

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information

Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) As You Sow				
	DEFENDANT(S) INVOLVED IN SETTLEMENT Dollar Tree Stores, Inc., Greenbrier International, Inc.				
CASE INFO	COURT DOCKET NUMBER RG08367601		COURT NAME Superior Court of Alameda County		
	SHORT CASE NAME As You Sow v. Dollar Tree Stores, Inc.				
REPORT INFO	INJUNCTIVE RELIEF				
	PAYMENT: CIVIL PENALTY \$8,000	PAYMENT: ATTORNEYS FEES \$15,000	PAYMENT: OTHER \$42,000		
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL		DATE SETTLEMENT SIGNED 06 / 04 / 2008	
	COPY OF SETTLEMENT MUST BE ATTACHED				
FILER INFO	NAME OF CONTACT Ellison Folk				
	ORGANIZATION Shute, Mihaly & Weinberger LLP		TELEPHONE NUMBER ((415)) 552-7272		
	ADDRESS 396 Hayes Street		FAX NUMBER ((415)) 552-5816		
	CITY San Francisco	STATE CA	ZIP	E-MAIL ADDRESS folk@smwlaw.com	

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FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

1 ELLISON FOLK (State Bar No. 149232)
2 Shute, Mihaly & Weinberger LLP
3 396 Hayes Street
4 San Francisco, CA 94102
5 Telephone: (415) 552-7272
6 Facsimile: (415) 552-5816

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8 Attorneys for Plaintiff
9 AS YOU SOW

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

AS YOU SOW,

Plaintiff,

v.

DOLLAR TREE STORES, INC.,
GREENBRIER INTERNATIONAL, INC.,
and DOES 1 through 10, inclusive,

Defendants.

CASE NO. RG 08367601

[PROPOSED] CONSENT JUDGMENT

(Health and Safety Code § 25249 *et seq.*)

1. INTRODUCTION

1.1 **Plaintiff:** Plaintiff As You Sow (“AYS” or “Plaintiff”), is a non-profit foundation organized under California’s Non-Profit Public Benefit Corporation Law. AYS is dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer safety, environmental education and corporate accountability.

1.2 **The Action:** On January 24, 2008, Plaintiff filed a complaint in the Superior Court for the City and County of Alameda (hereafter referred to as the “Action”) charging Dollar Tree Stores, Inc. and Greenbrier International, Inc. (hereinafter “Defendants”) with having violated the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), Health

1 and Safety Code section 25249.5 *et seq.*, by exposing individuals to Di(2-ethylhexyl) phthalate
2 (“DEHP”), a chemical known to the State of California to cause cancer and reproductive harm,
3 without providing clear and reasonable warnings to such individuals. The alleged violations
4 addressed in the Action were described in Plaintiff’s Notice of Intent to Sue dated October 16,
5 2007 (“Plaintiff’s Notice”), which Plaintiff had sent to the Defendants and to public enforcers as
6 required by Health & Safety Code section 25249.7. The alleged violations at issue in the Action
7 arise from alleged exposure to DEHP that is contained in the fake teeth and bath toys identified in
8 Plaintiff’s Notice that are imported, manufactured, packaged, distributed, marketed and are sold
9 by Defendants for use by children (“Covered Products”).

10 **1.3 Jurisdiction:** For purposes of this Consent Judgment, the Parties stipulate that the
11 Alameda Superior Court has jurisdiction over the allegations in the Action and personal
12 jurisdiction over Defendants as to the acts alleged in the Action; that venue is proper in the City
13 and County of Alameda; that this Court has jurisdiction to enter this Consent Judgment as a
14 resolution of all claims which were alleged in the Action; and that the Court shall retain
15 jurisdiction to implement the Consent Judgment.

16 **1.4 No Admissions:** The Parties enter into this Consent Judgment as a compromise of
17 disputed claims for the purpose of avoiding prolonged litigation. Neither the Consent Judgment
18 nor any of its provisions shall be construed as an admission by any Party of any fact, finding,
19 issue of law, or violation of law, including Proposition 65 or any other statute, regulation, or
20 common law requirement related to exposure to DEHP or other chemicals listed under
21 Proposition 65 from the Covered Products. By executing this Consent Judgment and agreeing to
22 provide the relief and remedies specified herein, Defendants do not admit any violations of
23 Proposition 65, or any other law or legal duty and specifically deny that they have committed any
24 such violations. Defendants maintain that all Covered Products distributed, marketed and/or sold
25 by Defendants in California have at all times been in compliance with all applicable laws.
26 Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, or defense
27 that Plaintiff and Defendants may have in any other or in future legal proceedings unrelated to
28 these proceedings. Defendants reserve all of their rights and defenses with regard to any claim by

