

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information

☐ Original Filing ☐ Supplemental Filing ☐ Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S)				
	DEFENDANT(S) INVOLVED IN SETTLEMENT				
CASE INFO	COURT DOCKET NUMBER			COURT NAME	
	SHORT CASE NAME				
REPORT INFO	INJUNCTIVE RELIEF				
	PAYMENT: CIVIL PENALTY		PAYMENT: ATTORNEYS FEES		PAYMENT: OTHER
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="checkbox"/> Yes <input type="checkbox"/> No		IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL		DATE SETTLEMENT SIGNED / /
	COPY OF SETTLEMENT MUST BE ATTACHED				
FILER INFO	NAME OF CONTACT				
	ORGANIZATION			TELEPHONE NUMBER ()	
	ADDRESS			FAX NUMBER ()	
	CITY		STATE	ZIP 91406	E-MAIL ADDRESS

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

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Attorney for Plaintiff SHEFA LMV, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHEFA LMV, INC.,

Plaintiff,

vs.

GREENBRIER INTERNATIONAL, INC.;
DOLLAR TREE STORES, INC.; and DOES 1
through 100, Inclusive,

Defendants.

) Case No. BC 705048
) Dept. 72
) Hon. Ruth Ann Kwan

) **[PROPOSED] CONSENT JUDGMENT**
) **AS TO GREENBRIER INTERNATIONAL,**
) **INC. AND DOLLAR TREE STORES, INC.**

) Action Filed: May 4, 2018
)
)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This consent judgment (“Consent Judgment”) is entered into by and between plaintiff Shefa
4 LMV, Inc. (“Shefa” or “Plaintiff”), on the one hand, and Greenbrier International, Inc. and Dollar
5 Tree Stores, Inc. (collectively “Defendants”), on the other hand. Shefa and Defendants are referred
6 to collectively as the “Parties.”)

7 **1.2 Plaintiff**

8 Shefa is a public benefit, non-profit corporation that seeks to promote awareness of
9 exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
10 substances contained in consumer products.

11 **1.3 Settling Defendants**

12 Each defendant employs ten (10) or more persons and is a person in the course of doing
13 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
14 Safety Code §25249.6 *et seq.* (“Proposition 65”).

15 **1.4 Covered Products**

16 The products covered by this Consent Judgment are rolling massagers including, but not
17 limited to, Rolling Massager, April Bath & Shower (UPC: 639277223586), and eyeglass cleaning
18 cloth pouches, including, but not limited to, Eyeglass Cleaning Cloth, Jumbo (UPC:
19 639277109934), that are manufactured, sold, or distributed for sale in California by Defendants that
20 contain Di-[2-Ethylhexyl] Phthalate (“DEHP”) (collectively, the “Covered Products”).

21 **1.5 General Allegations**

22 Shefa alleges that Defendants manufacture, import, sell, or distribute for sale in the state of
23 California, the Covered Products without first providing a clear and reasonable warning required by
24 Proposition 65. DEHP (CAS # 68515-48-0) is a chemical listed under Proposition 65 as a chemical
25 known to the state to cause cancer or reproductive toxicity.

26 **1.6 Notice of Violation**

27 On May 26, 2017, Shefa served Defendants and the requisite public enforcement agencies
28

1 with a 60-Day Notice of Violation (the "Notice") alleging that Defendants violated Proposition 65
2 when they failed to warn their customers and consumers in California that the Covered Products
3 expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced
4 and is diligently prosecuting the allegations set forth in the Notice.

5 **1.7 Complaint**

6 On May 4, 2018, Shefa filed the instant complaint in the Superior Court in and for the
7 County of Los Angeles against Defendants and DOES 1-100, alleging violations of California
8 Health & Safety Code § 25249.6, based on exposures to DEHP contained in the Covered Products
9 sold in the State of California (the "Complaint").

10 **1.8 No Admission**

11 Defendants deny the material, factual, and legal allegations contained in the Notice and
12 Complaint and maintain that all of the products they have manufactured, sold, or distributed for sale
13 in California, including the Covered Products, have been, and are, in compliance with all laws.
14 Nothing in this Consent Judgment shall be construed as an admission by Defendants of any fact,
15 finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent
16 Judgment constitute or be construed as an admission by Defendants of any fact, finding, conclusion
17 of law, issue of law, or violation of law, the same being specifically denied by Defendants. This
18 section shall not, however, diminish or otherwise affect Defendants' obligations, responsibilities,
19 and duties under this Consent Judgment.

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Defendants as to the allegations in the Complaint, that venue is proper in the
23 County of Los Angeles, and that this Court has jurisdiction over the Parties to enter and enforce the
24 provisions of this Consent Judgment.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date the
27 Consent Judgment is approved and entered by the Court.
28

1 **2. INJUNCTIVE RELIEF:**

2 **2.1 Reformulation Standards**

3 As of the Effective Date, Defendants shall not manufacture for sale in California any
4 Covered Products unless (a) such Covered Products contain DEHP in concentrations less than or
5 equal to 1000 parts per million ("ppm") when analyzed pursuant to U.S. Environmental Protection
6 Agency testing methodologies 3580A and 8270C or any other scientifically reliable methodology
7 for determining the concentration of DEHP in the Covered Products; or (b) the Covered Products
8 are sold with a Proposition 65 warning as set forth in Section 2.2 below.

