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8 *Attorneys for Plaintiff*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
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12 Plaintiff,
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14 vs.
15 GREENBRIER INTERNATIONAL,
16 INC. and DOLLAR TREE STORES,
17 INC.,
18
19 Defendants.

CASE NO.: RG15797630
JUDGE
DEPT.:
[PROPOSED] CONSENT JUDGMENT

1 **1. Introduction**

2 1.1 On May 21, 2015, Anthony Ferreiro (“Ferreiro”) served Greenbrier International,
3 Inc. (“Greenbrier”), Dollar Tree, Inc., and Dollar Tree Stores, Inc. (“Dollar Tree”), and various
4 public enforcement agencies with a document entitled “Notice of Violation of California Health
5 & Safety Code § 25249.6, *et seq.*” (the “Notice”). The Notice provided Greenbrier and such
6 others, including public enforcers, with notice that alleged that Greenbrier was in violation of
7 California Health & Safety Code § 25249.6 (“Proposition 65”), for failing to warn consumers and
8 customers that PVC Sewing Kits, UPC No. 6 3927782250 5/SKU No. 182250 (the “Product”)
9 exposed users in California to the chemicals Di(2-ethylhexyl) phthalate (DEHP). No public
10 enforcer has diligently prosecuted the allegations set forth in the Notice.

11 1.2 On December 22, 2015, Ferreiro filed a Complaint for Civil Penalties and
12 Injunctive Relief (“Complaint”) in Alameda County Superior Court, Case No. RG15797630,
13 against Greenbrier and Dollar Tree alleging violations of Proposition 65.

14 1.3 Greenbrier and Dollar Tree are corporations that employ more than ten persons
15 under California Health and Safety Code §25249.6

16 1.4 Ferreiro’s Complaint alleges, among other things, that Greenbrier and/or Dollar
17 Tree manufactured, distributed, and/or offered for sale the Product in California and/or to
18 California citizens, that the Product contains DEHP, and that the resulting exposure violated
19 provisions of Proposition 65, by knowingly and intentionally exposing persons to a chemical
20 known to the State of California to cause both cancer and reproductive toxicity, developmental,
21 male, without first providing a clear and reasonable warning to such individuals.

22 1.5 For purposes of this Consent Judgment only, the parties stipulate that this Court
23 has jurisdiction over the allegations of violations contained in the Complaint and personal
24 jurisdiction over Greenbrier and Dollar Tree as to the acts alleged in the Complaint, that venue is
25 proper in the County of Alameda, and that this Court has jurisdiction to enter this Consent
26 Judgment as a resolution of the allegations contained in the Complaint.

27 1.6 The parties enter into this Consent Judgment pursuant to a full, final and binding
28 settlement of disputed claims between the parties as alleged in the Complaint for the purpose of

1 avoiding prolonged litigation. By execution of this Consent Judgment, Greenbrier and Dollar
2 Tree do not admit any violation of Proposition 65 and specifically denies that they, and each of
3 them, committed any such violation. Nothing in this Consent Judgment shall be construed as an
4 admission by Greenbrier or Dollar Tree of any fact, issue of law or violation of law, nor shall
5 compliance with the Consent Judgment constitute or be construed as an admission by Greenbrier
6 or Dollar Tree of any fact, issue of law, or violation of law. Nothing in this Consent Judgment
7 shall prejudice, waive, or impair any right, remedy or defense that Greenbrier or Dollar Tree may
8 have in any other future legal proceeding. However, this paragraph shall not diminish or
9 otherwise affect the obligations, responsibilities and duties of Greenbrier and Dollar Tree under
10 this Consent Judgment.

11 1.7 For purposes of this Consent Judgment, the term "Effective Date" shall mean the
12 date that the Consent Judgment is entered by the Court.

13 **2. Injunctive Relief**

14 2.1 Commencing on the Effective Date, and continuing thereafter, Dollar Tree and
15 Greenbrier shall only ship, sell, or offer for sale in California, Reformulated Product pursuant to
16 Section 2.2. For purposes of this Settlement Agreement, a "Reformulated Product" is Product
17 that meets the standard set forth in Section 2.2 below.

18 2.2 "Reformulated Product" shall mean Product that contains less than or equal to
19 1,000 parts per million ("ppm") of DEHP when analyzed pursuant to U.S. Environmental
20 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by
21 federal or state government agencies for the purpose of determining DEHP content in a solid
22 substance.

23 **3. Entry of Consent Judgment**

24 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.
25 Upon entry of this Consent Judgment, Ferreiro, Dollar Tree and Greenbrier waive their respective
26 rights to a hearing or trial on the allegations of the Ferreiro Complaint and 60-Day Notice.

