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10 ATTORNEYS FOR PLAINTIFF
11 Consumer Advocacy Group, Inc.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES

14 CONSUMER ADVOCACY GROUP, INC., in
15 the public interest,

16 Plaintiff,

17 v.

18 DOLLAR TREE, INC., et al.;

19 Defendants.

Case No. BC575729

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

20 **1. INTRODUCTION**

21 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
22 Advocacy Group, Inc. (“CAG”) acting on behalf of itself and in the public interest and
23 defendants Dollar Tree Stores, Inc. and Greenbrier International, Inc. (“Settling Defendants”) with each a Party to the action and collectively referred to as “Parties.”

24 1.2 CAG is a California corporation that serves as a private enforcer of Proposition
25 65, as described in Proposition 65 and the regulations of the Attorney General of California at
26 11 Cal. Code Regs. § 3000 *et seq.*

27 1.3 Each Settling Defendant employs ten or more persons, is a person in the course
28 of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,

1 California Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”), and distributes and sells
2 Covered Products, as defined in Section 2.1:

3 **1.4 Notices of Violation.**

4 1.4.1 On or about July 16, 2014, CAG served Settling Defendants, and various
5 public enforcement agencies with a document entitled “Sixty-Day Notice of Intent to Sue
6 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
7 provided the recipients with notice of alleged violations of Health & Safety Code §
8 25249.6 for failing to warn individuals in California of exposures to DEHP contained in
9 Decorative Grapes they sell, including FLORAL GARDEN® Decorative Grapes, 847660
10 1402, “MADE IN CHINA”, Barcode: 6 39277 47660 9 (the “July 16, 2014 Notice”). No
11 public enforcer has commenced or diligently prosecuted the allegations set forth in the
12 July 16, 2014 Notice.

13 1.4.2 On or about August 8, 2014, CAG served Settling Defendants, and various
14 public enforcement agencies with a document entitled “Sixty-Day Notice of Intent to Sue
15 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
16 provided the recipients with notice of alleged violations of Health & Safety Code §
17 25249.6 for failing to warn individuals in California of exposures to DEHP contained in
18 the Gripper Pads they sell, including 4 GRIPPER PADS “Multipurpose, Open jar lid &
19 caps, Prevent Objects from sliding, Wrap around tool, Handles for firmer grip” (5.5 in
20 diameter, 13.97 cm diameter) 178052 1212 “Imported by Greenbrier International, Inc.”
21 Made In CHINA UPC.: 6 39277 98052 6 (the “August 8, 2014 Gripper Notice”). No
22 public enforcer has commenced or diligently prosecuted the allegations set forth in the
23 August 8, 2014 Gripper Notice.

24 1.4.3 On or about August 8, 2014, CAG served Settling Defendants, and various
25 public enforcement agencies with a document entitled “Sixty-Day Notice of Intent to Sue
26 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
27 provided the recipients with notice of alleged violations of Health & Safety Code §
28 25249.6 for failing to warn individuals in California of exposures to DEHP contained in

1 the Eyewear they sell, including “METALLIC READERS” Rose Gold Frame, +1.50,
2 “Newest Fashion & Styles. Scratch and impact resistant lenses. All powers meet or
3 exceed FDA standards.” Made In CHINA UPC: 7 58266 08080 8; “METALLIC
4 READERS” Black Frame, +2.25, “Newest Fashion & Styles. Scratch and impact resistant
5 lenses. All powers meet or exceed FDA standards.” Made In CHINA UPC: 7 58266
6 08080 8 (the “August 8, 2014 Eyewear Notice”). No public enforcer has commenced or
7 diligently prosecuted the allegations set forth in the August 8, 2014 Eyewear Notice.

8 1.4.4 On or about September 16, 2014, CAG served Settling Defendants, and
9 various public enforcement agencies with a document entitled “Sixty-Day Notice of Intent
10 to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
11 provided the recipients with notice of alleged violations of Health & Safety Code §
12 25249.6 for failing to warn individuals in California of exposures to DEHP contained in
13 the Eyewear Accessories they sell, including EYEGLOSS REPAIR KIT; 187436 1311;
14 IMPORTED BY IN U.S.A.: GREENBRIER INTERNATIONAL, INC. 500 VOLVO
15 PARKWAY, CHESAPEAKE, VA 23320; Barcode: 6 39277 87436 6 (the “September 16,
16 2014 Notice”) No public enforcer has commenced or diligently prosecuted the allegations
17 set forth in the September 16, 2014 Notice.

18 1.4.5 On or about October 13, 2014, CAG served Settling Defendants, and
19 various public enforcement agencies with a document entitled “Sixty-Day Notice of Intent
20 to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
21 provided the recipients with notice of alleged violations of Health & Safety Code §
22 25249.6 for failing to warn individuals in California of exposures to DEHP contained in
23 the Fashion Accessories they sell, including ““Light Up Bracelet” With Plastic Yellow
24 Butterfly, Made In China, “Greenbrier International Inc” 186915-06691-017-1310 “UPC:
25 6 39277 38691 5”” (the “October 13, 2014 Notice”). No public enforcer has commenced
26 or diligently prosecuted the allegations set forth in the October 13, 2014 Notice.