9 **2.2 Warning Standards**

10 As of the Effective Date, to the extent Defendants ship or sell Covered Products to
11 California consumers that do not meet the reformulation standards set forth above in Section 2.1,
12 Defendants will provide warnings on such Covered Products that comply with Proposition 65. The
13 warnings shall be provided in a conspicuous and prominent manner such that they will be likely to
14 be read or seen by the consumer prior to or at the time of the sale or purchase. The Parties agree
15 that the following warnings set forth below shall constitute compliance with Proposition 65 with
16 respect to any Covered Products that are not reformulated:

17 (a) **⚠ WARNING:** This product can expose you to chemicals, including Di-[2-
18 Ethylhexyl] Phthalate (DEHP), which are known to the State of California to cause birth
19 defects or other reproductive harm. For more information go to
20 www.P65Warnings.ca.gov; or

21 (b) **⚠ WARNING:** Reproductive Harm-www.P65warnings.ca.gov

22 In lieu of the preceding warning content and methods set forth above, Defendants may use
23 any warning content and method that complies with Title 27, California Code of Regulations,
24 section 25600 *et seq.*, as amended August 30, 2016 and subsequently thereafter.

25 **2.3 Covered Products in the Stream of Commerce.**

26 Any Covered Products that have been distributed, shipped, or sold by Greenbrier
27 International, Inc. prior to the Effective Date, shall not be subject to the requirements of Sections
28

1 2.1 and 2.2.

2 **3. MONETARY SETTLEMENT TERMS**

3 **3.1 Payment from Defendants.** Within ten (10) business days of the Effective Date,
4 Defendants shall make the Total Settlement Payment of \$14,000.00.

5 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)
6 separate checks made payable and allocated as follows:

7 **3.2.1 Civil Penalty.** Defendants shall pay \$1,000.00 as a civil penalty
8 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
9 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
10 California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the
11 OEHHA portion of the civil penalty payment in the amount of \$750.00 shall be made payable to
12 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
13 delivered as follows:

14 For United States Postal Service Delivery:

15 Attn: Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 P.O. Box 4010, MS #19B
19 Sacramento, CA 95812-4010

20 For Non-United States Postal Service Delivery:

21 Attn: Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 1001 I Street, MS #19B
25 Sacramento, CA 95814

26 The Shefa portion of the civil penalty payment in the amount of \$250.00 shall be made
27 payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002.
28 This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst
Ave, Suite 320, Van Nuys, CA 91406.

3.2.2 Attorney's Fees and Costs. A reimbursement of Shefa's attorney's
fees and costs in the amount of \$13,000.00 payable to the "Law Office of Daniel N. Greenbaum,"

1 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to
2 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1 Public Release**

5 This Consent Judgment is a full, final, and binding resolution between Shefa and Defendants
6 of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of
7 itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,
8 against Defendants, their respective parents, subsidiaries, affiliated entities, manufacturers,
9 suppliers, directors, officers, employees, attorneys, and the predecessors, successors, or assigns of
10 each of them, and each entity to whom Defendants directly or indirectly distributes or sells the
11 Covered Products, including, without limitation, distributors, wholesalers, customers, retailers,
12 franchisees, cooperative members, and licensees (collectively "Releasees"), based on failure to
13 warn of alleged exposures to DEHP from Covered Products manufactured, sold, or distributed for
14 sale in California by Defendants prior to the Effective Date. The release in this Section 4.1 applies
15 to all Covered Products that Defendants manufactured, distributed, or sold prior to the Effective
16 Date, regardless of the date any other Releasee distributes or sells the Covered Products.

17 Defendants' compliance with the terms of this Consent Judgment shall constitute
18 compliance with Proposition 65 by Defendants and the Releasees with respect to DEHP in Covered
19 Products manufactured, sold, or distributed on and after the Effective Date.

20 **4.2 Shefa's Individual Release of Claims**

21 In further consideration of the promises and agreements herein contained, Shefa, on its own
22 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
23 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
24 legal action, and releases all claims that it may have against Defendants and Releasees, including,
25 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
26 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
27 fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP from any
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1 Covered Products manufactured, sold, or distributed for sale by Defendants prior to the Effective
2 Date. The releases in this Section 4.2 are provided in Shefa's individual capacity and are not
3 releases on behalf of the public.

4 4.3 Defendants' Release of Shefa

5 Defendants, on their own behalves and on behalf of their past and current agents,
6 representatives, attorneys, successors, and assignees, hereby waive any and all claims that they may
7 have against Shefa and its attorneys and other representatives, for any and all actions taken or
8 statements made by Shefa and its attorneys and other representatives in the course of investigating
9 the claims set forth in the Notice and Complaint or otherwise seeking to enforce Proposition 65
10 against it in this matter.