27 3.2 In the event that the Attorney General objects or otherwise comments on one or
28 more provisions of this Consent Judgment, Ferreiro, Dollar Tree and Greenbrier agree to take

1 reasonable steps to satisfy such concerns or objections.

2 **4. Matters Covered By This Consent Judgment**

3 4.1 This Consent Judgment is a full, final and binding resolution between Plaintiff
4 Ferreiro, acting on his own behalf, and on behalf of the public and in the public interest, and
5 Defendants Greenbrier and Dollar Tree and their respective parents, subsidiaries, affiliated
6 entities under common ownership, directors, officers, agents employees, attorneys, and each
7 entity to whom Greenbrier and/or Dollar Tree directly or indirectly distributes or sells the
8 Product, including, but not limited, to downstream distributors, wholesalers, customers, retailers,
9 franchisees, cooperative members, and licensees (collectively, "Releasees"), and shall have
10 preclusive effect such that no other person or entity, whether purporting to act in his, her, or its
11 interests or the public interest shall be permitted to pursue and/or take any action with respect to:
12 (i) any violation of Proposition 65 that was alleged in the Complaint, or that could have been
13 brought pursuant to the Notice; or (ii) any other statutory or common law claim, to the fullest
14 extent that any of the foregoing described in (i) or (ii) were or could have been asserted by any
15 person or entity against any Releasee based on its purported exposure of persons to the Product,
16 or its purported failure to provide a clear and reasonable warning of exposure to such individuals,
17 or (iii) as to alleged exposures to the Product, any other claim based on whole or in part on the
18 facts alleged in the Complaint and the Notice, whether based on actions committed by Greenbrier
19 and/or Dollar Tree or their downstream retailers of the Product. As to alleged exposures to the
20 Product, compliance with the terms of this Consent Judgment resolves any issue, now and in the
21 future, and is deemed sufficient to satisfy all obligations concerning, compliance by Greenbrier
22 and Dollar Tree, and each of them, with the requirements of Proposition 65 with respect to the
23 Product, and any alleged resulting exposure.

24 4.2 As to alleged exposures to the Product, Ferreiro waives all rights to institute any
25 form of legal action, and releases all claims against Releasees whether under Proposition 65 or
26 otherwise, arising out of or resulting from, or related directly or indirectly to, in whole or in part,
27 the Product, including but not limited to any exposure to, or failure to warn with respect to, the
28 Product (referred to collectively in this Section as the "Claims"). In furtherance of the foregoing,

1 as to alleged exposures to the Product, Ferreiro waives any and all rights and benefits which he
2 now has, or in the future may have, conferred upon him with respect to the Claims by virtue of
3 the provisions of § 1542 of the California Civil Code, which provides as follows:

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

9 Ferreiro understands and acknowledges that the significance and consequence of this waiver of
10 California Civil Code § 1542 is that even if Ferreiro suffers future damages arising out of or
11 resulting from, or related directly or indirectly to, in whole or in part, the Product, including but
12 not limited to any exposure to, or failure to warn with respect to exposure to, the Product, Ferreiro
13 will not be able to make any claim for those damages against any Releasee

14 **5. Enforcement of Judgment**

15 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
16 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
17 Alameda County, giving the notice required by law, enforce the terms and conditions contained
18 herein. In any proceeding brought by either party to enforce this Consent Judgment, such party
19 may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation
20 of Proposition 65 or this Consent Judgment.

21 **6. Modification of Judgment**

22 6.1 This Consent Judgment may be modified only by written agreement of the parties
23 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as
24 provided by law and upon an entry of a modified Consent Judgment by the Court.

25 6.2 Without limiting the generality of the foregoing, should any court enter final
26 judgment in a case brought by Ferreiro or the People involving the Product that sets forth
27 standards defining when Proposition 65 warnings will or will not be required (“Alternative
28 Standards”), or if the California Attorney General’s office otherwise provides written

1 endorsement (i.e., a writing that is circulated by the Attorney General that is not intended for the
2 purpose of soliciting further input or comments) of Alternative Standards applicable to the
3 products that are of the same general type and function as the Product and constructed from the
4 same materials, Greenbrier and Dollar Tree shall be entitled to seek a modification of this
5 Consent Judgment on sixty (60) days' notice to Ferreiro so as to be able to utilize and rely on such
6 Alternative Standards in lieu of those set forth in Section 7 of this Consent Judgment. Ferreiro
7 shall not unreasonably contest any proposed application to effectuate such a modification and
8 reserves the right to dispute whether the Product for which such a modification is sought is of the
9 same general type and function as those to which the Alternative Standards apply.