27 1.4.6 On or about November 10, 2014, CAG served Settling Defendants, and
28 various public enforcement agencies with a document entitled “Sixty-Day Notice of Intent

1 to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
2 provided the recipients with notice of alleged violations of Health & Safety Code §
3 25249.6 for failing to warn individuals in California of exposures to DEHP contained in
4 the Eyewear Accessories they sell, including EYEGLASS REPAIR KIT; 187436 1311;
5 IMPORTED BY IN U.S.A.: GREENBRIER INTERNATIONAL, INC. 500 VOLVO
6 PARKWAY, CHESAPEAKE, VA 23320; Barcode: 6 39277 87436 6 (the “November 10,
7 2014 Notice”). No public enforcer has commenced or diligently prosecuted the
8 allegations set forth in the November 10, 2014 Notice.

9 1.4.7 On or about December 15, 2014, CAG served Settling Defendants, and
10 various public enforcement agencies with a document entitled “Sixty-Day Notice of Intent
11 to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
12 provided the recipients with notice of alleged violations of Health & Safety Code §
13 25249.6 for failing to warn individuals in California of exposures to DEHP contained in
14 the Fashion Accessories they sell, including ““Light Up Bracelet” With Plastic Yellow
15 Butterfly, Made In China, “Greenbrier International Inc” 186915-06691-017-1310 “UPC:
16 6 39277 38691 5””; ““Light Up Bracelet” With Plastic Flower, Made In China,
17 “Greenbrier International Inc” 186915-06691-017-1310 “UPC: 6 39277 38691 5”” (the
18 “December 15, 2014 Fashion Accessories Notice”). No public enforcer has commenced
19 or diligently prosecuted the allegations set forth in the December 15, 2014 Fashion
20 Accessories Notice.

21 1.4.8 On or about December 15, 2014, CAG served Settling Defendants, and
22 various public enforcement agencies with a document entitled “Sixty-Day Notice of Intent
23 to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
24 provided the recipients with notice of alleged violations of Health & Safety Code §
25 25249.6 for failing to warn individuals in California of exposures to DEHP contained in
26 the Eyewear Accessories they sell, including EYEGLASS REPAIR KIT; 187436 1407;
27 IMPORTED BY IN U.S.A.: GREENBRIER INTERNATIONAL, INC. 500 VOLVO
28 PARKWAY, CHESAPEAKE, VA 23320; Barcode: 6 39277 87436 8 (the “December 15,

1 2014 Eyewear Accessories Notice”). No public enforcer has commenced or diligently
2 prosecuted the allegations set forth in the December 15, 2014 Eyewear Accessories
3 Notice.

4 1.4.9 On or about March 3, 2015, CAG served Settling Defendants, and various
5 public enforcement agencies with a document entitled “Sixty-Day Notice of Intent to Sue
6 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
7 provided the recipients with notice of alleged violations of Health & Safety Code §
8 25249.6 for failing to warn individuals in California of exposures to DBP contained in the
9 Flip Flops they sell, including "LADIES Flip Flops"; Orange; "Size S 5/6"; Toe straps
10 attached at three point to sandal and have subtle line art decorations. "IMPORTED BY:
11 GREENBRIER INTERNATIONAL, INC. 500 VOLVO PARKWAY, VA 23320";
12 "MADE IN CHINA"; "195912 1402"; UPC: "6 39277 97952 0"; "LADIES Flip Flops";
13 Purple; "Size S 5/6"; Toe straps attached at three point to sandal and have complex
14 decorations. "IMPORTED BY: GREENBRIER INTERNATIONAL, INC. 500 VOLVO
15 PARKWAY, VA 23320"; "MADE IN CHINA"; "1960211401"; UPC: "6 39277 96021
16 4"; and "KIDS Flip Flops"; Pink with green, white and black circles; "Size S 10/11"; Toe
17 straps attached at three point to sandal and have subtle line art decoration. "IMPORTED
18 BY: GREENBRIER INTERNATIONAL, INC. 500 VOLVO PARKWAY, VA 23320";
19 "MADE IN CHINA"; "196010-02991-001-1402"; UPC: "6 39277 96010 8" (the “March
20 3, 2015 Notice”). No public enforcer has commenced or diligently prosecuted the
21 allegations set forth in the March 3, 2015 Notice.

22 1.4.10 On or about March 27, 2015, CAG served Settling Defendants, and various
23 public enforcement agencies with a document entitled “Sixty-Day Notice of Intent to Sue
24 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
25 provided the recipients with notice of alleged violations of Health & Safety Code §
26 25249.6 for failing to warn individuals in California of exposures to Lead contained in the
27 Ground Ginger they sell, including “Ground Ginger, Baker’s Select, (NET WT. 2oz 57g)
28 Distributed by Greenbrier International, Inc., 500 Volvo Parkway, Chesapeake, VA

1 23320, Packed in the U.S.A. UPC: 6 39277 23261 8” (the “March 27, 2015 Notice”). No
2 public enforcer has commenced or diligently prosecuted the allegations set forth in the
3 March 27, 2015 Notice.

