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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ANTHONY FERREIRO,

Plaintiff,

v.

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

Defendants.

Case No.: RG17856075
CONSENT JUDGMENT
Judge: Paul D. Herbert
Dept.: 20
Hearing Date: November 3, 2017
Hearing Time: 3:00 PM
Reservation #: R-1889259

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Anthony
3 Ferreiro acting on behalf of the public interest (hereinafter “Ferreiro”) and Greenbrier International,
4 Inc. and Dollar Tree Stores, Inc. (collectively “Defendants”) with Ferreiro and Defendants
5 collectively referred to as the “Parties” and each of them as a “Party.” Ferreiro is an individual
6 residing in California who seeks to promote awareness of exposures to toxic chemicals and improve
7 human health by reducing or eliminating hazardous substances contained in consumer products.
8 Defendants employ ten or more persons and each company is a person in the course of doing
9 business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

10 1.2 **Allegations and Representations.** Ferreiro alleges that Defendants have exposed
11 individuals to Di(2-ethylhexyl) phthalate (DEHP) from Tool Bench Noise Reduction Ear Muffs
12 without providing clear and reasonable warnings under Proposition 65. DEHP is listed under
13 Proposition 65 as a chemical known to the State of California to cause reproductive toxicity and
14 cancer.

15 1.3 **Notice of Violation/Complaint.** On or about November 29, 2016, Ferreiro served
16 Defendants and various public enforcement agencies with a document entitled “60-Day Notice of
17 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
18 was in violation of Proposition 65 for failing to warn consumers and customers that Tool Bench
19 Noise Reduction Ear Muffs exposed users in California to DEHP. No public enforcer has brought
20 and is diligently prosecuting the claims alleged in the Notice. On April 10, 2017, Ferreiro filed a
21 complaint in the matter as captioned above (the “Complaint”).

22 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendants as to the allegations contained in the Complaint filed in this matter,
24 that venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
25 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
26 claims which were or could have been raised in the Complaint based on the facts alleged therein
27 and/or in the Notice.

1 1.5 Defendants deny the material allegations contained in Ferreiro’s Notice and
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
3 shall be construed as an admission by Defendants of any fact, finding, issue of law, or violation of
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
5 by Defendants of any fact, finding, conclusion, issue of law, or violation of law, such being
6 specifically denied by Defendants. However, this section shall not diminish or otherwise affect the
7 obligations, responsibilities, and duties of Defendants under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means vinyl ear muffs, including
10 but not limited to Tool Bench Noise Reduction Ear Muffs, UPC No. 6 39277 08412 5 that are
11 manufactured, distributed and/or offered for sale in California by Defendants.

12 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
13 entered as a Judgment of the Court.

14 **3. INJUNCTIVE RELIEF: WARNINGS**

15 3.1 Commencing ninety (90) days after the Effective Date, Defendants shall not
16 manufacture, import, or purchase for sale in California any Covered Product that contains more
17 than 1,000 parts per million DEHP, unless the Covered Product is accompanied by the following
18 warning: “WARNING: This product contains a chemical known to the State of California to cause
19 birth defects and other reproductive harm.” In lieu of the preceding warning, Defendants may use
20 any warning language that complies with Title 27, California Code of Regulations, section 25600
21 *et seq.*, as amended August 30, 2016.

22 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
23 Covered Product’s packaging or labeling or provided on an in-store shelf strip where the Covered
24 Product is displayed. The warning shall be displayed with such conspicuousness, as compared with
25 other words, statements, or designs as to render it likely to be read and understood by an ordinary
26 individual under customary conditions of purchase or use. A warning may be contained in the same
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1 section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,
2 concerning the use of the product and shall be at least the same size as those other safety warnings.

3 **4. MONETARY TERMS**

4 4.1 **Civil Penalty.** Defendants shall pay a civil penalty of \$3,000 pursuant to Health
5 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
6 Safety Code § 25192, with 75% of these funds remitted to the State of California’s Office of
7 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
8 Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

9 4.1.1 Within ten (10) business days of the Effective Date, Defendants shall issue
10 two separate checks for the civil penalty payment to (a) “OEHHA” in the amount of \$2,250; and
11 (b) “Brodsky & Smith, LLC in Trust for Ferreiro” in the amount of \$750. Payment owed to
12 Ferreiro pursuant to this Section shall be delivered to the following payment address:

13 Evan J. Smith, Esquire
14 Brodsky & Smith, LLC
15 Two Bala Plaza, Suite 510
16 Bala Cynwyd, PA 19004

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

18 For United States Postal Service Delivery:

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

22 For Non-United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street
27 Sacramento, CA 95814

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

1 4.2 **Attorney Fees.** Defendants shall pay \$27,000 to Brodsky & Smith, LLC (“Brodsky
2 Smith”) as complete reimbursement for Plaintiff Ferreiro’s attorneys’ fees and costs incurred as a
3 result of investigating, bringing this matter to Defendants’ attention, litigating and negotiating and
4 obtaining judicial approval of a settlement in the public interest. Payment shall be made within ten
5 (10) business days of the Effective Date and sent to the address for Brodsky & Smith set forth in
6 section 4.1.1, above.

7 **5. RELEASE OF ALL CLAIMS**

8 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
9 acting in the public interest, and Defendants, and their respective parents, shareholders, divisions,
10 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their successors and
11 assigns (“Defendant Releasees”), and all entities from whom they obtain and to whom they directly
12 or indirectly distribute or sell Covered Products, including but not limited to manufacturers,
13 suppliers, distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and
14 cooperative members (“Additional Releasees”), of all claims for violations of Proposition 65 based
15 on exposure to DEHP from Covered Products as set forth in the Notice and Complaint, with respect
16 to any Covered Products manufactured, distributed, or sold by Defendants prior to the Effective
17 Date. Compliance with the terms of this Consent Judgment constitutes compliance with
18 Proposition 65 with regard to the Covered Products.

19 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
20 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative
21 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
22 legal action and releases Defendants, Defendant Releasees, and Additional Releasees from any and
23 all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
24 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of
25 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
26 future, with respect to any alleged violations of Proposition 65 related to or arising from the
27 Covered Products manufactured, distributed or sold by Defendants, Defendant Releasees or
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1 Additional Releasees. With respect to the foregoing waivers and releases in this Section, Ferreiro
2 hereby specifically waives any and all rights and benefits which he now has, or in the future may
3 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
4 provides as follows:

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

10 5.3 Defendants waive any and all claims against Ferreiro, his attorneys and other
11 representatives, for any and all actions taken or statements made by Ferreiro and his attorneys and
12 other representatives in the course of investigating the claims in the Complaint or otherwise seeking
13 enforcement of Proposition 65 against Defendants in this matter with respect to Covered Products.

14 5.4 Ferreiro represents and warrants that as of the date of his execution of this Consent
15 Judgment he is not aware of any other Proposition 65 violations by Defendants.

16 **6. INTEGRATION**

17 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
18 any and all prior negotiations and understandings related hereto shall be deemed to have been
19 merged within it. No representations or terms of agreement other than those contained herein exist
20 or have been made by any Party with respect to the other Party or the subject matter hereof.

21 **7. GOVERNING LAW**

22 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California and apply within the State of California. In the event that Proposition 65 is repealed or
24 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
25 Defendants shall have no further obligations pursuant to this Consent Judgment with respect to,
26 and to the extent that, Covered Products are so affected.

27 **8. NOTICES**

28 8.1 Unless specified herein, all correspondence and notices required to be provided
pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-

1 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
2 by the other party at the following addresses:

3 For Defendants:

4 Peg Carew Toledo
5 PEG CAREW TOLEDO, LAW CORPORATION
6 3001 Douglas Blvd., Suite 340
7 Roseville, CA 95661

7 For Ferreiro:

8 Evan Smith
9 Brodsky & Smith, LLC
10 2 Bala Plaza, Suite 510
11 Bala Cynwyd, PA 19004

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

14 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

15 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
16 which shall be deemed an original, and all of which, when taken together, shall constitute one and
17 the same document.

18 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
19 **APPROVAL**

20 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
21 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
22 and Defendants agree they shall support approval of such Motion.

23 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
24 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
25 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
26 thirty (30) days, the case shall proceed on its normal course.

27 **11. MODIFICATION**

28 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

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12. ATTORNEY'S FEES

12.1 A party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless the unsuccessful party has acted with substantial justification. For purposes of this Consent Judgment, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, *et seq.*

13. RETENTION OF JURISDICTION

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

14. AUTHORIZATION

14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and each certifies that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: 9/11/17
By: Anthony Ferreiro
ANTHONY FERREIRO

Date: 8/22/17
By: [Signature]
GREENBRIER INTERNATIONAL, INC.

Date: 8/22/17
By: [Signature]
DOLLAR TREE STORES, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____ Judge of Superior Court