9 4.1 This written Stipulated Consent Judgment may only be modified by written
10 agreement of CAG and Defendants upon stipulation and Order of the Court, or after noticed
11 motion, and upon entry of a Stipulated Consent Judgment by the Court thereon, or upon motion of
12 CAG or Defendants as provided by law and upon entry of a modified Stipulated Consent
13 Judgment by the Court.

14 **5. ENFORCEMENT OF STIPULATED CONSENT JUDGMENT**

15 5.1 Either party may, by motion or application for an order to show cause before the
16 Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in
17 paragraphs 9.1 and 9.2 of this Stipulated Consent Judgment, enforce the terms and conditions
18 contained in this Stipulated Consent Judgment. The prevailing party shall be entitled to its
19 reasonable attorneys' fees and costs associated with such motion or application.

20 **6. APPLICATION OF STIPULATED CONSENT JUDGMENT**

21 6.1 This Stipulated Consent Judgment shall apply to and be binding upon the
22 Parties hereto, their divisions, subdivisions and subsidiaries, officers, directors, employees, agents
23 and their successors or assigns, and to the extent allowed by law, on the general public.

24 **7. CLAIMS COVERED AND RELEASED**

25 7.1 CAG, on behalf of itself and in the public interest, hereby releases and discharges
26 Defendants, their related subsidiaries, affiliates, predecessors, successors and assigns, vendors,
27 suppliers, distributors, retailers, and customers and all officers, directors, employees, agents and
28 shareholders of them (collectively, "Released Parties") from any and all claims asserted, or that

1 could have been asserted, in this litigation arising from the alleged failure to provide Proposition
2 65 warnings for the Products regarding the exposure of individuals to the Noticed Chemical in the
3 Products. CAG, on behalf of itself only, hereby releases and discharges the Released Parties from
4 any and all known and unknown past, present, and future rights, claims, causes of action,
5 damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorney fees, costs,
6 and expenses related to or arising out of the facts and claims asserted, or that could have been
7 asserted, under state or federal law or the facts alleged in Plaintiff's Proposition 65 Notices or the
8 Complaint relating to any and all claims concerning exposure of any person to the Noticed
9 Chemical in the Products. Compliance with the terms of this Stipulated Consent Judgment shall
10 constitute compliance by the Released Parties with Proposition 65 with respect to exposures to the
11 Noticed Chemical contained in the Product. This release does not limit or affect the obligations of
12 any party created under this Stipulated Consent Judgment.

13 7.2 Unknown Claims. It is possible that other injuries, damages, liability, or claims not
14 now known to the Parties arising out of the facts alleged in the Complaint and relating to the
15 Products will develop or be discovered, and this Stipulated Consent Judgment is expressly
16 intended to cover and include all such injuries, damages, liability, and claims, including all rights
17 of action therefor. CAG has full knowledge of the contents of Section 1542 of the California Civil
18 Code. CAG, on behalf of itself only, acknowledges that the claims released in section 7.1 above
19 may include unknown claims and waives Section 1542 as to any such unknown claims. Section
20 1542 reads as follows:

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

24 CAG acknowledges and understands the significance and consequences of this specific waiver of
25 California Civil Code Section 1542.

1 **8. SEVERABILITY**

2 8.1 In the event that any of the provisions of this Stipulated Consent Judgment are held
3 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
4 affected.

5 **9. NOTICE AND CURE**

6 9.1 No action to enforce this Stipulated Consent Judgment may be commenced, and no
7 notice of violation related to the Products may be served or filed against Defendants by CAG,
8 unless the party seeking enforcement or alleging violation notifies the other party of the specific
9 acts alleged to breach this Stipulated Consent Judgment at least 90 days before serving or filing
10 any motion, action, or Notice of Violation. Any notice to Defendants must contain (a) the name of
11 the product, (b) specific dates when the product was sold in California, (c) the store or other place
12 at which the product was available for sale to consumers, and (d) any other evidence or other
13 support for the allegations in the notice.

14 9.2 Within 30 days of receiving the notice described in Section 9.1, Defendants shall
15 either (1) withdraw the product, or (3) refute the information provided under Section 9.1. Should
16 the Parties be unable to resolve the dispute, either party may seek relief under Section 5.

17 **10. GOVERNING LAW**

18 10.1 The terms of this Stipulated Consent Judgment shall be governed by the laws of the
19 State of California.

20 **11. PROVISION OF NOTICE**

21 11.1 All notices required pursuant to this Stipulated Consent Judgment and
22 correspondence shall be sent to the following:

23 For CAG:	For Greenbrier International, Inc. and Dollar Tree Stores, Inc.:
24 Reuben Yeroushalmi	
25 YEROUSHALMI & ASSOCIATES	Margaret Carew Toledo, Esq.
26 9100 Wilshire Boulevard, Suite 610E	MENNEMEIER, GLASSMAN & STROUD L.L.P.
26 Beverly Hills, CA 90212	980 9 th Street, Suite 1700
27 T: 310-623-1926	Sacramento, CA 95814
27 F: 310-623-1930	T: 916-553-4000
	F: 916-553-4011

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1 **12. COURT APPROVAL**

2 12.1 If this Stipulated Consent Judgment is not approved by the Court, it shall be of no
3 further force or effect.

4 12.2 CAG shall comply with Health and Safety Code section 25249.7(f) and with Title
5 11 California Code of Regulations section 3003.

6 12.3 In the event that the California Attorney General, or any other person, files an
7 appeal challenging this Stipulated Judgment and the Stipulated Judgment is reversed or modified
8 in any way by the appellate court, CAG and its counsel shall refund all payments made by
9 Defendants pursuant to Section 3 of this Stipulated Consent Judgment within 15 days of the
10 appellate court opinion becoming final.

11 **13. EXECUTION AND COUNTER PARTS**

12 13.1 This Stipulated Consent Judgment may be executed in counterparts and by means
13 of facsimile, which taken together shall be deemed to constitute one document. Facsimile or pdf
14 signatures shall be construed as valid as the original.

15 **14. AUTHORIZATION**

16 14.1 Each signer of this Stipulated Consent Judgment certifies that he or she is fully
17 authorized by the party he or she represents to stipulate to the terms and conditions of this
18 Stipulated Consent Judgment and to enter into and execute the Stipulated Consent Judgment on
19 behalf of the party represented and legally bind that party. The undersigned have read, understand
20 and agree to all of the terms and conditions of this Stipulated Consent Judgment. Except as
21 explicitly provided herein, each party is to bear its own fees and costs.

22

23 Dated: 5-10-11

CONSUMER ADVOCACY GROUP, INC.

24

25



26

Name and Title: MICHEL SASSEON
EXECUTIVE DIRECTOR

27

28

1 Dated: May 13, 2011

GREENBRIER INTERNATIONAL, INC.

3 James A. Gorry III
4 Name and Title: James A. Gorry III
5 General Counsel and
Corporate Secretary

6 Dated: May 13, 2011

DOLLAR TREE STORES, INC.

8 James A. Gorry III
9 Name and Title: James A. Gorry III
10 General Counsel and
11 Corporate Secretary

12 ORDER AND JUDGMENT

13 Based upon the Stipulated Consent Judgment between Consumer Advocacy Group, Inc. and
14 Greenbrier International, Inc. and Dollar Tree Stores, Inc., the Consent Judgment is approved and
15 judgment is hereby entered according to the terms herein.

16 Dated: AUG 02 2011



17 ABRAHAM KHAN

18 Judge, Superior Court of the State of California

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