4 1.4.11 On or about May 1, 2015, CAG served Settling Defendants, and various
5 public enforcement agencies with a document entitled “Sixty-Day Notice of Intent to Sue
6 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
7 provided the recipients with notice of alleged violations of Health & Safety Code §
8 25249.6 for failing to warn individuals in California of exposures to DEHP contained in
9 the LED Lights they sell, including Garden Collection 10 LED Green Leaf Lights UPC #
10 6 39277 13841 5 (the “May 1, 2015 Notice”). No public enforcer has commenced or
11 diligently prosecuted the allegations set forth in the May 1, 2015 Notice.

12 1.4.12 On or about June 12, 2015, CAG served Settling Defendants, and various
13 public enforcement agencies with a document entitled “Sixty-Day Notice of Intent to Sue
14 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
15 provided the recipients with notice of alleged violations of Health & Safety Code §
16 25249.6 for failing to warn individuals in California of exposures to DEHP contained in
17 the Plastic Retractable ID Holders they sell, including Retractable ID Holder; 155542
18 1501; Imported By In USA: Greenbrier International, Inc.; 500 Volvo Parkway,
19 Chesapeake, VA 23320; UPC: 6 39277 55542 7 (the “June 12, 2015 Notice”). No public
20 enforcer has commenced or diligently prosecuted the allegations set forth in the June 12,
21 2015 Notice.

22 1.4.13 On or about December 1, 2015, CAG served Settling Defendants, and
23 various public enforcement agencies with a document entitled “Sixty-Day Notice of Intent
24 to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
25 provided the recipients with notice of alleged violations of Health & Safety Code §
26 25249.6 for failing to warn individuals in California of exposures to Lead contained in the
27 Smoked Mussels they sell, including “Pacific Pride® Smoked Mussels in Sunflower Oil.
28 Net Wt 3oz (85g). Imported by Greenbrier International, Inc., Made in China. “11631

1 0417” UPC: 0 63205 20085 9” (the “December 1, 2015 Notice”). No public enforcer has
2 commenced or diligently prosecuted the allegations set forth in the December 1, 2015
3 Notice.

4 1.4.14 On or about June 30, 2016, CAG served Settling Defendants, and various
5 public enforcement agencies with a document entitled “Sixty-Day Notice of Intent to Sue
6 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
7 provided the recipients with notice of alleged violations of Health & Safety Code §
8 25249.6 for failing to warn individuals in California of exposures to Lead contained in the
9 Ground Cinnamon they sell, including “Ground Cinnamon”; “Supreme Tradition”; “NET
10 WT 3 oz., (84g)”; “Distributed by: Greenbrier Int’l, Inc. Chesapeake, VA 23320”; UPC: 6
11 39277 99003 7 (the “June 30, 2016 Notice”). No public enforcer has commenced or
12 diligently prosecuted the allegations set forth in the June 30, 2016 Notice.

13 1.4.15 On or about July 22, 2016, CAG served Settling Defendants, and various
14 public enforcement agencies with a document entitled “Sixty-Day Notice of Intent to Sue
15 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
16 provided the recipients with notice of alleged violations of Health & Safety Code §
17 25249.6 for failing to warn individuals in California of exposures to Lead contained in the
18 Ground Cinnamon they sell, including “Ground Cinnamon”; “Supreme Tradition”; “NET
19 WT 3 oz., (84g)”; “Distributed by: Greenbrier Int’l, Inc. Chesapeake, VA 23320”; UPC: 6
20 39277 99003 7 (the “July 22, 2016 Ground Cinnamon Notice”). No public enforcer has
21 commenced or diligently prosecuted the allegations set forth in the July 22, 2016 Ground
22 Cinnamon Notice.

23 1.4.16 On or about July 22, 2016, CAG served Settling Defendants, and various
24 public enforcement agencies with a document entitled “Sixty-Day Notice of Intent to Sue
25 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
26 provided the recipients with notice of alleged violations of Health & Safety Code §
27 25249.6 for failing to warn individuals in California of exposures to Lead contained in the
28 Ground Nutmeg they sell, including “Ground Nutmeg”; “Baker’s Secret”; “Net Wt. 1.75

1 oz., (50g)”; “Ground Nutmeg is great sprinkled on eggnog, baked into spice cake, or
2 blended into a latte. It also matches well with custards, whipped cream, sauces, rice
3 pudding, cakes, cookies, and bread.”; “Ground nutmeg enhances many foods with its rich
4 flavor and visual appeal. Use as a topping on raw or cooked apples, bananas, peaches, or
5 pears.” “Distributed by: Greenbrier International, Inc. 500 Volvo Parkway Chesapeake,
6 VA 23320”; UPC: 6 39277 23268 7 (the “July 22, 2016 Ground Nutmeg Notice”). No
7 public enforcer has commenced or diligently prosecuted the allegations set forth in the
8 July 22, 2016 Ground Nutmeg Notice.

