



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CGC-17-562186

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TEXT JUDGMENT

**CENTER FOR ADVANCED PUBLIC AWARENESS, INC. VS. DOLLAR TREE
STORES, INC. ET AL**

001C06179723

Instructions:

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FILED
San Francisco County Superior Court

JAN 16 2018

CLERK OF THE COURT

BY: *Gene Gonzales* Deputy Clerk

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2 KAWAHITO LAW GROUP APC
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Attorneys for Plaintiff the Center for Advanced Public Awareness

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN FRANCISCO**

10 CENTER FOR ADVANCED PUBLIC
11 AWARENESS, in the public interest,

Plaintiff,

12 vs.

13 DOLLAR TREE STORES, INC., a Virginia
14 Corporation; GREENBRIER
INTERNATIONAL, INC., a and DOES 1
through 50, inclusive,

15 Defendants.

Case Number: *CAC-17-562186*

MK
[PROPOSED] STIPULATED CONSENT
JUDGMENT

HEALTH AND SAFETY CODE § 25249.6

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1. INTRODUCTION

1.1. Center for Advanced Public Awareness, Dollar Tree Stores, Inc., and Greenbrier International, Inc.

This Consent Judgment is entered into by and between plaintiff the Center for Advanced Public Awareness (“CAPA” or “Plaintiff”) and defendants Dollar Tree Stores, Inc. and Greenbrier International, Inc. (collectively “Dollar Tree” or “Defendant”) with Dollar Tree and CAPA each individually referred to as a “Party” and collectively as the “Parties.”

1.2. Plaintiff

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

1.3. Defendant

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

1.4. General Allegations

CAPA alleges that Dollar Tree has manufactured, sold, and/or distributed for sale in California, products containing Di-(2-ethylhexyl) phthalate (“DEHP”), a listed chemical pursuant to Proposition 65 listed by the State of California to cause cancer and reproductive toxicity, and failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP. DEHP shall be referred to hereinafter as the “Listed Chemical.”

1.5. Product Description

The products covered by this Consent Judgment are party string cup lights (Party Lights/Lanternes de Fetes), which are imported, sold and/or distributed for sale in California by Dollar Tree (“Covered Products”).

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1.6. Notice of Violation

On July 31, 2017, CAPA served Dollar Tree and the requisite public enforcement agencies with a 60-Day Notices of Violation (“Notice”), alleging that Dollar Tree violated Proposition 65. The Notices alleged that Dollar Tree had failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its import, sale and/or distribution of the Covered Products.

1.7. Complaint

On October 27, 2017, Plaintiff, who was and is acting in the interest of the general public in California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the County of San Francisco against Dollar Tree and Does 1 through 50, alleging violations of Health & Safety Code §25249.6 based on the alleged exposures to DEHP contained in the Covered Products sold by Dollar Tree.

1.8. No Admission

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

1.9. Consent to Jurisdiction

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

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1.10. Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean the date on which the Court approves this Consent Judgment, including any unopposed tentative ruling granting approval of this Consent Judgment.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS

2.1. Reformulation Standard and Schedule

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

2.2. Warning Option

Covered Products that do not meet the warning exemption standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. This warning shall only be required as to Covered Products that Defendant sells or ships to consumers, retailers, or distributors located in California after 60 days from the Effective Date. No Proposition 65 warning for DEHP shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date.

2.3. Warning Language

Where required to meet the criteria set forth in Section 2.2, Defendant shall provide the following warning statements in the following circumstances: When sold or distributed directly to a California end user consumer, or when Dollar Tree distributes or sells Covered Products to an intermediary that it reasonably believes might sell or distribute the Covered Products to California

1
2 end users or consumers, Dollar Tree shall provide one of the following warning statements with
3 the unit conspicuously, compared to other words, statements, designs or devices, on the package.

4
5 **WARNING:** This product can expose you to chemicals including Di-(2-
6 ethylhexyl) phthalate (DEHP), which are known to the State of California
7 to cause cancer and birth defects or other reproductive harm. For more
8 information go to www.P65Warnings.ca.gov.

9 OR

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

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

14 **2.4. Accessible Component**

15 The term “Accessible Component” shall mean any component of the Covered Product that
16 could be touched by a person during reasonably foreseeable use

17 **3. MONETARY PAYMENTS**

18 **3.1. Payments Pursuant to Health & Safety Code § 25249.7(b)**

19 Dollar Tree shall pay a civil penalty of \$4,000, to be apportioned in accordance with
20 California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the
21 State of California's Office of Environmental Health Hazard Assessment (“OEHHA”) and the
22 remaining 25% of the penalty remitted to CAPA. Dollar Tree shall issue two separate checks for
23 the penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the
24 State of California's Office of Environmental Health Hazard Assessment (“in Trust for OEHHA”) in
25 the amount of \$3,000, representing 75% of the initial civil penalty and (b) one check to
26 “Kawahito Law Group in Trust for Center for Advanced Public Awareness, Inc.,” in the amount
27 of \$1,000, representing 25% of the initial civil penalty. Two separate 1099s shall be issued for
28 the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA
95814 (EIN: 68-0284486). The second 1099 shall be issued to CAPA, who shall furnish a W2 at
least five calendar days before payment is due.

