

# Settlement Agreement

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## 1. INTRODUCTION

### 1.1 The Parties

This Settlement Agreement is hereby entered into by and between Kingpun Cheng, as an individual, (hereinafter “Cheng”) and Dollar Tree, Inc., Dollar Tree Stores, Inc., and Greenbrier International, Inc. (collectively “Dollar Tree”). Dollar Tree and Cheng shall be collectively referred to as the “Parties” and each of them as a “Party.” Cheng is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Dollar Tree employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 *et seq.*

### 1.2 Allegations and Representations

Cheng alleges that Dollar Tree has offered for sale and sold in the State of California Micro USB Cable UPC639277944023 and Durex Procraft Household Cord UPC639277223258 containing Di(2-ethylhexyl)phthalate, Diisononyl phthalate, and Diisodecyl phthalate, and that such sales have not been accompanied by Proposition 65 warnings. Di(2-ethylhexyl)phthalate, Diisononyl phthalate, and Diisodecyl phthalate are listed chemicals under Proposition 65.

For purposes of this Settlement Agreement only, Dollar Tree represents that: Micro USB Cable UPC639277944023 and Durex Procraft Household Cord UPC639277223258 are items that were previously distributed or sold by Dollar Tree to California consumers.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as any and all (1) USB Cables, including Micro USB Cables UPC639277944023; and (2) extension cords, including Durex Procraft Household Cords UPC639277223258 that are sold by Dollar Tree or others. All such items shall be referred to herein as the “Products.”

### 1.4 Notices of Violation

On or about May 6, 2016, Cheng served Dollar Tree and various public enforcement agencies with a document entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Dollar Tree was in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to Di(2-ethylhexyl)phthalate, Diisononyl phthalate, and/or Diisodecyl phthalate. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time after service of the Notice to them by Cheng.

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## 1.5 Stipulation as to Jurisdiction/No Admission

For purposes of this Settlement Agreement only, the Parties stipulate that in the event that enforcement of this Settlement Agreement or a dispute arises regarding this Settlement Agreement, the Superior Court of California, County of Alameda has jurisdiction over Dollar Tree as to the allegations contained in the Notice and that venue is proper in the County of Alameda.

Nothing in this Settlement Agreement shall be construed as an admission by Dollar Tree of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Dollar Tree of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Dollar Tree. However, this Section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Dollar Tree under this Settlement Agreement.

## 1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is signed by all Parties and their counsel.

## 2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

Commencing on the Effective Date, Dollar Tree shall not sell or offer for sale in California Products containing more than 0.1% (1,000 parts per million, or "1,000 ppm") Di(2-ethylhexyl)phthalate, Diisononyl phthalate, and Diisodecyl phthalate unless they comply with the requirements set forth in this Section.

2.1 The Products shall be deemed to comply with Proposition 65 with regard to Di(2-ethylhexyl)phthalate, Diisononyl phthalate, and Diisodecyl phthalate if the accessible parts of the Products meet the following criteria: the components shall have a Di(2-ethylhexyl)phthalate, Diisononyl phthalate, and Diisodecyl phthalate content by weight of no more than 0.1% (1,000 parts per million, or "1,000 ppm"). Dollar Tree may comply with the above requirements by relying on information obtained from its suppliers provided such reliance is in good faith. Obtaining test results showing that the Di(2-ethylhexyl)phthalate, Diisononyl phthalate, and Diisodecyl phthalate content is no more than 1,000 ppm, using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 1,000 ppm shall be deemed to establish good faith reliance.

2.2 Warning Alternative. As an alternative to reformulating the Products, Products that Dollar Tree manufactures for sale in California after the Effective Date that do not meet the reformulation option set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below.

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2.3 Warnings. Where required under Section 2.2 above, Dollar Tree shall provide Proposition 65 warnings substantially as follows:

**WARNING:** This product can expose you to phthalates, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

OR

**WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

As an alternative to the warnings stated above, Dollar Tree may use any warning that complies with Title 27, California Code of Regulations, section 25600 *et seq.*, as amended August 30, 2016.

2.4 Any warning provided pursuant to this Section shall be prominently affixed to the packaging of, or directly on, the Products, or be prominently displayed as a shelf sign or shelf tag with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. If the warning is printed on the label, the warning shall be contained in the same area of the label that states other safety warnings, if any, concerning the use of the Product.

2.5 The reformulation and warning requirements set forth in this Section 2 shall not apply to any Product that is in the stream of commerce or in Dollar Tree's inventory as of the Effective Date.

### 3. PAYMENTS

With regard to all claims that have been raised or which could be raised with respect to failure to warn pursuant to Proposition 65 with regard to Di(2-ethylhexyl)phthalate, Diisononyl phthalate, and Diisodecyl phthalate in the Products, Dollar Tree shall pay a civil penalty of \$850.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to Cheng, as provided by California Health & Safety Code § 25249.12(d) and the instructions directly below.

