

1 LEXINGTON LAW GROUP, LLP
ERIC S. SOMERS, STATE BAR NO. 139050
2 MARK N. TODZO, STATE BAR NO. 168389
HOWARD HIRSCH, STATE BAR NO. 213209
3 1627 Irving Street
San Francisco, CA 94122
4 Telephone: (415) 759-4111
Facsimile: (415) 759-4112

5 Attorneys for Plaintiff
6 CENTER FOR ENVIRONMENTAL HEALTH

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

10
11 CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation,

12 Plaintiff,

13 v.

14 DOLLAR TREE DISTRIBUTION, INC.,
15 DOLLAR TREE STORES, INC.,
GREENBRIER INTERNATIONAL, INC.,
16 and Defendant DOES 1 through 200,
inclusive,

17 Defendants.
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CASE No. RG08425739

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1** On December 18, 2008, plaintiff the Center for Environmental Health
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint in Alameda
4 County Superior Court, entitled *Center for Environmental Health v. Dollar Tree Distribution,*
5 *Inc., et al.*, Alameda County Superior Court Case Number RG08425739 (the “Action”), for civil
6 penalties and injunctive relief pursuant to the provisions of California Health & Safety Code
7 §25249.5 *et seq.* (“Proposition 65”).

8 **1.2** Defendants Dollar Tree Distribution, Inc., Dollar Tree Stores, Inc., and
9 Greenbrier International, Inc. (collectively, “Dollar Tree”) are each a “person in the course of
10 doing business” under Proposition 65 and manufacture, distribute and/or sell clothing designed to
11 be worn during wet weather, including but not limited to rain coats, rain jackets, ponchos, rain
12 bonnets, rain hats and rain boots (each a “Product” and collectively “the Products”) in the State of
13 California. Dollar Tree and CEH are referred to collectively herein as the Parties.

14 **1.3** On or about September 26, 2008, CEH served Dollar Tree and the
15 appropriate public enforcement agencies with the requisite 60-day notice that Dollar Tree is in
16 violation of Proposition 65. CEH’s notice and the Complaint in this Action allege that Dollar
17 Tree exposes individuals who use or otherwise handle the Products to lead and/or lead
18 compounds (referred to interchangeably herein as “Lead”), chemicals known to the State of
19 California to cause cancer, birth defects and other reproductive harm, without first providing clear
20 and reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity of
21 Lead. The notice and Complaint allege that Dollar Tree’s conduct violates Health & Safety Code
22 §25249.6, the warning provision of Proposition 65.

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

1 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of
2 certain disputed claims between the Parties as alleged in the Complaint. By executing this
3 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'
4 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
5 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
6 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
7 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
8 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
9 any other or future legal proceedings. This Consent Judgment is the product of negotiation and
10 compromise and is accepted by the parties, for purposes of settling, compromising and resolving
11 issues disputed in this action, including future compliance by Dollar Tree with Section 2 of this
12 Consent Judgment, and shall not be used for any other purpose, or in any other matter.

13 **2. COMPLIANCE - REFORMULATION**

14 **2.1 Lead Reformulation.** After the date of entry of this Consent Judgment
15 (the "Compliance Date"), Dollar Tree shall not manufacture, distribute, ship, or sell, or cause to
16 be manufactured, distributed, or sold, any Product that contains Lead in concentrations that
17 exceed 40 parts per million ("ppm") or is comprised of any material that contains Lead in
18 concentrations that exceed 40 ppm. Products that were manufactured prior to the Compliance
19 Date shall not be subject to the provisions of Section 2, or the related provisions herein.

20 **2.2 Certification of level from suppliers.** Dollar Tree shall obtain written
21 certification with corresponding test results from its suppliers of the Products certifying that
22 neither the Products nor any materials of which the Products are comprised contain Lead
23 concentrations exceeding 40 ppm.

24 **2.3 Testing.** In order to help ensure compliance with the requirements of
25 Section 2.1, Dollar Tree shall conduct testing to confirm that neither the Products nor any
26 materials of which the Products are comprised contain less than 40 ppm Lead. Testing pursuant
27 to this section shall be conducted pursuant to the most current version of United States
28 Environmental Protection Agency Method SW-846 3051 or Method 3050B (the "Test Protocol").

1 The results of all testing performed pursuant to this section shall be retained for a period of three
2 years from the date of the test and shall be made available to CEH upon request. Dollar Tree
3 shall test 8 randomly selected Products from each delivered shipment of each of the Products.