10 **7. Settlement Payment**

11 7.1 In settlement of all the claims referred to in this Consent Judgment, and without
12 any admission of liability therefor, Greenbrier shall make the following monetary payments:

13 7.1.1 Greenbrier shall cause to be paid a total of \$5,000.00 in civil penalties in
14 accordance with this Section. The civil penalty payment will be allocated in accordance with
15 California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the
16 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
17 25% of the civil penalty remitted to Ferreiro.

18 7.1.2 Within seven (7) business days of the Effective Date, Greenbrier shall
19 cause to be issued two separate checks for the initial civil penalty payment to (a) "OEHHA" in the
20 amount of \$3,750.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of
21 \$1,250.00. Payment owed to Ferreiro pursuant to this Section shall be delivered to the following
22 payment address:

23 Evan J. Smith, Esquire
24 Brodsky & Smith, LLC
25 Two Bala Plaza, Suite 510
26 Bala Cynwyd, PA 19004

27 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
28 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

For United States Postal Service Delivery:

1
2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 P.O. Box 4010
6 Sacramento, CA 95812-4010

7 For Non-United States Postal Service Delivery:

8 Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 1001 I Street
12 Sacramento, CA 95814

13 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address
14 set forth above as proof of payment to OEHHA.

15 7.1.3 In addition to the payment above, Greenbrier shall cause to be paid
16 \$40,000.00 to Brodsky & Smith, LLC (“Brodsky Smith”) as complete reimbursement for Plaintiff
17 Ferreiro’s attorneys’ fees and costs, including any investigation and laboratory costs or expert
18 fees, incurred in the course of bringing the Ferreiro action, and in enforcing Proposition 65,
19 including without limitation, preparation of the 60-Day Notice letter and discussions with the
20 office of the Attorney General. Payment shall be made within seven (7) business days of the
21 Effective Date and sent to the address for Brodsky & Smith set forth in section 7.1.2, above.
22 Greenbrier shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts
23 due and owing that are not received within two business days of the date they are due.

24 **8. Notices**

25 8.1 Any and all notices between the parties provided for or permitted under this
26 Agreement, or by law, shall be in writing and personally delivered or sent by: (i) first-class
27 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any
28 party by the other party to the following addresses:

For Greenbrier and Dollar Tree:

Keith P. Zanni
Assistant General Counsel, Compliance
DOLLAR TREE
500 Volvo Parkway
Chesapeake, VA 23320

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2 *With copy to:*

3 Ann G. Grimaldi
4 GRIMALDI LAW OFFICES
5 50 California Street | Suite 1500
6 San Francisco, CA 94111
7 T: 415.463.5186

8 For Ferreiro:

9 Evan J. Smith
10 BRODSKY & SMITH, LLC
11 9595 Wilshire Blvd., Suite 900
12 Beverly Hills, CA 90212
13 T: 877.354.2590

14 Any party, from time to time, may specify in writing to the other party a change of address to
15 which all notices and other communications shall be sent.

16 **9. Authority to Stipulate**

17 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
18 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
19 the party represented and legally to bind that party.

20 **10. Counterparts**

21 10.1 This Stipulation may be signed in counterparts and shall be binding upon the
22 parties hereto as if all said parties executed the original hereof.

23 **11. Retention of Jurisdiction**

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

26 **12. Service on the Attorney General**

27 12.1 Ferreiro shall serve a copy of this Consent Judgment, signed by both parties, on the
28 California Attorney General on behalf of the parties as required by law so that the Attorney
general may review this Consent Judgment prior to its submittal to the Court for Approval. No
sooner than forty-five (45) days after the Attorney General has received the aforementioned copy
of this Consent Judgment, and in the absence of any written objection by the Attorney General to
the terms of this Consent Judgment, the parties may then submit it to the Court for Approval.

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13. Entire Agreement

13.1 This Consent Judgment contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all discussions, negotiations, commitment and understandings related thereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

14. Governing Law and Construction

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

15. Court Approval

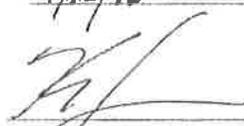
15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

IT IS SO STIPULATED:

Dated: _____

Dated: 1/13/16

By: _____
Anthony Ferreiro

By: 
Dollar Tree Stores, Inc. and
Greenbrier International, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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13. Entire Agreement

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

15. Court Approval

15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

IT IS SO STIPULATED:

Dated: 1/20/16

Dated: _____

By: Anthony Ferreiro
Anthony Ferreiro

By: _____
Dollar Tree Stores, Inc. and
Greenbrier International, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court