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FILED
Superior Court of California
County of Los Angeles

OCT 01 2018

Sherril R. Carter, Executive Officer/Clerk
By Neli M. Faya Deputy

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5 Attorneys for Plaintiff the Center for Advanced Public Awareness

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES**

9 **CENTER FOR ADVANCED PUBLIC**
10 **AWARENESS, in the public interest,**

11 **Plaintiff,**

12 **vs.**

13 **DOLLAR TREE STORES, INC., a Virginia**
14 **Corporation and DOES 1 through 50,**
15 **inclusive,**

16 **Defendants.**

Case Number: BC678168

~~PROPOSED~~ **STIPULATED CONSENT**
JUDGMENT

HEALTH AND SAFETY CODE § 25249.6

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[PROPOSED] STIPULATED CONSENT JUDGMENT

10/02/2018

1 **1. INTRODUCTION**

2 **1.1. Center for Advanced Public Awareness and Dollar Tree Stores, Inc.**

3 This Consent Judgment is entered into by and between plaintiff the Center for Advanced
4 Public Awareness ("CAPA" or "Plaintiff") and defendant Dollar Tree Stores, Inc. ("Dollar Tree"
5 or "Defendant") with Dollar Tree and CAPA each individually referred to as a "Party" and
6 collectively as the "Parties."

7 **1.2. Plaintiff**

8 CAPA is a not-for-profit corporation duly organized and existing in the State of
9 California, which seeks to promote awareness of exposures to toxic chemicals and to improve
10 human health by reducing or eliminating hazardous substances used in consumer products.

11 **1.3. Defendant**

12 Dollar Tree employs ten or more persons and is a person in the course of doing business
13 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
14 and Safety Code section 25249.6 *et seq.* ("Proposition 65").

15 **1.4. General Allegations**

16 CAPA alleges that Dollar Tree has manufactured, sold, and/or distributed for sale in
17 California, vinyl gloves containing Di-isononyl Phthalate ("DINP"), a listed chemical pursuant to
18 Proposition 65 listed by the State of California to cause cancer, and failed to provide the health
19 hazard warning required by Proposition 65 for exposures to DINP. DINP shall be referred to
20 hereinafter as the "Listed Chemical."

21 **1.5. Product Description**

22 The products covered by this Consent Judgment are the vinyl gloves, including but not
23 limited to Scrub Buddies vinyl gloves (UPC# 0639277291820), which are imported, sold and/or
24 distributed for sale in California by Dollar Tree ("Covered Products").

25 **1.6. Notice of Violation**

26 On July 17, 2017, CAPA served Dollar Tree and the requisite public enforcement
27 agencies with a 60-Day Notice of Violation ("Notice"), alleging that Dollar Tree violated
28 Proposition 65. The Notice alleged that Dollar Tree had failed to warn its customers and

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1 consumers in California of the health hazards associated with exposures to DINP from its import,
2 sale and/or distribution of the Covered Products.

3 **1.7. Complaint**

4 On October 4, 2017, Plaintiff, who was and is acting in the interest of the general public in
5 California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for the
6 County of Los Angeles against Dollar Tree and Does 1 through 50, alleging violations of Health
7 & Safety Code §25249.6 based on the alleged exposures to DINP contained in the Covered
8 Products sold by Dollar Tree.

9 **1.8. No Admission**

10 Dollar Tree denies the material, factual and legal allegations contained in CAPA's Notice
11 and the Complaint and maintains that all Covered Products that it has sold and distributed in
12 California have been and are in compliance with all applicable laws. Nothing in this Consent
13 Judgment shall be construed as an admission by Dollar Tree of any fact, finding, conclusion,
14 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or
15 be construed as an admission by Dollar Tree of any fact, finding, conclusion, issue of law, or
16 violation of law, such being specifically denied by Dollar Tree. However, this section shall not
17 diminish or otherwise affect Dollar Tree's obligations, responsibilities, and duties hereunder.

18 **1.9. Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, Parties stipulate that: 1) this Court has
20 jurisdiction over Dollar Tree as to the allegations contained in the Complaint; 2) that venue is
21 proper in the County of Los Angeles; and 3) that this Court has jurisdiction to enter and enforce
22 the provisions of this Consent Judgment.

23 **1.10. Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date of
25 service of the notice of entry of this Consent Judgment.

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1 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

2 **2.1. Reformulation Standard and Schedule**

3 Commencing on the Effective Date, and continuing thereafter, Covered Products that are
4 imported, manufactured and sold or offered for sale or purchase for sale in or into California,
5 shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning
6 requirements with respect to DINP if they are "Reformulated Products." "Reformulated
7 Products" shall mean Covered Products containing less than or equal to 1,000 parts per million
8 (0.1%) DINP in each accessible component when analyzed pursuant to Environmental Protection
9 Agency testing methodologies 3580A and 8270C, CPSC-CH-C1001-09.3 or equivalent
10 methodologies utilized by federal or state agencies for the purpose of determining DINP content
11 in a solid substance.