4 **2.3.1 Products that exceed 40 ppm pursuant to Dollar Tree Testing.**

5 If the results of the testing required pursuant to section 2.3 shows levels of Lead exceeding 40
6 ppm for a Product, Dollar Tree shall return all of the Products that were purchased under the
7 particular purchase order to the supplier with a letter explaining that such Products do not comply
8 with the supplier's certification. In addition, Dollar Tree shall increase the number of units tested
9 to 16 randomly selected Products from each delivered shipment of each of the Products from such
10 supplier for the two shipments purchased immediately following a Product test exceeding 40
11 ppm. Should the testing of Products purchased from a particular supplier demonstrate Lead levels
12 exceeding 40 ppm more than once, Dollar Tree shall cease purchasing Products from such
13 supplier for a period of at least five years.

14 **2.4 Confirmatory testing by CEH.** CEH intends to conduct periodic testing

15 of the Products. Any such testing will be conducted pursuant to the Test Protocol at an
16 independent laboratory. In the event that CEH's testing demonstrates Lead levels in excess of 40
17 ppm for one or more Products, CEH shall inform Dollar Tree of the violation(s), including
18 information sufficient to permit Dollar Tree to identify the Product(s). Dollar Tree shall, within
19 10 days following such notice, provide CEH, at the address listed in section 12, with its supplier
20 certification and testing information demonstrating its compliance with sections 2.2 and 2.3 of
21 this Consent Judgment. Dollar Tree shall then increase the amount of testing performed on the
22 Products supplied by the supplier of the Product(s) for which CEH demonstrates a test with Lead
23 levels exceeding 40 ppm to 16 randomly selected Products from each delivered shipment from
24 each purchase order of each of the Products from such supplier for the two purchase orders
25 following a Product test exceeding 40 ppm. Dollar Tree shall also be liable for stipulated
26 payments in lieu of penalties for Products for which CEH produces tests demonstrating Lead
27 levels exceeding 40 ppm as set forth below. These payments shall be made to CEH and used for
28 the purposes described in section 4.1 and to pay for related attorneys' fees and costs. The

1 stipulated payments in lieu of penalties and other remedies provided for herein are in addition to
2 any other remedies available to enforce the terms of this Consent Judgment.

3 **2.4.1 Stipulated penalty assuming compliance with sections 2.2 and**
4 **2.3.** Assuming Dollar Tree provides CEH with information demonstrating that it complied with
5 sections 2.2 and 2.3 for the Products purchased pursuant to the same purchase order as those with
6 tests showing Lead levels exceeding 40 ppm, the stipulated penalty shall be as follows for each
7 unit of Product for which CEH produces a test result with Lead levels exceeding 40 ppm:

8 First Occurrence	\$500
9 Second Occurrence	\$1,000
10 Third Occurrence	\$2,000
11 Thereafter	\$5,000

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13 **2.4.2 Stipulated penalty assuming non-compliance with sections 2.2**
14 **and 2.3.** Assuming Dollar Tree fails to provide CEH with information demonstrating that it
15 complied with sections 2.2 and 2.3 for the Products purchased pursuant to the same purchase
16 order as those with tests showing Lead levels exceeding 40 ppm, the stipulated penalty shall be as
17 follows for each unit of Product for which CEH produces a test result with Lead levels exceeding
18 40 ppm:

19 First Occurrence	\$2,000
20 Second Occurrence	\$5,000
21 Third Occurrence	\$10,000
22 Thereafter	\$20,000

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24 **2.4.3 Recall of Products testing in excess of 600 ppm Lead.** Should
25 CEH's testing demonstrate that a Product contains Lead levels in excess of 600 ppm ("Recall
26 Product"), Dollar Tree shall send a recall letter to all distribution facilities and retail outlets that
27 may have received the Products that were purchased in the same purchase order as any Recall
28 Product informing them that they must pull the items from public distribution and send them back

1 to Dollar Tree. Dollar Tree shall destroy all such Products and send certification to CEH that it
2 has completed this process. Such certification shall indicate how many units of the Products were
3 returned via the recall.

4 3. SETTLEMENT PAYMENTS

5 3.1 Within five days of entry of this Consent Judgment, Dollar Tree shall pay a
6 total of \$45,000 as a settlement payment. This total shall be paid in three separate checks
7 delivered to the offices of the Lexington Law Group, LLP at the address set forth in section 12
8 below and made payable and allocated as follows. Any failure by Dollar Tree to comply with the
9 payment terms herein shall be subject to a stipulated late fee in the amount of \$50 for each day
10 after the delivery date the payment is received. The late fees required under this section shall be
11 recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought
12 pursuant to section 5 of this Consent Judgment.

