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6 CENTER FOR ENVIRONMENTAL HEALTH

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF MARIN  
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13 CENTER FOR ENVIRONMENTAL HEALTH, )  
14 a non-profit corporation, )

15 Plaintiff, )

16 v. )

17 DOLLAR TREE DISTRIBUTION, INC., )  
18 DOLLAR TREE STORES, INC., )  
GREENBRIER INTERNATIONAL, INC., and )  
19 Defendant DOES 1 through 200, inclusive, )

20 Defendants. )  
21 \_\_\_\_\_ )

Case No. CVI005571

**[PROPOSED] CONSENT JUDGMENT**

1           **1. INTRODUCTION**

2           **1.1** On October 20, 2010, plaintiff Center for Environmental Health (“CEH”),  
3 a non-profit corporation acting in the public interest, filed a complaint in Marin County Superior  
4 Court, entitled *Center for Environmental Health v. Dollar Tree Distribution, Inc., et al.*, Marin  
5 County Superior Court Case Number CVI005571 (the “Action”), for civil penalties and  
6 injunctive relief pursuant to the provisions of California Health & Safety Code §25249.5 *et seq.*  
7 (“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 aluminum water  
11 bottles (“the Products”) in the State of California. Dollar Tree and CEH are referred to  
12 collectively herein as the Parties.

13           **1.3** On or about August 6, 2010, CEH served Dollar Tree and the appropriate  
14 public enforcement agencies with the requisite 60-day notice that Dollar Tree is in violation of  
15 Proposition 65. CEH’s notice and the Complaint in this Action allege that Dollar Tree exposes  
16 individuals who use or otherwise handle the Products to lead and/or lead compounds (referred to  
17 interchangeably herein as “Lead”), chemicals known to the State of California to cause cancer,  
18 birth defects and other reproductive harm, without first providing clear and reasonable warning  
19 to such persons regarding the carcinogenicity and reproductive toxicity of Lead. The notice and  
20 Complaint allege that Dollar Tree’s conduct violates Health & Safety Code §25249.6, the  
21 warning provision of Proposition 65.

22           **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this  
23 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and  
24 personal jurisdiction over Dollar Tree as to the acts alleged in CEH’s Complaint, that venue is  
25 proper in the County of Marin, and that this Court has jurisdiction to enter this Consent  
26 Judgment as a full and final resolution of all claims which were or could have been raised in the  
27 Complaint based on the facts alleged therein.

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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 90 parts per million ("ppm") or includes any component part (including but not limited to  
18 the paint or other surface coating of the Product) that contains Lead in concentrations that exceed  
19 90 ppm. Products that were manufactured prior to the Compliance Date shall not be subject to  
20 the provisions of Section 2, or the related provisions herein.

21                   **2.2    Certification of level from suppliers.** Dollar Tree shall obtain written  
22 certification with corresponding test results from its suppliers of the Products certifying that  
23 neither the Products nor any component parts of the Products contain Lead concentrations  
24 exceeding 90 ppm.

25                   **2.3    Testing.** In order to help ensure compliance with the requirements of  
26 Section 2.1, Dollar Tree shall conduct testing to confirm that neither the Products nor any  
27 component parts of the Products contain more than 90 ppm Lead. Testing pursuant to this  
28 section shall be conducted pursuant to the most current version of United States Environmental

1 Protection Agency Method SW-846 3051 or Method 3050B (the “Test Protocol”). The results of  
2 all testing performed pursuant to this section shall be retained for a period of three years from the  
3 date of the test and shall be made available to CEH upon request. Dollar Tree shall test 8  
4 randomly selected Products from each delivered shipment of each of the Products.

5 **2.3.1 Products that exceed 90 ppm pursuant to Dollar Tree**

6 **Testing.** If the results of the testing required pursuant to section 2.3 shows levels of Lead  
7 exceeding 90 ppm for a Product, Dollar Tree shall return all of the Products that were purchased  
8 under the particular purchase order to the supplier with a letter explaining that such Products do  
9 not comply with the supplier’s certification. In addition, Dollar Tree shall increase the number  
10 of units tested to 16 randomly selected Products from each delivered shipment of each of the  
11 Products from such supplier for the two shipments purchased immediately following a Product  
12 test exceeding 90 ppm. Should the testing of Products purchased from a particular supplier  
13 demonstrate Lead levels exceeding 90 ppm more than once, Dollar Tree shall cease purchasing  
14 Products from such supplier for a period of at least five years.