12 **2.2. Warning Option**

13 Covered Products that do not meet the warning exemption standard set forth in Section 2.1
14 above shall be accompanied by a warning as described in Section 2.3 below. This warning shall
15 only be required as to Covered Products that Defendant sells or ships to consumers, retailers, or
16 distributors located in California after the Effective Date. No Proposition 65 warning for DINP
17 shall be required as to any Covered Products that are already in the stream of commerce as of the
18 Effective Date.

19 **2.3. Warning Language**

20 When a warning is required pursuant to Section 2.2, Dollar Tree shall provide one of the
21 following warning statements on the product label conspicuously, compared to other words,
22 statements, designs or devices, on the package.

23
24 **WARNING:** This product can expose you to chemicals including
25 Di-isononyl phthalate (DINP), which are known to the State of
California to cause cancer. For more information go to
www.P65Warnings.ca.gov.

26 OR

27 **WARNING:** Cancer and Reproductive Harm –
28 www.P65Warnings.ca.gov

1 The warnings shall be preceded by a symbol consisting of a black exclamation point in a
2 yellow equilateral triangle with a bold black outline. However, if the package does not contain the
3 color yellow, the symbol may be in black and white.

4 In lieu of the foregoing examples, in the event that Dollar Tree elects to provide warnings,
5 Dollar Tree may provide any warnings that are in compliance with any regulations that are
6 promulgated by the Office of Environmental Health Hazard Assessment ("OEHHA") and that
7 take effect after the Effective Date of this agreement.

8 **3. MONETARY PAYMENTS**

9 **3.1. Payments Pursuant to Health & Safety Code § 25249.7(b)**

10 Dollar Tree shall pay a civil penalty of \$10,000, to be apportioned in accordance with
11 California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the
12 State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
13 remaining 25% of the penalty remitted to CAPA. Dollar Tree shall issue two separate checks for
14 the penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the
15 State of California's Office of Environmental Health Hazard Assessment ("in Trust for
16 OEHHA") in the amount of \$7,500, representing 75% of the initial civil penalty and (b) one
17 check to "Kawahito Law Group in Trust for CAPA" in the amount of \$2,500, representing 25%
18 of the initial civil penalty. Two separate 1099s shall be issued for the above payments: The first
19 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486).
20 The second 1099 shall be issued to CAPA, who shall furnish a W-9 at least five calendar days
21 before payment is due.

22 The payments shall be delivered to CAPA's counsel at the following address within ten
23 (10) business days of the Effective Date:

24 James Kawahito, Esq.
25 Kawahito Law Group APC
26 222 N. Sepulveda, Blvd. Suite 2222
27 El Segundo, CA 90245

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1 **4. REIMBURSEMENT OF ATTORNEYS' FEES AND COSTS**

2 The Parties acknowledge that CAPA and its counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
4 any fee reimbursement issue to be resolved after the material terms of the agreement had been
5 settled. The Parties reached an accord on the compensation due to CAPA and its counsel under
6 general contract principles and the private attorney general doctrine codified at California Code of
7 Civil Procedure § 1021.5, for all work performed through the mutual execution of this Consent
8 Judgment. Dollar Tree shall reimburse CAPA and its counsel in the total amount of \$40,000 for
9 fees and costs incurred by CAPA as a result of investigating, bringing this matter to the attention
10 of Dollar Tree, drafting the Complaint, litigating this matter, negotiating this Consent Judgment,
11 and preparing the papers and necessary briefing to obtain the Consent Judgment from this Court.
12 Dollar Tree shall make the check payable to "Kawahito Law Group APC" and shall deliver
13 payment within ten (10) business days of the Effective Date to:

14 James Kawahito, Esq.
15 Kawahito Law Group APC
16 Attn: CAPA v. Dollar Tree, Inc.
17 222 North Sepulveda Blvd., Suite 2222
18 El Segundo, CA 90245

18 To allow for the issuance of a timely payment to be rendered pursuant to the above,
19 CAPA shall provide Dollar Tree with a completed IRS Form W-9 for the Kawahito Law Group
20 APC upon execution of this Consent Judgment by the Parties.

21 **5. RELEASE OF CLAIMS**

22 **5.1. CAPA's Release of Dollar Tree**

23 This Consent Judgment is a full, final and binding resolution between CAPA, on behalf of
24 itself, its past and current agents, representatives, attorneys, successors and/or assignees, and in
25 the interest of the general public ("Releasers"), on the one hand, and Dollar Tree, its parent,
26 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
27 licensors, and each entity to whom Dollar Tree directly or indirectly distributes or sells the
28 Covered Products, including but not limited to distributors, wholesalers, customers, and the

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1 successors and assigns of any of them (all collectively "Releasees"), on the other hand, of any
2 violation of Proposition 65 that was or could have been asserted by CAPA against Dollar Tree,
3 based on the failure to warn about alleged exposures to DINP contained in the Covered Products
4 that were manufactured, imported, distributed, sold and/or offered for sale by Dollar Tree (either
5 directly or through any of the Releasees) in California before the Effective Date. Compliance
6 with the injunctive relief provisions of this Consent Judgment shall be deemed compliance with
7 Proposition 65 as to alleged exposures to DINP in the Covered Products.