1 any person under Proposition 65 or otherwise. Nevertheless, this paragraph shall not diminish or
2 otherwise affect the obligations, responsibilities, waivers, releases, and/or duties provided for
3 under this Consent Judgment.
4

5 **2. INJUNCTIVE RELIEF: WARNINGS OR REFORMULATION**

6 Defendants agree, with respect to all Covered Products, to the following alternative forms
7 of injunctive relief.

8 **2.1 Warnings:** Defendants agree to provide Proposition 65 warnings for all Covered
9 Products that contain DEHP, to the extent that Defendants may ship such Covered Products into
10 California for sale in California after August 31, 2008. Such warnings shall be deemed to be
11 "clear and reasonable" within the meaning of Proposition 65 and the implementing regulations
12 that appear at Cal. Code Regs, tit. 22, § 12601, provided that the statement that appears below is
13 printed on the label or labeling, for such Covered Products, or is affixed to such labels or labeling
14 by means of adhesive stickers on such Covered Products that identify the Covered Products to
15 which the warnings pertain, provided that such warnings, whether they appear on labels or
16 labeling shall be printed and/or affixed with such conspicuousness, as compared to other words or
17 statements on the label or labeling so as to render the warnings reasonably likely to be read by an
18 ordinary individual under customary conditions of purchase or use:

19 **WARNING:** This product contains a chemical known to the State
20 of California to cause cancer and birth defects or other reproductive
harm.

21 **2.2 Reformulation.** Defendants agree to attempt in good faith to ensure that after
22 August 31, 2008, any Covered Products that are imported, manufactured, packaged, distributed,
23 or marketed for sale or use in California are reformulated, in a manner consistent with the
24 requirements of Health and Safety Code section 108939, so as not to contain DEHP in
25 concentrations exceeding 1/10 of 1%. For any Covered Products that contain DEHP in amounts
26 equal to or less than concentrations of 1/10 of 1%, no Proposition 65 warning shall be required
27 for DEHP. This provision shall not be construed to confer upon Plaintiffs any authority or
28 standing to enforce the provisions of Health and Safety Code section 108939 that is not conferred

1 under the terms of that law itself, or to enforce the provisions of Health and Safety Code section
2 108939 as a term of this Consent Judgment.

3
4 **3. WAIVER AND RELEASE OF ALL CLAIMS**

5 **3.1 Waiver and Release of Claims Against Defendants:** As to those matters raised
6 in this Action and in Plaintiff's Notice brought in the public interest, Plaintiff hereby releases
7 Defendants and waives any claims against Defendants for injunctive relief or damages, penalties,
8 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses
9 or any other sum incurred or claimed, for the alleged failure of Defendants to provide clear and
10 reasonable warnings under Proposition 65 about exposure to DEHP arising from the sale,
11 distribution or use of any Covered Products in California.

12 **3.2 Defendants' Waiver and Release of Plaintiff:** Defendants hereby release
13 Plaintiff from and waive any claims against Plaintiff for injunctive relief or damages, penalties,
14 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,
15 expenses, or any other sum incurred or claimed or which could have been claimed for matters
16 related to the Action.

17 **3.3 Matters Covered By This Consent Judgment/Release of Future Claims:** As to
18 the Covered Products, this Consent Judgment is a full, final, and binding resolution between the
19 Plaintiff, acting on behalf of itself and, as to those matters raised in Plaintiff's Notice, in the
20 public interest pursuant to Health and Safety Code section 25249.7(d), and Defendants for their
21 alleged failure to provide clear, reasonable, and lawful warnings of exposure to DEHP contained
22 in the Covered Products. As to the Covered Products, compliance with the terms of this Consent
23 Judgment resolves any issue, now and in the future, concerning compliance by Defendants with
24 existing requirements of Proposition 65 to provide clear and reasonable warning about exposure
25 to DEHP in the Covered Products.

26 **3.4 Waiver of Civil Code Section 1542:** This Consent Judgment is intended as a full
27 settlement and compromise of all claims arising out of or relating to Plaintiffs' Notice and/or the
28 Action regarding Covered Products. No claim is reserved as between the Parties hereto, and each

1 Party expressly waives any and all rights which it may have arising out of or relating to Plaintiffs'
2 Notice and/or the Action regarding Covered Products under the provisions of section 1542 of the
3 Civil Code of the State of California, which provides:

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

10 3.5 For purposes of this paragraph 3, the terms "Plaintiff" and "Defendants" are
11 defined as follows. The term "Plaintiff" includes the Plaintiff as defined at Paragraph 1.1 above,
12 and also includes its members, subsidiaries, successors, and assigns and its directors, officers,
13 agents, attorneys, representatives, and employees. The term "Defendants" includes the
14 Defendants, as that term is defined in Paragraph 1.2 above, and also includes their corporate
15 affiliates, including any and all corporate parents and subsidiaries and their directors, officers,
16 agents, attorneys, representatives, employees, licensors, heirs, predecessors, successors, and
17 assigns, and their suppliers, distributors and customers of the Covered Products.