9 1.4.17 On or about August 8, 2016, CAG served Settling Defendants, and various
10 public enforcement agencies with a document entitled “Sixty-Day Notice of Intent to Sue
11 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
12 provided the recipients with notice of alleged violations of Health & Safety Code §
13 25249.6 for failing to warn individuals in California of exposures to DEHP contained in
14 the Hand Lotion Travel Bags they sell, including Anti-Bacterial Hand Lotions – 3 Pack –
15 Travel Size”; Each Net Wt. 1 Oz (28.4g)/Total Net Wt. 3 oz (85.2 g)”; “Distributed By
16 Greenbrier International, Inc. 500 Volvo Parkway, Chesapeake, VA 23320”; “Made in
17 China”; UPC: 639277824080 (the “August 8, 2016 Notice”). No public enforcer has
18 commenced or diligently prosecuted the allegations set forth in the August 8, 2016 Notice.

19 1.4.18 On or about October 21, 2016, CAG served Settling Defendants, and
20 various public enforcement agencies with a document entitled “Sixty-Day Notice of Intent
21 to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
22 provided the recipients with notice of alleged violations of Health & Safety Code §
23 25249.6 for failing to warn individuals in California of exposures to DEHP contained in
24 the Plastic LED Spiders with Suction Cups they sell, including “Light-Up LED Color
25 Changing Spider”; Indoor use only; 222499-06691-245-063016; Imported by Greenbrier
26 International, Inc., 500 Volvo Parkway, Chesapeake, VA 23320; UPC: 639277134776
27 (the “October 21, 2016 Notice”). No public enforcer has commenced or diligently
28 prosecuted the allegations set forth in the October 21, 2016 Notice.

1 1.4.19 On or about November 15, 2016, CAG served Settling Defendants, and
2 various public enforcement agencies with a document entitled “Sixty-Day Notice of Intent
3 to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
4 provided the recipients with notice of alleged violations of Health & Safety Code §
5 25249.6 for failing to warn individuals in California of exposures to DEHP contained in
6 the Toiletry Travel Bags they sell, including “april bath & shower”; Vanilla Sugar Scent
7 Travel Set; Shampoo; Body Wash; Body Lotion; “Directions: For best results, apply
8 daily.” Each of the 3 containers is 2 FL OZ. Distributed by Greenbrier International, Inc.,
9 500 Volvo Parkway, Chesapeake, VA 23320; MADE IN CHINA; UPC 639277531650
10 (the “November 15, 2016 Toiletry Travel Bags Notice”). No public enforcer has
11 commenced or diligently prosecuted the allegations set forth in the November 15, 2016
12 Toiletry Travel Bags Notice.

13 1.4.20 On or about November 15, 2016, CAG served Settling Defendants, and
14 various public enforcement agencies with a document entitled “Sixty-Day Notice of Intent
15 to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that
16 provided the recipients with notice of alleged violations of Health & Safety Code §
17 25249.6 for failing to warn individuals in California of exposures to DEHP contained in
18 the Plastic Thermometers with plastic suction cups they sell, including Thermometer;
19 “Garden Collection”, clear plastic piece, featuring an outdoors scene, with a suction cup at
20 either end; “21331 1511”; Imported by Greenbrier International, Inc., 500 Volvo Parkway,
21 Chesapeake, VA 23320; MADE IN CHINA; UPC 639277072948 (the “November 15,
22 2016 Thermometers Notice”). No public enforcer has commenced or diligently prosecuted
23 the allegations set forth in the November 15, 2016 Thermometers Notice.

24 **1.5 Complaints.**

25 1.5.1 On March 16, 2015, CAG filed a Complaint for civil penalties and
26 injunctive relief in Los Angeles Superior Court, Case No. BC575729, against Settling
27 Defendants. The Complaint alleged, among other things, that Settling Defendants
28 violated Proposition 65 by failing to give clear and reasonable warnings of exposure to

1 DEHP as alleged in the July 16, 2014 Notice, the August 8, 2014 Gripper Notice, the
2 August 8, 2014 Eyewear Notice, the September 16, 2014 Notice, the October 13, 2014
3 Notice, the November 10, 2014 Notice, and the December 15, 2014 Fashion Accessories
4 and Eyewear Accessories Notices.

5 1.5.2 On May 20, 2015, CAG filed a First Amended Complaint (“FAC”) in the
6 Los Angeles Case adding the alleged violations in the March 3, 2015 Notice.

7 **1.6 Consent to Jurisdiction**

8 For purposes of this Consent Judgment, the Parties stipulate that this Court has
9 jurisdiction over the allegations of violations contained in the FAC and the Notices and personal
10 jurisdiction over Settling Defendants as to the acts alleged in the FAC and the Notices, that venue
11 is proper in the County of Los Angeles and that this Court has jurisdiction to enter this Consent
12 Judgment as a full settlement and resolution of the allegations contained in the FAC and the
13 Notices, and of all claims which were or could have been raised by any person or entity based in
14 whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or related
15 to.

16 **1.7 No Admission**

17 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
18 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
19 the Parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
20 constitute an admission with respect to any material allegation of the FAC or the Notices, each
21 and every allegation of which Settling Defendants denies, nor may this Consent Judgment or
22 compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on
23 the part of Settling Defendants.