13 3.1.1 **Penalty:** The sum of \$1,000 in penalties pursuant to Health and
14 Safety Code §25249.7(b). This payment shall be made by check payable to Center for
15 Environmental Health. CEH shall apportion the penalties in accordance with Health and Safety
16 Code §25249.12.

17 3.1.2 **Monetary Payment in Lieu of Penalty:** The sum of \$14,500 shall
18 be paid to CEH in lieu of any penalty pursuant to Health and Safety Code §25249.7(b). This
19 payment shall be made by check payable to Center for Environmental Health. CEH shall use
20 such funds to continue its work protecting people from exposures to toxic chemicals. As part of
21 this work, CEH intends to conduct periodic testing of the Products as set forth in section 2.4.

22 3.1.3 **Attorneys' Fees and Costs:** The sum of \$29,500 shall be used to
23 reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees,
24 and any other costs incurred as a result of investigating, bringing this matter to Dollar Tree's
25 attention, litigating and negotiating a settlement in the public interest. This payment shall be
26 made by check payable to Lexington Law Group, LLP.

1 **4. MODIFICATION OF CONSENT JUDGMENT**

2 **4.1** This Consent Judgment may be modified by written agreement of CEH and
3 Dollar Tree, or upon motion of CEH or Dollar Tree as provided by law.

4 **5. ENFORCEMENT OF CONSENT JUDGMENT**

5 **5.1** CEH may, by motion or application for an order to show cause before the
6 Superior Court of the County of Alameda, enforce the terms and conditions contained in this
7 Consent Judgment. Should CEH prevail on any motion or application under this section, CEH
8 shall be entitled to recover its reasonable attorneys' fees and costs associated with such motion or
9 application.

10 **6. APPLICATION OF CONSENT JUDGMENT**

11 **6.1** This Consent Judgment shall apply to and be binding upon the Parties
12 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
13 them.

14 **7. RELEASE**

15 **7.1** This Consent Judgment is a full, final and binding resolution between CEH
16 and Dollar Tree of any violation of Proposition 65 that was or could have been asserted in the
17 Complaint against Dollar Tree or its parents, subsidiaries, affiliates, directors, officers,
18 employees, agents, attorneys, downstream distributors, or customers based on failure to warn
19 about alleged exposure to Lead contained in the Products, with respect to any Products
20 manufactured, distributed or sold by Dollar Tree on or prior to the date of entry of this Consent
21 Judgment. This release does not limit or effect the obligations of any party created under this
22 Consent Judgment.

23 **8. SEVERABILITY**

24 **8.1** In the event that any of the provisions of this Consent Judgment are held by
25 a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
26 affected.

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1 **9. SPECIFIC PERFORMANCE**

2 **9.1** The Parties expressly recognize that Dollar Tree’s obligations under this
3 Consent Judgment are unique. In the event that Dollar Tree is found to be in breach of this
4 Consent Judgment for failure to comply with the provisions of Section 2 hereof, the parties agree
5 that it would be extremely impracticable to measure the resulting damages and that such breach
6 would cause irreparable damage. Accordingly, CEH, in addition to any other available rights or
7 remedies, may sue in equity for specific performance, and Dollar Tree expressly waives the
8 defense that a remedy in damages will be adequate.

9 **10. GOVERNING LAW**

10 **10.1** The terms of this Consent Judgment shall be governed by the laws of the
11 State of California.

12 **11. RETENTION OF JURISDICTION**

13 **11.1** This Court shall retain jurisdiction of this matter to implement and enforce
14 the terms this Consent Judgment.

15 **12. PROVISION OF NOTICE**

16 **12.1** All notices required pursuant to this Consent Judgment and correspondence
17 shall be sent to the following:

18 For CEH	Howard Hirsch LEXINGTON LAW GROUP, LLP 1627 Irving Street San Francisco, CA 94122
19 For Dollar Tree	Stanley W. Landfair MCKENNA LONG & ALDRIDGE LLP 101 California Street, 41st Floor San Francisco, CA 94111

20 **13. COURT APPROVAL**

21 **13.1** If this Consent Judgment is not approved by the Court, it shall be of no
22 further force or effect. The Parties agree to support a Motion for Approval of this Consent
23 Judgment.
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14. EXECUTION AND COUNTERPARTS

14.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

15. AUTHORIZATION

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

AGREED TO

CENTER FOR ENVIRONMENTAL HEALTH



MICHAEL GREEN, *Executive Director*
CENTER FOR ENVIRONMENTAL HEALTH

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


Signature

JAMES A. GORRY, III
Printed Name

Corporate Secretary
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.

Dated: _____

JUDGE, *Superior Court of the State of Court*