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The payments shall be delivered CAPA's counsel at the following address within ten days of the Effective Date of this Consent:

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

4. REIMBURSEMENT OF ATTORNEYS' FEES AND COSTS

The Parties acknowledge that CAPA and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee reimbursement issue to be resolved after the material terms of the agreement had been settled. The parties reached an accord on the compensation due to CAPA and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this Consent Judgment. Dollar Tree shall reimburse CAPA and its counsel in the total amount of \$32,000 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to the attention of Dollar Tree, negotiating this Consent Judgment, drafting the Complaint, and preparing the papers necessary briefing to obtain the Consent Judgment from this Court. Dollar Tree shall make the check payable to "Kawahito Law Group APC" and shall deliver payment within ten days of the Effective Date to:

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

To allow for the issuance of a timely payment to be rendered pursuant to the above, CAPA shall provide Dollar Tree with a completed IRS Form W-9 for the Kawahito Law Group APC upon request.

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5. RELEASE OF CLAIMS

5.1. CAPA's Release of Dollar Tree

This Consent Judgment is a full, final and binding resolution between CAPA, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, and in the interest of the general public ("Releasers"), on the one hand, and Greenbrier International Inc. and Dollar Tree Stores, Inc., their respective parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, licensors, and each entity to whom Greenbrier International Inc. and/or Dollar Tree Stores, Inc. directly or indirectly distributes or sells the Covered Products, including but not limited distributors, wholesalers, customers, marketplace hosts, and the successors and assigns of any of them (all collectively "Releasees"), on the other hand, of any violation of Proposition 65 that was or could have been asserted by CAPA against Greenbrier International Inc. and/or Dollar Tree Stores, Inc., based on the alleged failure to warn about alleged exposures to DEHP contained in the Covered Products that were manufactured, imported, distributed, sold and/or offered for sale by Greenbrier International Inc. and/or Dollar Tree Stores, Inc. (either directly or through any of the Releasees) in California before the Effective Date. Compliance with the injunctive relief provisions of this Consent Judgment shall be deemed compliance with Proposition 65 as to alleged exposures to DEHP in Covered Products.

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

5.2. Dollar Tree's Release of CAPA

Dollar Tree on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against CAPA, its attorneys and

1
2 other representatives, for any and all actions taken or statements made (or those that could have
3 been taken or made) by CAPA and its attorneys and other representatives, whether in the course
4 of investigating its claims asserted in this Action or otherwise seeking to enforce Proposition 65
5 against it in this matter with respect to the Covered Products.

6 5.3 California Civil Code Section 1542

7 It is possible that other claims not known to the Parties arising out of the facts alleged
8 in the Notice and relating to the Covered Products will develop or be discovered. CAPA on its
9 behalf only, on one hand, and Greenbrier International Inc. and Dollar Tree Stores, Inc., on the
10 other hand, acknowledge that this Consent Judgment is expressly intended to cover and include
11 all such claims up through the Effective Date, including all rights of action therefor. CAPA,
12 Greenbrier International Inc. and Dollar Tree Stores, Inc. acknowledge that the claims released in
13 Sections 5.1 and 5.2 above may include unknown claims, and nevertheless waive California Civil
14 Code, section 1542 as to any such unknown claims. California Civil Code, section 1542 reads as
15 follows:

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

22 CAPA, Greenbrier International Inc. and Dollar Tree Stores, Inc. each acknowledge and
23 understand the significance and consequences of this specific waiver of California Civil Code,
24 section 1542.

25 **6. COURT APPROVAL**

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

28 **7. SEVERABILITY**

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

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8. GOVERNING LAW

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

9. NOTICES

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

For Greenbrier International Inc. and Dollar Tree Stores, Inc.:

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

with a copy to:

Ann Grimaldi, Esq.
Grimaldi Law Offices
50 California Street, Suite 1500
San Francisco, CA 94111
ann.grimaldi@grimaldilawoffices.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.

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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 his 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

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. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen days in advance of its consideration by the Court.

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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: _____

By: *Jaymie D. Lee-Doubler* Date: 2017.10.31
14:14:15 EDT
Center for Advanced Public Awareness, Inc.

By: _____
Dollar Tree Stores, Inc.

AGREED TO:

Date: _____

By: _____
Greenbrier International 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: _____

[SEE NEXT PAGE]
JUDGE OF THE SUPERIOR COURT

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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: _____

By: _____
Center for Advanced Public Awareness, Inc.

By:  _____
Dollar Tree Stores, Inc.

AGREED TO:

Date: _____

By:  _____
Greenbrier International 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: 1/16/18 _____

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JUDGE OF THE SUPERIOR COURT
HAROLD KAHN