24 **2. DEFINITIONS**

25 2.1 “Covered Products” means DEHP Covered Products as defined in section 2.4
26 below, Flip Flops, and Lead Covered Products as defined in section 2.6 below. Covered
27 Products are limited to those sold by the Settling Defendants.

28 2.2 “DBP” means Di-*n*-butyl Phthalate (DBP).

- 1 2.3 “DEHP” means Di(2-ethylhexyl)phthalate (DEHP).
- 2 2.4 “DEHP Covered Products” means:
- 3 2.4.1 Decorative Grapes
- 4 2.4.2 Gripper Pads
- 5 2.4.3 Reading Glasses
- 6 2.4.4 Eyeglass Repair Kits
- 7 2.4.5 Plastic Bracelets
- 8 2.4.6 Retractable ID Holder
- 9 2.4.7 LED Lights
- 10 2.4.8 Hand Lotion Travel Bags
- 11 2.4.9 Plastic LED spiders
- 12 2.4.10 Plastic Thermometers
- 13 2.4.11 Toiletry Travel Bags
- 14 2.5 “Exemplar Products” means the specific Covered Products identified in each of
- 15 the Notices.
- 16 2.6 “Lead Covered Products” means
- 17 2.6.1 Ground Ginger, Baker’s Select, UPC: 6 39277 23261 8
- 18 2.6.2 Supreme Tradition Ground Cinnamon, UPC: 6 39277 99003 7
- 19 2.6.3 Baker’s Secret Ground Nutmeg, UPC: 6 39277 23268 7
- 20 2.6.4 Smoked Mussels
- 21 2.7 “Effective Date” means the date that this Consent Judgment is approved by the
- 22 Court.
- 23 2.8 “Lead” means lead and lead compounds.
- 24 2.9 “Notices” means the Notices described in Section 1.4

25 **3. MATTERS COVERED BY THIS CONSENT JUDGMENT**

26 3.1 This Consent Judgment is a full, final, and binding resolution between CAG on

27 behalf of itself and in the public interest, and (i) Settling Defendants and their officers,

28 directors, insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries,

1 partners, affiliates, sister companies. and (ii) the suppliers and manufacturers and all other
2 persons and entities who sell or distribute the Covered Products to Settling Defendants, and (iii)
3 their respective successors and assigns, (collectively "Releasees"), for all claims for violations
4 of Proposition 65 up through the Effective Date based on exposure to DEHP, DBP, and Lead
5 from the Covered Products as set forth in the Notices, through the Effective Date. Settling
6 Defendants' compliance with this Consent Judgment shall constitute compliance with
7 Proposition 65 with respect to DEHP, DBP, and Lead from Covered Products as set forth in the
8 Notices. The scope of the release is limited to those sold Covered Products by the Settling
9 Defendants.

10 3.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
11 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
12 indirectly, any form of legal action and releases all claims, including, without limitation, all
13 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
14 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
15 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
16 fixed or contingent (collectively "CAG Claims"), against Releasees arising from any violation
17 of Proposition 65 or any other statutory or common law regarding the failure to warn about
18 exposure to DEHP in DEHP Covered Products, to DBP in Flip Flops, and to Lead in Lead
19 Covered Products through the Effective Date. In furtherance of the foregoing, as to alleged
20 exposures from the Covered Products, CAG hereby waives any and all rights and benefits
21 which it now has, or in the future may have, conferred upon it with respect to the CAG Claims
22 by virtue of the provisions of section 1542 of the California Civil Code, which provides as
23 follows:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
25 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
26 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
27 KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS
28 OR HER SETTLEMENT WITH THE DEBTOR.

1 CAG understands and acknowledges that the significance and consequence of this waiver of
2 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
3 resulting from, or related directly or indirectly to, in whole or in part, from any violation of
4 Proposition 65 or any other statutory or common law regarding exposure or failure to warn
5 about exposure to DEHP in DEHP Covered Products, to DBP in Flip Flops, and to Lead in
6 Lead Covered Products, CAG will not be able to make any claim for those damages against
7 Settling Defendants and the Releasees. Furthermore, CAG acknowledges that it intends these
8 consequences for any such CAG Claims as may exist as of the date of this release but which
9 CAG does not know exist, and which, if known, would materially affect its decision to enter
10 into this Consent Judgment, regardless of whether their lack of knowledge is the result of
11 ignorance, oversight, error, negligence, or any other cause. The scope of the release is limited
12 to those sold Covered Products by the Settling Defendants.