11 4.4 Release of Unknown Claims

12 It is possible that other claims not known to the Parties arising out of the facts contained in
13 the Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
14 discovered or developed. Shefa, on behalf of itself only, acknowledges that this Consent Judgment
15 is expressly intended to cover and include all such claims through and including the Effective Date,
16 including all rights of action therefor. Shefa acknowledges that the claims released in Sections 4.1
17 and 4.2 may include unknown claims, and nevertheless Shefa intends to release such claims, and in
18 doing so waives California Civil Code § 1542, which reads as follows:

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

24 Shefa understands and acknowledges that the significance and consequence of this waiver of
25 California Civil Code § 1542 is that, even if Shefa suffers future damages arising out of or resulting
26 from, or related directly or indirectly to, in whole or in part, the Covered Products, including but not
27 limited to any exposure to, or failure to warn with respect to exposure to, the Covered Products,
28 Shefa will not be able to make any claim for those damages against Defendants or any of the
Releasees.

1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court.

3 **6. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of California
5 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
6 is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then
7 Defendants may provide written notice to Shefa of any asserted change in the law, and with the
8 exception of Sections 3.1 and 3.2 above, have no further obligations pursuant to this Consent
9 Judgment, with respect to, and to the extent that, the Covered Products are so affected. None of the
10 terms of this Consent Judgment shall have any application to Covered Products sold outside of the
11 State of California.

12 **7. NOTICE**

13 Unless specified herein, all correspondence and notices required to be provided pursuant to
14 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class,
15 registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any
16 Party by the other at the following addresses:

17 To Defendants:

18 Keith Zanni
19 Assistant General Counsel, Compliance
20 Dollar Tree
21 500 Volvo Parkway
22 Chesapeake, VA 23320

 To Shefa:

 Daniel N. Greenbaum
 Law Office of Daniel N. Greenbaum
 7120 Hayvenhurst Ave., Suite 320
 Van Nuys, CA 91406

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

24 **8. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

25 This Consent Judgment may be executed in counterparts, and by facsimile or portable
26 document format (PDF) signature, each of which shall be deemed an original, and all of which,
27 when taken together, shall constitute one and the same document.

1 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

2 Plaintiff agrees to comply with the reporting form requirements referenced in California
3 Health & Safety Code § 25249.7(f).

4 **10. POST EXECUTION ACTIVITIES**

5 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7(f),
6 Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent Judgment.
7 Upon the Parties' execution of this Consent Judgment, Shefa promptly shall proceed to submit this
8 Consent Judgment to the Court with a motion seeking Court approval.

9 **11. MODIFICATION**

10 This Consent Judgment may only be modified by a written instrument executed by the
11 Parties and after approval by the Court upon a noticed motion. Any motion to modify shall be
12 served on all Parties and the Office of the Attorney General.

13 **12. DISPUTE RESOLUTION**

14 If Shefa determines at a future date that a violation of this Consent Judgment has occurred,
15 Shefa shall provide notice to Defendants. Prior to bringing any action to enforce any requirement of
16 this Consent Judgment, the party alleging a violation of this Consent Judgment shall provide the
17 other party with written notice of the grounds for such allegation together with all supporting
18 information as well as a complete demand for the relief sought. The Parties shall then meet and
19 confer regarding the basis for the allegation to resolve the matter informally, including providing
20 the party alleged to be in violation with a reasonable opportunity of at least thirty (30) days to cure
21 any alleged violation. Should such attempt at informal resolution fail, the party alleging a violation
22 may file its lawsuit seeking the proposed relief.

23 **13. AUTHORIZATION**

24 The undersigned are authorized to execute this Consent Judgment on behalf of their
25 respective Parties and have read, understood, and agree to all of the terms and conditions of this
26 Consent Judgment.

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AGREED TO:

Date: 11/18/2018

Date: 11/16/18

By: 
SHEFA LMV, INC.

By: 
DOLLAR TREE STORES, INC.

Date: 11/16/18

By: 
GREENBRIER INTERNATIONAL, INC.

1 **[PROPOSED] JUDGMENT**

2 Plaintiff Shefa LMV, Inc. and defendants Greenbrier International, Inc. and Dollar Tree
3 Stores, Inc., having agreed that Judgment be entered pursuant to the terms of their settlement
4 agreement in the form of the preceding [Proposed] consent judgment ("Consent Judgment"), and
5 following this Court's issuance of an order approving their Proposition 65 settlement and Consent
6 Judgment, and for good cause shown,

7
8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that pursuant to California
9 Health and Safety Code section 25249.7(f)(4) and California Civil Procedure Code section 664.6,
10 Judgment is hereby entered in accordance with the terms of the Consent Judgment.

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12 _____
13 Date

14 _____
15 Judge of the Superior Court
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