15 **2.4 Confirmatory testing by CEH.** CEH intends to conduct periodic testing

16 of the Products sold in California. Any such testing will be conducted pursuant to the Test  
17 Protocol at an independent laboratory. In the event that CEH’s testing demonstrates Lead levels  
18 in excess of 90 ppm for one or more Products sold in California, CEH shall inform Dollar Tree  
19 of the violation(s), including information sufficient to permit Dollar Tree to identify the  
20 Product(s). Dollar Tree shall, within 10 days following such notice, provide CEH, at the address  
21 listed in section 12, with its supplier certification and testing information demonstrating its  
22 compliance with sections 2.2 and 2.3 of this Consent Judgment. Dollar Tree shall then increase  
23 the amount of testing performed on the Products supplied by the supplier of the Product(s) for  
24 which CEH demonstrates a test with Lead levels exceeding 90 ppm to 16 randomly selected  
25 Products from each delivered shipment from each purchase order of each of the Products from  
26 such supplier for the two purchase orders following a Product test exceeding 90 ppm. Dollar  
27 Tree shall also be liable for stipulated payments in lieu of penalties for Products for which CEH  
28 produces tests demonstrating Lead levels exceeding 90 ppm as set forth below. These payments

1 shall be made to CEH and used for the purposes described in this section 2.4 and to pay for  
2 related attorneys' fees and costs. The stipulated payments in lieu of penalties and other remedies  
3 provided for herein are in addition to any other remedies available to enforce the terms of this  
4 Consent Judgment.

5 **2.4.1 Stipulated penalty assuming compliance with sections**  
6 **2.2 and 2.3.** Assuming Dollar Tree provides CEH with information demonstrating that it  
7 complied with sections 2.2 and 2.3 for the Products purchased pursuant to the same purchase  
8 order as those with tests showing Lead levels exceeding 90 ppm, the stipulated penalty shall be  
9 as follows for each unit of Product for which CEH produces a test result with Lead levels  
10 exceeding 90 ppm:

- 11 First Occurrence: \$500
- 12 Second Occurrence: \$1,000
- 13 Third Occurrence: \$2,000
- 14 Thereafter: \$5,000

15 **2.4.2 Stipulated penalty assuming non-compliance with**  
16 **sections 2.2 and 2.3.** Assuming Dollar Tree fails to provide CEH with information  
17 demonstrating that it complied with sections 2.2 and 2.3 for the Products purchased pursuant to  
18 the same purchase order as those with tests showing Lead levels exceeding 90 ppm, the  
19 stipulated penalty shall be as follows for each unit of Product for which CEH produces a test  
20 result with Lead levels exceeding 90 ppm:

- 21 First Occurrence: \$2,000
- 22 Second Occurrence: \$5,000
- 23 Third Occurrence: \$10,000
- 24 Thereafter: \$20,000

25 **2.4.3 Recall of Products testing in excess of 300 ppm.** Should  
26 CEH's testing demonstrate that a Product sold in California contains Lead levels in excess of  
27 300 ppm ("Recall Product"), Dollar Tree shall send a recall letter to all distribution facilities and  
28 retail outlets that may have received the Products that were purchased in the same purchase order

1 as any Recall Product informing them that they must pull the items from public distribution and  
2 send them back to Dollar Tree. Dollar Tree shall destroy all such Products and send certification  
3 to CEH that it has completed this process. Such certification shall indicate how many units of  
4 the Products were returned via the recall.

5 **3. SETTLEMENT PAYMENTS**

6 **3.1** Within five days of entry of this Consent Judgment, Dollar Tree shall pay  
7 a total of \$40,000 as a settlement payment. This total shall be paid in three separate checks  
8 delivered to the offices of the Lexington Law Group at the address set forth in section 12 below  
9 and made payable and allocated as follows. Any failure by Dollar Tree to comply with the  
10 payment terms herein shall be subject to a stipulated late fee in the amount of \$50 for each day  
11 after the delivery date the payment is received. The late fees required under this section shall be  
12 recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought  
13 pursuant to section 5 of this Consent Judgment.

14 **3.1.1 Penalty:** The sum of \$4,000 in penalties pursuant to Health and  
15 Safety Code § 25249.7(b). This payment shall be made by check payable to Center for  
16 Environmental Health. CEH shall apportion the penalties in accordance with Health and Safety  
17 Code § 25249.12.

18 **3.1.2 Monetary Payment in Lieu of Penalty:** The sum of \$11,500 shall  
19 be paid to CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This  
20 payment shall be made by check payable to Center for Environmental Health. CEH shall use  
21 such funds to continue its work protecting people from exposures to toxic chemicals. As part of  
22 this work, CEH intends to conduct periodic testing of the Products as set forth in section 2.4.