13 3.3 Settling Defendants, on behalf of themselves, their past and current agents,
14 representatives, attorneys, successors, and/or assignees, waive all rights to institute or
15 participate in, directly or indirectly, any form of legal action and releases all claims, including,
16 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
17 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
18 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever,
19 whether known or unknown, fixed or contingent (collectively "Defendant Claims"), against
20 CAG arising from enforcement of Proposition 65 relating to the failure to warn about exposure
21 to DEHP, DBP, and Lead in Covered Products through the Effective Date. In furtherance of the
22 foregoing, as to Defendant Claims, Settling Defendants waive any and all rights and benefits
23 which they now, or in the future may, have conferred upon them with respect to the Claims by
24 virtue of the provisions of section 1542 of the California Civil Code, which provides as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
26 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
27 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
28

1 KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS
2 OR HER SETTLEMENT WITH THE DEBTOR.

3 Settling Defendants understand and acknowledge that the significance and consequence of this
4 waiver of California Civil Code section 1542 is that even if Settling Defendants suffer future
5 damages arising out of or resulting from, or related directly or indirectly to, in whole or in part,
6 enforcement of Proposition 65 relating to the failure to warn about exposure to DEHP, DBP,
7 and Lead in Covered Products, Settling Defendants will not be able to make any claim for those
8 damages against CAG. Furthermore, Settling Defendants acknowledge that they intend these
9 consequences for any such Defendant Claims as may exist as of the date of this release but
10 which Settling Defendant do not know exist, and which, if known, would materially affect their
11 decision to enter into this Consent Judgment, regardless of whether their lack of knowledge is
12 the result of ignorance, oversight, error, negligence, or any other cause.

13 **4. INJUNCTIVE RELIEF/ REFORMULATION AND CLEAR AND REASONABLE**
14 **WARNING.**

15 4.1 **DEHP Covered Products.** Except as provided in Section 4.4, after the Effective
16 Date, Settling Defendants shall not distribute or sell in California any DEHP Covered Products
17 with any component that contains DEHP in excess of 0.1% (1,000 ppm).

18 4.2 **Lead Covered Products.**

19 4.2.1 After the Effective Date, Settling Defendants shall provide a clear and
20 reasonable warning pursuant to Section 4.5 for Lead Covered Products sold or offered for
21 retail sale by Settling Defendants in California.

22 4.2.2 Settling Defendants may comply with a court-approved settlement
23 agreement between CAG and a Lead Covered Product purchased from Gel Spice
24 Company, Inc., other than smoked mussels that contains injunctive relief that is different
25 from Section 4.2.1 or Section 4.5, in lieu of the requirements of Section 4.2.1.
26
27
28

1 4.3 **Flip Flops.** Except as provided in Section 4.4, after the Effective Date, Settling
2 Defendants shall not distribute or sell in California any Flip Flops with any component that
3 contains DBP in excess of 0.1% (1,000 ppm).

4 4.4 **Existing Inventory.** Notwithstanding Sections 4.1 and 4.3, Settling Defendants
5 may sell in California DEHP Covered Products and Flip Flops in their existing inventory as of
6 the Effective Date. Settling Defendants shall provide a warning that complies with Section 4.5
7 for Exemplar Products, until the existing inventory is depleted and after which the Exemplar
8 Products will be sold by complying with the reformulation standards in Section 4.1 and 4.3 as
9 applicable.

10 4.5 **Warnings for Existing Inventory of Exemplar Products and Lead Covered**
11 **Products.**

12 4.5.1 Settling Defendants shall provide clear and reasonable warnings for
13 Exemplar Products and Lead Covered Products sold in California by either (i) affixing or
14 printing the compliant warning to the packaging of, or directly on, the Exemplar Products
15 and Lead Covered Products, or (ii) by providing a warning on a point-of-display sign
16 which identifies the specific type of Covered Product to which the warning applies.
17 Warnings must be prominently placed with such conspicuousness as compared with other
18 words, statements, designs, or devices as to render it likely to be read and understood by
19 an ordinary individual under customary conditions during purchase or use.

20 4.5.2 Warnings provided pursuant to this Section shall state:

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

23 4.5.3 At their option, Settling Defendants may also comply with this Section 4.5
24 by providing warnings that comply with the methods and/or warning content of Title 27,
25 California Code of Regulations, Article 6, Subarticle 2, Safe Harbor Methods and Content
26 (§§ 25601 et seq.) (Adopted August 30, 2016).

27 4.6 **Vendor Requirement and Good Faith Efforts to Reformulate.** Within 30
28 days of the Effective Date, Settling Defendants shall use good faith efforts to require all of their

1 existing suppliers of DEHP Covered Products, Exemplar Products, and Flip Flops to comply
2 with the DEHP and DBP reformulation limits applicable to Covered Products under Sections
3 4.1 and 4.3, respectively, and Settling Defendants shall use good faith efforts to ensure the
4 Settling Defendants themselves purchase, distribute, and sell DEHP Covered Products,
5 Exemplar Products and Flip Flops that meet the reformulation limits applicable to Covered
6 Products under Sections 4.1 and 4.3, respectively, as to such DEHP Covered Products,
7 Exemplar Products or Flip Flops sold outside California.

8 **5. SETTLEMENT PAYMENTS**

9 5.1 Within 14 business days of the Effective Date or receipt of Forms W-9 from
10 CAG whichever is later, Settling Defendants shall pay a total of \$935,000 as complete
11 settlement of all monetary claims by CAG related to the Notices, as follows.