Dollar Tree shall issue two separate checks for the penalty payment: (a) one check made payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of the total penalty (i.e., \$637.50); and (b) one check in an amount representing 25% of the total penalty (i.e., \$212.50) made payable directly to Cheng. Dollar Tree shall mail these payments within ten (10) business days after the Effective Date at which time such payments shall be mailed to the following addresses respectively:

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Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

Mr. Kingpun Cheng  
C/O Sy and Smith, PC  
11622 El Camino Real, Suite 100  
Del Mar, CA 92130

#### **4. REIMBURSEMENT OF FEES AND COSTS**

The Parties reached an accord on the compensation due to Cheng and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Dollar Tree shall reimburse Cheng's counsel for fees and costs incurred as a result of investigating, bringing this matter to Dollar Tree's attention, and negotiating a settlement in the public interest. Within ten (10) business days of the Effective Date, Dollar Tree shall pay Cheng's counsel \$7,650.00 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. The check shall be made payable to "Sy and Smith, PC" and mailed to the following address:

Sy and Smith, PC  
11622 El Camino Real, Suite 100  
Del Mar, CA 92130

Sy and Smith, PC will provide Dollar Tree with its tax identification information on or before the Effective Date. Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

#### **5. RELEASE OF ALL CLAIMS**

5.1 Cheng, on behalf of himself only, releases Dollar Tree and its suppliers (including World and Main, LLC and World and Main (Cranbury), LLC), distributors, wholesalers, licensors, licensees, and retailers and their respective officers, directors, shareholders, employees, agents, attorneys, affiliates, and subsidiaries (collectively "Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on exposure to Di(2-ethylhexyl)phthalate, Diisononyl phthalate, and Diisodecyl phthalate from the Products as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to Di(2-ethylhexyl)phthalate, Diisononyl phthalate, and Diisodecyl phthalate from the Products.

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In addition to the foregoing, Cheng, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, and not in his representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases any other claims that he could make against Dollar Tree or the Releasees arising prior to the Effective Date with respect to violations of Proposition 65 based upon the Products. With respect to the foregoing waivers and releases in this paragraph, Cheng hereby specifically waives any and all rights and benefits which he now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

5.2 Dollar Tree waives any and all claims against Cheng, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Cheng and his attorneys and other representatives in the course of investigating claims related to the Notice.

## **6. PUBLIC BENEFIT**

It is Dollar Tree's understanding that the commitments it has agreed to herein, and actions to be taken by Dollar Tree under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in California Civil Procedure Code section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, it is the intent of Dollar Tree that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Dollar Tree's or any Releasees' failure to provide a warning concerning exposure to Di(2-ethylhexyl)phthalate, Diisononyl phthalate, and/or Diisodecyl phthalate with respect to the Products they have respectively manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Dollar Tree is in material compliance with this Settlement Agreement.

## **7. NON-DISPARAGEMENT**

The Parties agree to refrain from taking action or making statements, written, oral or through any form of social media, which disparage or defame the goodwill or reputation of the other Party.

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## 8. SEVERABILITY AND MERGER

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this document are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

## 9. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Dollar Tree shall have no further obligations pursuant to this Settlement Agreement with respect to the Products.

## 10. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: electronic mail and either (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

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

Peg Carew Toledo  
Peg Carew Toledo, Law Corporation  
3001 Douglas Blvd., Suite 340  
Roseville, CA 95661  
peg@toledolawcorp.com

and

For Cheng:

Parker A. Smith  
Sy and Smith, PC  
11622 El Camino Real, Suite 100  
Del Mar, CA 92130  
parker@sysmithlaw.com

# Settlement Agreement

Any party, from time to time, may specify in writing by the means set forth above to the other party a change of address to which all notices and other communications shall be sent.

## 11. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

## 12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Cheng agrees to comply with the requirements set forth in California Health & Safety Code §25249.7(f).

## 13. MODIFICATION

This Settlement Agreement may be modified only by further written agreement of the Parties.

## 14. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and certifies that he or she is fully authorized by the Party he or she represents to execute the Settlement Agreement on behalf of the Party and legally bind that Party.

[Signatures Follow]

IT IS HEREBY AGREED TO:

By:   
Kingpun Cheng

Date: 6/17/2017

By: \_\_\_\_\_  
On Behalf of: Dollar Tree, Inc.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
On Behalf of: Dollar Tree Stores, Inc.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
On Behalf of: Greenbrier International, Inc.

Date: \_\_\_\_\_

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[Signatures Follow]

IT IS HEREBY AGREED TO:

By: \_\_\_\_\_  
Kingpun Cheng

Date: \_\_\_\_\_

By:   
On Behalf of: Dollar Tree, Inc.

Date: 6/22/17

By:   
On Behalf of: Dollar Tree Stores, Inc.

Date: 6/22/17

By:   
On Behalf of: Greenbrier International, Inc.

Date: 6/22/17



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APPROVED AS TO FORM:

By: Peg Carew Toledo  
Peg Carew Toledo  
Attorney for Defendants  
Dollar Tree, Inc., Dollar Tree Stores, Inc. and  
Greenbrier International, Inc.

Date: 6-23-17

By: [Signature]  
Parker A. Smith  
Attorney for Plaintiff, Kingpun Cheng

Date: 6/22/17