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CENTER FOR ENVIRONMENTAL HEALTH

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

11
12 Coordination Proceeding Special Title:) Judicial Council Coordination
13 PROPOSITION 65 COCAMIDE DEA CASES) Proceeding
14 _____) Case No. 4765
15 This Document Relates To:) **[PROPOSED] CONSENT**
16 *CEH v. Mudlark Papers Inc., et al., A.C.S.C.*) **JUDGMENT AS TO DOLLAR**
17 Case No. RG 13-707833) **TREE DISTRIBUTION, INC.,**
) **DOLLAR TREE STORES, INC.,**
) **AND GREENBRIER**
) **INTERNATIONAL, INC.**

18
19 **1. INTRODUCTION**

20 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
21 Environmental Health (“CEH”) and Defendants Dollar Tree Distribution, Inc., Dollar Tree Stores,
22 Inc., and Greenbrier International, Inc. (“Settling Defendants”). CEH and Settling Defendants are
23 referred to collectively as the “Parties.”

24 1.2 Settling Defendants are corporations that employ ten (10) or more persons and
25 that manufacture, distribute, and/or sell shampoo and liquid soaps that contain coconut oil
26 diethanolamine condensate (cocamide diethanolamine) (hereinafter, “cocamide DEA”) in the
27 State of California or have done so in the past.
28

1 1.3 More than sixty days prior to naming each Settling Defendant as a defendant
2 in these coordinated cases, CEH served a 60-Day Notice of Violation under Proposition 65 (The
3 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§
4 25249.5, *et seq.*) to Settling Defendants, the California Attorney General, the District Attorneys
5 of every County in the State of California, and the City Attorneys for every City in the State of
6 California with a population greater than 750,000. The Notices allege violations of Proposition
7 65 with respect to the presence of cocamide DEA in shampoo and liquid soaps manufactured,
8 distributed and/or sold by Settling Defendants.

9 1.4 On December 23, 2013, CEH filed the action entitled *Center for*
10 *Environmental Health v. Mudlark Papers Inc., et al.*, Case No. RG 13-707833, in the Superior
11 Court of California for Alameda County, naming Settling Defendants Dollar Tree Distribution,
12 Inc. and Dollar Tree Stores, Inc. as defendants in that action. On April 1, 2014, the *Mudlark*
13 action was coordinated with several other related Proposition 65 actions in the *Proposition 65*
14 *Cocamide DEA Cases*, Case No. JCCP 4765, currently pending before this Court. On _____,
15 2014, CEH named Settling Defendant Greenbrier International, Inc. as a defendant in the
16 *Mudlark* action pursuant to California Code of Civil Procedure § 474.

17 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
18 Court has jurisdiction over the allegations of violations contained in the operative Complaints
19 applicable to Settling Defendants and personal jurisdiction over Settling Defendants as to the acts
20 alleged in the Complaints; (ii) venue is proper in the County of Alameda; and (iii) this Court has
21 jurisdiction to enter this Consent Judgment.

22 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
23 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
24 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
25 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
26 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
27 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
28 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in

1 this action.

2 **2. DEFINITIONS**

3 2.1 “Covered Products” means shampoo and liquid soaps such as hand soaps, soap
4 sheets, body washes, pet soaps, shower gels, and bubble baths.

5 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
6 the Court.

7 **3. INJUNCTIVE RELIEF**

8 3.1 **Reformulation of Covered Products.** As of the Effective Date, Settling
9 Defendants shall not manufacture, distribute, sell, or offer for sale any Covered Product that
10 contains cocamide DEA and that will be sold or offered for sale to California consumers. For
11 purposes of this Consent Judgment, a product “contains cocamide DEA” if cocamide DEA is an
12 intentionally added ingredient in the product and/or part of the product formulation.

13 3.2 **Specification to Suppliers.** No more than thirty (30) days after the Effective
14 Date, Settling Defendants shall issue specifications to their suppliers of Covered Products
15 requiring that Covered Products not contain any cocamide DEA, and shall instruct each supplier
16 to use reasonable efforts to eliminate Covered Products containing cocamide DEA on a
17 nationwide basis.