8 CAPA, on its own behalf, also provides a release herein which shall be effective as a full
9 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
10 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of CAPA of any
11 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
12 alleged or actual exposures to DINP in the Covered Products, and claims that were or could have
13 been asserted based on the Notice and/or Complaint relating to the Covered Products imported,
14 manufactured, sold or distributed for sale by Releasees in California before the Effective Date.

15 **5.2. Dollar Tree's Release of CAPA**

16 Dollar Tree on behalf of itself, its past and current agents, representatives, attorneys,
17 successors, and/or assignees, hereby waives any and all claims against CAPA, its attorneys and
18 other representatives, for any and all actions taken or statements made (or those that could have
19 been taken or made) by CAPA and its attorneys and other representatives, whether in the course
20 of investigating its claims asserted in this Action or otherwise seeking to enforce Proposition 65
21 against it in this matter with respect to the Covered Products.

22 **5.3. California Civil Code Section 1542**

23 It is possible that other claims not known to the Parties arising out of the facts alleged in
24 the Notice and/or Complaint relating to the Covered Products will develop or be discovered.
25 CAPA on its behalf only, on one hand, and Dollar Tree, on the other hand, acknowledge that this
26 Consent Judgment is expressly intended to cover and include all such claims up through the
27 Effective Date, including all rights of action therefor. CAPA and Dollar Tree acknowledge that
28 the claims released in Sections 5.1 and 5.2 above may include unknown claims, and nevertheless

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1 waive California Civil Code section 1542 as to any such unknown claims. California Civil Code
2 section 1542 reads as follows:

3 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH**
4 **THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN**
5 **HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
6 **RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE**
7 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
8 **DEBTOR.**

9 CAPA and Dollar Tree each acknowledge and understand the significance and
10 consequences of this specific waiver of California Civil Code section 1542.

11 **6. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved and entered by the Court and
13 shall be null and void if, for any reason, it is not approved and entered by the Court.

14 **7. SEVERABILITY**

15 If, subsequent to the entry of this Consent Judgment, any provisions of this Consent
16 Judgment are deemed by a court to be unenforceable, the validity of the remaining provisions
17 shall not be adversely affected.

18 **8. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the State of
20 California and apply within the State of California.

21 **9. NOTICES**

22 Unless specified herein, all correspondence and notice required to be provided pursuant to
23 this Consent Judgment shall be in writing and, with courtesy copies to counsel delivered by email,
24 sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested;
25 or (c) a recognized overnight courier on any Party by the other at the following addresses:

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27 For Dollar Tree:

28 Keith Zanni
Assistant General Counsel, Compliance
Dollar Tree
500 Volvo Parkway
Chesapeake, VA 23320

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with a copy to: Peg Carew Toledo, Esq.
Peg Carew Toledo, Law Corporation
3001 Douglas Blvd., Suite 340
Roseville, CA 95661
peg@toledolawcorp.com

For CAPA: James K. Kawahito
Kawahito Law Group APC
Attn: CAPA v. Dollar Tree, Inc.
222 North Sepulveda Blvd., Suite 2222
El Segundo, CA 90245
jkawahito@kawahitolaw.com

with a copy to: Center for Advanced Public Awareness, Inc.
Attn: Linda Droubay
100 Promenade Circle, Suite 300
Sacramento, CA 95834

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

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7

CAPA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code Section 25249.7(f).

12. ADDITIONAL POST EXECUTION ACTIVITIES

The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, CAPA and Dollar Tree and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall include at a minimum, cooperating on the drafting and filing any papers in support of the required motion for judicial approval.

13. MODIFICATION

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10/02/2018

1 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
2 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion
3 of any Party and entry of a modified consent judgment by the Court.

4 **14. AUTHORIZATION**

5 The undersigned are authorized to stipulate to, enter into, and execute this Consent
6 Judgment on behalf of their respective Parties, and have read, understood, and agree to all of the
7 terms and conditions of this Consent Judgment.

9 **AGREED TO:**

AGREED TO:

11 Date: _____

Date: _____

12 *Linda DeRose-Droubay*
13 By: _____
14 Center for Advanced Public Awareness, Inc.

Digitally signed by
Linda DeRose-Droubay
email= linda@capasafe.com
Date: 2018.05.02 15:59:09 EDT

13 By: _____
14 Dollar Tree Stores, Inc.

16 ~~IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health &~~
17 ~~Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.~~

19 Dated: _____

JUDGE OF THE SUPERIOR COURT

10/02/2018

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This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of any Party and entry of a modified consent judgment by the Court.

14. AUTHORIZATION

The undersigned are authorized to stipulate to, enter into, and execute this Consent Judgment on behalf of their respective Parties, and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: _____

Date: 5/3/18

By: _____
Center for Advanced Public Awareness, Inc.

By: [Signature]
Dollar Tree Stores, Inc.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: OCT 01 2018

[Signature]
JUDGE OF THE SUPERIOR COURT

YVETTE M. PALAZUELOS

Clerk to give notice.

10/02/2018