12 5.2 **Payment In Lieu of Civil Penalties:** Settling Defendants shall pay \$21,400 in
13 lieu of civil penalties to "Consumer Advocacy Group, Inc." CAG will use this payment as
14 follows, seventy percent (70%) for fees of investigation, purchasing and testing for Proposition
15 65 listed chemicals in various products, and for expert fees for evaluating exposures through
16 various mediums, including but not limited to consumer product, occupational, and
17 environmental exposures to Proposition 65 listed chemicals, and the cost of hiring consulting
18 and retained experts who assist with the extensive scientific analysis necessary for those files in
19 litigation; twenty percent (20%) for administrative costs incurred during the investigation and
20 litigation to reduce the public's exposure to Proposition 65 listed chemicals by notifying those
21 persons and/or entities believed to be responsible for such exposures and attempting to persuade
22 those persons and/or entities to reformulate their products or the source of exposure to
23 completely eliminate or lower the level of Proposition 65 listed chemicals including but not
24 limited to costs of documentation and tracking of products investigated, storage of products,
25 website enhancement and maintenance, computer and software maintenance, investigative
26 equipment, CAG's member's time for work done on investigations, office supplies, mailing
27 supplies and postage; and ten percent (10%) to offset the costs of future litigation enforcing
28 Proposition 65 but excluding attorney fees, thereby addressing the same public harm as

1 allegedly in the instant Action. Within 30 days of a request from the Attorney General, CAG
2 shall provide to the Attorney General copies of documentation demonstrating how the above
3 funds have been spent.

4 **5.3 Reimbursement of Attorney's Fees and Costs:** Settling Defendants shall pay
5 \$885,000 to "Yeroushalmi & Associates" as reimbursement for the investigation fees and costs,
6 testing costs, expert fees, attorney fees, and other litigation costs and expenses for all work
7 performed through the approval of this Consent Judgment.

8 **5.4 Civil penalty:** Settling Defendants shall issue two separate checks for a
9 total amount of \$28,600 as penalties pursuant to Health & Safety Code § 25249.12: (a) one
10 check made payable to the State of California's Office of Environmental Health Hazard
11 Assessment (OEHHA) in the amount of \$21,450, representing 75% of the total penalty; and (b)
12 one check to Consumer Advocacy Group, Inc. in the amount of \$7,150 representing 25% of the
13 total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall
14 be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the
15 amount of \$21,450. The second 1099 shall be issued in the amount of \$7,150 to CAG and
16 delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills,
17 California 90212.

18 **5.5** All payments to CAG and Yeroushalmi & Associates under this Consent
19 Judgment shall be delivered to: Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite
20 240W, Beverly Hills, CA 90212.

21 **6. ENFORCEMENT OF JUDGMENT**

22 **6.1** The terms of this Consent Judgment shall be enforced exclusively by the parties
23 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
24 California, Los Angeles, giving the notice required by law, enforce the terms and conditions
25 contained herein. A Party may enforce any of the terms and conditions of this Consent
26 Judgment only after that Party first provides 30 days' notice to the Party allegedly failing to
27 comply with the terms and conditions of this Consent Judgment and attempts to resolve such
28 Party's failure to comply in an open and good faith manner.

1 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
2 proceeding to enforce Section 4 of this Consent Judgment, CAG shall provide a Notice of
3 Violation (“NOV”) to Settling Defendants. The NOV shall include for each Covered Product:
4 the date(s) the alleged violation(s) was observed and the location at which the Covered Product
5 was offered for sale, and shall be accompanied by all test data obtained by CAG regarding the
6 Covered Product.

7 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
8 alleged violation if, within 30 days of receiving such NOV, a Settling Defendant serves a
9 Notice of Election (“NOE”) that meets one of the following conditions:

10 (a) The Covered Product was distributed, sold, or offered for sale by
11 Settling Defendant for sale in California before the Effective Date, or

12 (b) Since receiving the NOV, Settling Defendant has taken corrective
13 action by removing the Covered Product identified in the NOV from sale in California, or
14 (ii) providing a clear and reasonable warning for the Covered Product identified in the
15 NOV pursuant to Section 4.5.

16 6.2.2 **Contested NOV.** A Settling Defendant may serve an NOE informing
17 CAG of its election to contest the NOV within 30 days of receiving the NOV.

18 (a) In its election, a Settling Defendant may request that the same
19 sample(s) of Covered Product(s) tested by CAG be subject to confirmatory testing at an
20 accredited laboratory.

21 (b) If the confirmatory testing establishes that the Covered Product
22 does not contain DEHP or DBP in excess of the level allowed in Section 4, or Lead above
23 150 ppb for Lead Covered Products purchased from Gel Spice Company, Inc. other than
24 smoked mussels, CAG shall take no further action regarding the alleged violation. If the
25 testing does not establish compliance with Section 4, the Settling Defendant may
26 withdraw its NOE to contest the violation and may serve a new NOE pursuant to Section
27 6.2.1.

28

1 (c) If a Settling Defendant does not withdraw an NOE to contest the
2 NOV, the Parties shall meet and confer for a period of no less than 30 days before CAG
3 may seek an order enforcing the terms of this Consent Judgment.