18 3.3 **Action Regarding Specific Products.**

19 3.3.1 On or before the Effective Date, Settling Defendants shall cease selling the
20 following specific products in California, unless such products have been reformulated such that
21 they do not contain cocamide DEA: (i) the Iron Man 3 Berry Blast Bubble Bath, SKU No. 0-
22 41348-00801-3; and (ii) the Serenity Pomegranate Foaming Hand Soap, SKU No. 0-17911-
23 09031-0 (the “Section 3.3 Products”). On or before the Effective Date, Settling Defendants shall
24 also: (i) cease shipping the Section 3.3 Products to any of their stores and/or customers that resell
25 the Section 3.3 Products in California; and (ii) send instructions to their stores and/or customers
26 that resell the Section 3.3 Products in California instructing them either to: (a) return all the
27 Section 3.3 Products to Settling Defendants for destruction; or (b) directly destroy the Section 3.3
28 Products.

1 3.3.2 Any destruction of Section 3.3 Products shall be in compliance with all
2 applicable laws.

3 3.3.3 Within sixty (60) days of the Effective Date, Settling Defendants shall
4 provide CEH with written certification from Settling Defendants confirming compliance with the
5 requirements of this Section 3.3.

6 **4. ENFORCEMENT**

7 4.1 CEH may, by motion or application for an order to show cause before the
8 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
9 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3
10 above, CEH shall provide Settling Defendants with a Notice of Violation and a copy of any test
11 results which purportedly support the Notice of Violation. The Parties shall then meet and confer
12 regarding the basis for the anticipated motion or application in an attempt to resolve it informally,
13 including providing Settling Defendants with a reasonable opportunity of at least thirty (30) days
14 to cure any alleged violation. Should such attempts at informal resolution fail, CEH may file an
15 enforcement motion or application. This Consent Judgment may only be enforced by the Parties.

16 **5. PAYMENTS**

17 5.1 **Payments by Settling Defendants.** Within five (5) business days of the Effective
18 Date, Settling Defendants shall pay the total sum of \$37,500 as a settlement payment. The total
19 settlement amount for Settling Defendants shall be paid in four separate checks delivered to
20 counsel for CEH at the address set forth in Section 8.1 below. The funds paid by Settling
21 Defendants shall be allocated between the following categories:

22 5.1.1 \$4,125 as a civil penalty pursuant to Health & Safety Code § 25249.7(b),
23 such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12
24 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
25 Assessment). The civil penalty check shall be made payable to the Center for Environmental
26 Health.

27 5.1.2 \$5,625 as a payment in lieu of civil penalty to CEH pursuant to Health &
28 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use

1 such funds to continue its work educating and protecting people from exposures to toxic
2 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent
3 Judgment and to purchase and test Settling Defendants' products to confirm compliance. In
4 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four
5 percent (4%) of such funds to award grants to grassroots environmental justice groups working to
6 educate and protect people from exposures to toxic chemicals. The method of selection of such
7 groups can be found at the CEH web site at www.ceh.org/justicefund. The payment pursuant to
8 this Section shall be made payable to the Center for Environmental Health.

9 5.1.3 \$27,750 as reimbursement of a portion of CEH's reasonable attorneys' fees
10 and costs. A check for \$24,000 shall be made payable to the Lexington Law Group, and a check
11 for \$3,750 shall be made payable to the Center for Environmental Health.

12 **6. MODIFICATION**

13 6.1 **Written Consent.** This Consent Judgment may be modified from time to
14 time by express written agreement of the Parties with the approval of the Court, or by an order of
15 this Court upon motion and in accordance with law.

16 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
17 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
18 modify the Consent Judgment.

19 **7. CLAIMS COVERED AND RELEASED**

20 7.1 This Consent Judgment is a full, final, and binding resolution between (i) CEH
21 on behalf of itself and the public interest, and (ii) Settling Defendants, and their parents,
22 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
23 and attorneys ("Defendant Releasees"), and each entity to whom they directly or indirectly
24 distribute or sell Covered Products, including but not limited to distributors, wholesalers,
25 customers, retailers, franchisees, cooperative members, licensors, and licensees ("Downstream
26 Defendant Releasees"), of any violation of Proposition 65 that was or could have been asserted in
27 the Complaints against Settling Defendants, Defendant Releasees, and Downstream Defendant
28 Releasees, based on failure to warn about alleged exposure to cocamide DEA contained in

1 Covered Products that were purchased by Settling Defendants prior to the Effective Date.

2 7.2 Compliance with the terms of this Consent Judgment by Settling Defendants
3 and the Defendant Releasees shall constitute compliance with Proposition 65 by Settling
4 Defendants and their Defendant Releasees with respect to any alleged failure to warn about
5 cocamide DEA in Covered Products manufactured, distributed, or sold by Settling Defendants
6 after the Effective Date.