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

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1           **4.     MODIFICATION OF CONSENT JUDGMENT**

2           **4.1**     This Consent Judgment may be modified by written agreement of CEH  
3 and 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 Marin, 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  
9 or 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**     In further consideration of the promises and agreements contained herein,  
16 CEH on behalf of itself and its past and current agents, successors and/or assignees, and in the  
17 interest of the general public, hereby releases all claims, including, without limitation, all  
18 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,  
19 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation  
20 fees, expert fees, and attorney’s fees) of any nature whatsoever, whether known or unknown,  
21 fixed or contingent (collectively “Claims”), against Dollar Tree and each of its parents,  
22 subsidiaries, affiliates, directors, officers, representatives, shareholders, employees, agents,  
23 attorneys, distributors, retailers, or customers (“Releasees”) that arise under Proposition 65, as  
24 such Claims relate to Dollar Tree’s failure to warn about exposures to Lead contained in any  
25 Products manufactured, distributed or sold by Dollar Tree on or prior to the date of entry of this  
26 Consent Judgment.

27          **7.2**     This Consent Judgment is a full, final and binding resolution  
28 between CEH and Dollar Tree of any violation of Proposition 65 that was or could have been

1 asserted in the Complaint against Dollar Tree or its parents, subsidiaries, affiliates, directors,  
2 officers, employees, agents, attorneys, distributors, retailers, or customers based on failure to  
3 warn about alleged exposure to Lead contained in the Products, with respect to any Products  
4 manufactured, distributed or sold by Dollar Tree on or prior to the date of entry of this Consent  
5 Judgment.

6           **7.3** This release as set forth in this Section 7 does not limit or effect the  
7 obligations of any party created under this Consent Judgment.

8           **8. SEVERABILITY**

9           **8.1** In the event that any of the provisions of this Consent Judgment are held  
10 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
11 affected.

12           **9. SPECIFIC PERFORMANCE**

13           **9.1** The Parties expressly recognize that Dollar Tree's obligations under this  
14 Consent Judgment are unique. In the event that Dollar Tree is found to be in breach of this  
15 Consent Judgment for failure to comply with the provisions of Section 2 hereof, the parties agree  
16 that it would be extremely impracticable to measure the resulting damages and that such breach  
17 would cause irreparable damage. Accordingly, CEH, in addition to any other available rights or  
18 remedies, may sue in equity for specific performance, and Dollar Tree expressly waives the  
19 defense that a remedy in damages will be adequate.

20           **10. GOVERNING LAW**

21           **10.1** The terms of this Consent Judgment shall be governed by the laws of the  
22 State of California.

23           **11. RETENTION OF JURISDICTION**

24           **11.1** This Court shall retain jurisdiction of this matter to implement and enforce  
25 the terms this Consent Judgment.

26           **12. PROVISION OF NOTICE**

27           **12.1** All notices required pursuant to this Consent Judgment and  
28 correspondence shall be sent by electronic and first class mail to the following:



1 For CEH:

2 Howard Hirsch  
3 Lexington Law Group  
4 503 Divisadero Street  
5 San Francisco, CA 94117  
6 [hhirsch@lexlawgroup.com](mailto:hhirsch@lexlawgroup.com)

7 For Dollar Tree:

8 Peg Carew Toledo  
9 MENNEMEIER, GLASSMAN & STROUD LLP  
10 980 9th Street, Suite 1700  
11 Sacramento, CA 95814  
12 [toledo@mgsllaw.com](mailto:toledo@mgsllaw.com)

13 **12.2** Either Party can modify the person or address to whom the notice is to be  
14 sent by sending the other Party notice by first class and electronic mail.

15 **13. COURT APPROVAL**

16 **13.1** If this Consent Judgment is not approved by the Court, it shall be of no  
17 further force or effect. The Parties agree to support a Motion for Approval of this Consent  
18 Judgment.

19 **14. EXECUTION AND COUNTERPARTS**

20 **14.1** The stipulations to this Consent Judgment may be executed in  
21 counterparts and by means of facsimile, which taken together shall be deemed to constitute one  
22 document.

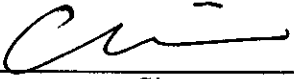
23 **15. AUTHORIZATION**

24 **15.1** Each signatory to this Consent Judgment certifies that he or she is fully  
25 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter  
26 into and execute the Consent Judgment on behalf of the party represented and legally bind that  
27 party. The undersigned have read, understand and agree to all of the terms and conditions of this  
28 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and  
costs.

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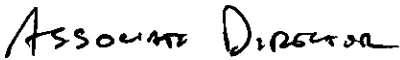
CENTER FOR ENVIRONMENTAL HEALTH



Signature



Printed Name



Title

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

Signature

Printed Name

Title

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**AGREED TO:**

CENTER FOR ENVIRONMENTAL HEALTH

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

  
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Signature

**James A. Gorry III**  
\_\_\_\_\_  
**General Counsel and**  
**Corporate Secretary**

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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 California