18 **4. MONETARY PAYMENTS**

19 4.1 Within fifteen (15) days following the approval and entry of this Consent
20 Judgment by the Court, Defendants shall pay \$8,000 as stipulated penalties under Proposition 65
21 for any violations arising therefrom, to be distributed by the Plaintiff and to the Plaintiff and to
22 the State of California as required under Proposition 65. In lieu of additional civil penalties,
23 Defendants further shall pay \$42,000 in the form of a check made payable to "Ellison Folk,
24 Attorney Client Trust Account" with this amount to be used by As You Sow for grants to
25 California non-profit organizations and by AYS Foundation Environmental Enforcement Fund.
26 These funds shall be used to reduce exposures to toxic chemicals and to increase consumer,
27 worker and community awareness of the health hazards posed by toxic chemicals in California.
28 In deciding among the grantee proposals, the As You Sow Board of Directors ("Board") takes
into consideration a number of important factors, including: (1) the nexus between the harm done

1 in the underlying case(s), and the grant program work; (2) the potential for toxics reduction,
2 prevention, remediation or education benefits to California citizens from the proposal; (3) the
3 budget requirements of the proposed grantee and the alternate funding sources available to it for
4 its project; and (4) the Board's assessment of the grantee's chances for success in its program
5 work. AYS shall ensure that all funds will be disbursed and used in accordance with AYS'
6 mission statement, articles of incorporation, and bylaws and applicable state and federal laws and
7 regulations. The check shall be delivered by overnight delivery to Ellison Folk, Shute, Mihaly &
8 Weinberger LLP, 396 Hayes Street, San Francisco, CA 94102. In the event this Consent
9 Judgment becomes null and void under Paragraph 11 *infra*, Plaintiff shall, within fifteen days,
10 return the payment made under this paragraph to Defendants.

11 4.2 Within fifteen (15) days following the parties' execution of this Consent
12 Judgment, Defendants shall pay \$15,000 in the form of a check made payable to "Ellison Folk,
13 Attorney Client Trust Account" as reimbursement for the investigation fees and costs, testing
14 costs, expert witness fees, attorneys fees, and other litigation costs and expenses. The check shall
15 be delivered by overnight delivery to Ellison Folk, Shute, Mihaly & Weinberger LLP, 396 Hayes
16 Street, San Francisco, CA 94102. In the event this Consent Judgment becomes null and void
17 under either Paragraph 11 *infra*, Plaintiff shall, within fifteen days, return the payment made
18 under this paragraph to Defendants.

19
20 **5. SEVERABILITY**

21 In the event that any of the provisions of this Consent Judgment are held by a court to be
22 unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected
23 thereby.

24
25 **6. MODIFICATION OF CONSENT JUDGMENT**

26 This Consent Judgment may be modified only upon the written agreement of the Parties,
27 or pursuant to court order issued upon motion of a Party, and upon entry of a modified Consent
28 Judgment by this Court.

1 **7. ENFORCEMENT OF CONSENT JUDGMENT**

2 7.1 The Parties may, by motion or order to show cause before this Court, and upon
3 notice having been given to all Parties in accordance with Paragraph 10 below, unless waived,
4 enforce the terms and conditions of this Consent Judgment and seek whatever fines, costs,
5 penalties, or remedies (including reasonable attorneys' fees and costs) are provided by law.

6 7.2 The Parties may enforce the terms and conditions of this Consent Judgment
7 pursuant to paragraph 7.1 only after the complaining party has first given thirty (30) days notice
8 to the Party allegedly failing to comply with the terms and conditions of the Consent Judgment
9 and has attempted, in an open and good faith manner, to resolve such Party's alleged failure to
10 comply.

11
12 **8. GOVERNING LAW**

13 8.1 The terms of this Consent Judgment shall be governed by, and construed in
14 accordance with, the laws of the State of California.

15 8.2 The Parties have participated in the preparation of this Consent Judgment and this
16 Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment was
17 subject to revision and modification by the Parties and has been accepted and approved as to its
18 final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in
19 this Consent Judgment shall not be interpreted against any Party as a result of the manner of the
20 preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any
21 statute or rule of construction providing that ambiguities are to be resolved against the drafting
22 party should not be employed in the interpretation of this Consent Judgment and, in this regard,
23 the Parties hereby waive California Civil Code section 1654.

24
25 **9. ENTIRE AGREEMENT**

26 This Consent Judgment constitutes the sole and entire agreement and understanding
27 between the Parties with respect to the subject matter hereof, and any prior discussions,
28 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein

1 and therein. There are no warranties, representations, or other agreements between the Parties,
2 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
3 other than those specifically referred to herein, shall be deemed to exist or bind any of the Parties
4 hereto. No supplementation, modification, waiver, or termination of this Consent Judgment shall
5 be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
6 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
7 other provisions hereof, whether or not similar, nor shall such waiver constitute a continuing
8 waiver.