7 7.3 Nothing in this Section 7 affects CEH's right to commence or prosecute an
8 action under Proposition 65 against any person other than Settling Defendants, Defendant
9 Releasees, or Downstream Defendant Releasees.

10 **8. NOTICE**

11 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
12 notice shall be sent by first class and electronic mail to:

13 Mark Todzo
14 Lexington Law Group
15 503 Divisadero Street
16 San Francisco, CA 94117
17 mtodzo@lexlawgroup.com

18 8.2 When Settling Defendants are entitled to receive any notice under this Consent
19 Judgment, the notice shall be sent by first class and electronic mail to:

20 Margaret Carew Toledo
21 Stacy E. Don
22 Toledo Don LLP
23 3001 Douglas Blvd., Suite 340
24 Roseville, CA 95661
25 toledo@toledodon.com
26 don@toledodon.com

27 8.3 Any Party may modify the person and address to whom the notice is to be sent
28 by sending the other Party notice by first class and electronic mail.

29 **9. COURT APPROVAL**

30 9.1 This Consent Judgment shall become effective upon entry by the Court. CEH
31 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendants

1 shall support entry of this Consent Judgment.

2 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
3 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
4 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

5 **10. ATTORNEYS' FEES**

6 10.1 Should CEH prevail on any motion, application for an order to show cause, or
7 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
8 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
9 Settling Defendants prevail on any motion application for an order to show cause or other
10 proceeding, Settling Defendants may be awarded their reasonable attorneys' fees and costs as a
11 result of such motion or application upon a finding by the Court that CEH's prosecution of the
12 motion or application lacked substantial justification. For purposes of this Consent Judgment, the
13 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of
14 1986, Code of Civil Procedure §§ 2016, *et seq.*

15 10.2 Except as otherwise provided in this Consent Judgment, each Party shall bear
16 its own attorneys' fees and costs.

17 10.3 Nothing in this Section 10 shall preclude a Party from seeking an award of
18 sanctions pursuant to law.

19 **11. OTHER TERMS**

20 11.1 The terms of this Consent Judgment shall be governed by the laws of the State
21 of California.

22 11.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
23 Defendants, and their respective divisions, subdivisions, and subsidiaries, and the successors or
24 assigns of any of them.

25 11.3 This Consent Judgment contains the sole and entire agreement and
26 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
27 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
28 merged herein and therein. There are no warranties, representations, or other agreements between

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

9 11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights
10 that Settling Defendants might have against any other party, whether or not that party is a Settling
11 Defendant.

12 11.5 This Court shall retain jurisdiction of this matter to implement or modify the
13 Consent Judgment.

14 11.6 The stipulations to this Consent Judgment may be executed in counterparts
15 and by means of facsimile or portable document format (pdf), which taken together shall be
16 deemed to constitute one document.

17 11.7 Each signatory to this Consent Judgment certifies that he or she is fully
18 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
19 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
20 Party.

21 11.8 The Parties, including their counsel, have participated in the preparation of
22 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
23 This Consent Judgment was subject to revision and modification by the Parties and has been
24 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
25 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
26 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
27 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
28 be resolved against the drafting Party should not be employed in the interpretation of this Consent

1 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

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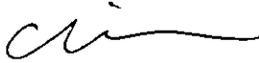
3 **IT IS SO STIPULATED:**

4

5 **CENTER FOR ENVIRONMENTAL HEALTH**

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Charlie Pizarro
Associate Director

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DOLLAR TREE DISTRIBUTION, INC.

12

13

Signature

14

15

16

Printed Name

17

18

Title

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DOLLAR TREE STORES, INC.

21

22

23

Signature

24

25

Printed Name

26

27

28

Title

1 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

2

3 **IT IS SO STIPULATED:**

4

5 **CENTER FOR ENVIRONMENTAL HEALTH**

6

7

8 _____
Charlie Pizarro
Associate Director

9

10

11 **DOLLAR TREE DISTRIBUTION, INC.**

12

13 William A. Old
Signature

14

15 William A. Old
Printed Name

16

17
18 Chief Legal Officer
Title

19

20 **DOLLAR TREE STORES, INC.**

21

22 Robert H. Rudman
Signature

24 ROBERT H. Rudman
Printed Name

26

27 CMC
Title

28

1 GREENBRIER INTERNATIONAL, INC.

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4 Signature

5 ROBERT H. Rudman

6 Printed Name

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8 President / CEO

9 Title

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11 IT IS SO ORDERED:

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13 Dated: _____, 2014

Judge of the Superior Court

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