4 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the
5 prevailing party shall be entitled to recover its attorney's fees and costs.

6 **7. ENTRY OF CONSENT JUDGMENT**

7 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
8 California Health & Safety Code § 25249.7(f).

9 7.2 Upon entry of the Consent Judgment, the FAC shall be deemed to be amended to
10 include the claims identified in the March 27, 2015 Notice, May 1, 2015 Notice, June 12, 2015
11 Notice, December 1, 2015 Notice, June 30, 2016 Notice, July 22, 2016 Ground Cinnamon
12 Notice, July 22, 2016 Ground Nutmeg Notice, August 8, 2016 Notice, October 21, 2016 Notice,
13 November 15, 2016 Toiletry Travel Bags Notice, and November 15, 2016 Thermometers
14 Notice.

15 7.3 If this Consent Judgment is not approved by the Court in its entirety, (a) this
16 Consent Judgment and any and all prior agreements between the Parties merged herein shall
17 terminate and become null and void, and the actions shall revert to the status that existed prior
18 to the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any
19 draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties'
20 settlement discussions, shall have any effect, nor shall any such matter be admissible in
21 evidence for any purpose in this Action, or in any other proceeding; and (c) the Parties agree to
22 meet and confer to determine whether to modify the terms of the Consent Judgment and to
23 resubmit it for approval.

24 **8. MODIFICATION OF JUDGMENT**

25 8.1 This Consent Judgment may be modified only upon written agreement of the
26 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
27 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

28

1 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith
2 to meet and confer with the other Party prior to filing a motion to modify the Consent
3 Judgment.

4 **9. RETENTION OF JURISDICTION**

5 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
6 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

7 **10. SERVICE ON THE ATTORNEY GENERAL**

8 10.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
9 California Attorney General so that the Attorney General may review this Consent Judgment
10 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
11 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
12 absence of any written objection by the Attorney General to the terms of this Consent
13 Judgment, the parties may then submit it to the Court for approval.

14 **11. ATTORNEYS' FEES**

15 11.1 Except as specifically provided in Sections 5.3 and 6.3, each Party shall bear its
16 own costs and attorney's fees in connection with this action.

17 **12. ENTIRE AGREEMENT**

18 12.1 This Consent Judgment contains the sole and entire agreement and
19 understanding of the Parties with respect to the entire subject matter hereof and any and all prior
20 discussions, negotiations, commitments and understandings related hereto. No representations,
21 oral or otherwise, express or implied, other than those contained herein have been made by any
22 party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
23 deemed to exist or to bind any of the Parties.

24 **13. GOVERNING LAW**

25 13.1 The validity, construction and performance of this Consent Judgment shall be
26 governed by the laws of the State of California, without reference to any conflicts of law
27 provisions of California law.
28

1 13.2 The Parties, including their counsel, have participated in the preparation of this
2 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
3 This Consent Judgment was subject to revision and modification by the Parties and has been
4 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
5 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
6 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
7 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are
8 to be resolved against the drafting Party should not be employed in the interpretation of this
9 Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

10 **14. EXECUTION IN COUNTERPARTS**

11 14.1 This Consent Judgment may be executed in counterparts and by means of
12 electronic signature, which taken together shall be deemed to constitute one document.

13 **15. NOTICES**

14 15.1 Any notices under this Consent Judgment shall be by personal delivery or First
15 Class Mail.

<p>17 If to CAG:</p> <p>18 Reuben Yeroushalmi, Esq. 19 Yeroushalmi & Yeroushalmi 20 9100 Wilshire Boulevard, Suite 240W 21 Beverly Hills, CA 90212 22 (310) 623-1926</p>	<p>If to Settling Defendants:</p> <p>Keith P. Zanni, Esq. Assistant General Counsel, Compliance Dollar Tree 500 Volvo Parkway Chesapeake, VA 23320</p> <p>With a copy to:</p> <p>Jeffrey B. Margulies, Esq. Norton Rose Fulbright US LLP 555 South Flower Street 41st Floor Los Angeles, California 90071</p>
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1 **16. AUTHORITY TO STIPULATE**

2 16.1 Each signatory to this Consent Judgment certifies that he or she is fully
3 authorized by the party he or she represents to enter into this Consent Judgment and to execute
4 it on behalf of the party represented and legally to bind that party.

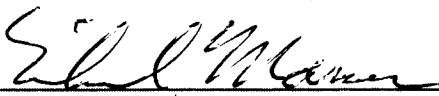
5
6
7 **AGREED TO:**

8 Date:

05/17/17

AGREED TO:

Date:

9 



10 Name: Michael Marcus

Name: Robert H. Rudman

11 Title: Director
12 CONSUMER ADVOCACY GROUP,
INC.

Title: CMO
DOLLAR TREE STORES, INC.

AGREED TO:

Date:

15 

16 Name: ROBERT H. Rudman

17 Title: Pres./Sons/CEO
18 GREENBRIER INTERNATIONAL, INC.

19 **IT IS SO ORDERED.**

20
21 Date: _____

22 JUDGE OF THE SUPERIOR COURT