9
10 **10. NOTICES**

11 All notices or correspondence to be given pursuant to this Consent Judgment shall be in
12 writing and shall be personally delivered or sent by first-class, registered, certified mail, overnight
13 courier, and/or via facsimile transmission (with presentation of facsimile transmission
14 confirmation) addressed to the Parties as follows:

15 For Plaintiffs: AS YOU SOW FOUNDATION
16 Attn: Larry Fahn / Kara Buchner
17 311 California Street, Suite 510
San Francisco, CA 94104
415 391 3245 fax

18 With a copy to: Ellison Folk
19 Shute, Mihaly & Weinberger LLP
20 396 Hayes Street
San Francisco, CA 94102
(415) 552-5816 Fax

21 For Defendants: John L. Deal
22 Corporate Counsel
Dollar Tree Stores, Inc.
23 500 Volvo Parkway
Chesapeake, VA 23320

24 McKenna Long & Aldridge LLP
25 Attn: Stanley W. Landfair
26 101 California Street, Suite 4100
San Francisco, California 94111

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28

1 The contacts and/or addresses stated immediately above may be amended by giving notice to all
2 Parties to this Consent Judgment.

3
4 **11. COURT APPROVAL/EFFECTIVE DATE**

5 The Court shall either approve or disapprove of this Consent Judgment in its entirety,
6 without alteration, deletion or amendment, unless otherwise so stipulated by the Parties and their
7 counsel. If the Court approves of this Consent Judgment, then the terms of this Consent
8 Judgment are incorporated into the terms of the Court's Order.

9 Defendants agree to support the motion to approve this Consent Judgment in full, and
10 shall take all reasonable measures to ensure that it is entered without delay. In the event that the
11 Court fails to approve and order entry of the Consent Judgment without any change whatsoever
12 (unless otherwise so stipulated by the Parties), this Consent Judgment shall become null and void
13 upon the election of either Party and upon written notice to all of the Parties to the Action
14 pursuant to the notice provisions herein.

15 If the Court enters this Consent Judgment, Plaintiff shall, within ten (10) working days
16 after the Effective Date, electronically provide or otherwise serve a copy of it and the report
17 required pursuant to 11 Cal. Code Regs. § 3004 to/on the California Attorney General's Office.

18 The Effective Date of this Consent Judgment shall be the date it is entered by the Court.

19
20 **12. AUTHORIZATION**

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

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25 **13. COUNTERPARTS/FACSIMILE SIGNING**

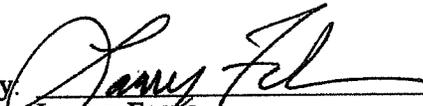
26 This Consent Judgment may be executed in one or more counterparts, each of which shall
27 be deemed an original, and all of which, when taken together, shall constitute one and the same
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1 document. All signatures need not appear on the same page of the document and signatures of
2 the Parties transmitted by facsimile shall be deemed binding.

3 **IT IS SO STIPULATED:**

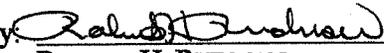
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5 Dated: 6-4-08

AS YOU SOW FOUNDATION

6
7 By: 
8 LARRY FAIN
Executive Director

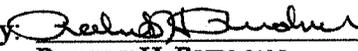
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10 Dated: 5-23-08

DOLLAR TREE STORES, INC.

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12 By: 
13 ROBERT H. RUDMAN
Chief Merchandising Officer

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15 Dated: 5-23-08

GREENBRIER INTERNATIONAL, INC.

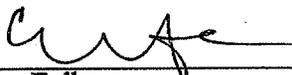
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17 By: 
18 ROBERT H. RUDMAN
President

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APPROVED AS TO FORM:

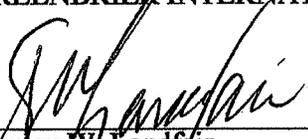
Dated: May 28, 2008

AS YOU SOW FOUNDATION


Ellison Folk
Shute, Mihaly & Weinberger LLP
Counsel for As You Sow Foundation

Dated: 5-23-08

DOLLAR TREE STORES, INC. and
GREENBRIER INTERNATIONAL, INC.


Stanley W Landfair
McKenna Long & Aldridge LLP
Counsel for Dollar Tree Stores, Inc. and
Greenbrier International, Inc.

In accordance with the stipulation of Plaintiff and Defendants,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED.

The Court hereby incorporates the terms of the Consent Judgment into this Order. If a party violates the provisions of this Consent Judgment, this Court retains over this matter.

Dated: _____

JUDGE OF THE SUPERIOR COURT