

# SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND DOLLAR TREE

## 1. RECITALS

### 1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between Dollar Tree Stores, Inc., Greenbrier International, Inc., and Dollar Tree Distribution, Inc. (collectively “Dollar Tree”), on the one hand, and APS&EE, LLC (“APS&EE”), on the other hand. APS&EE and Dollar Tree shall hereinafter collectively be referred to as the “Parties.”

1.1.2 APS&EE is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

1.1.3 APS&EE alleges that each Dollar Tree entity is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 Allegations

1.2.1 APS&EE alleges that Dollar Tree sold mugs with exterior decorations, including but not limited to the Greenbrier International mug with fall leaves, 639277581037 (hereinafter the “Products”) in the State of California causing users in California to be exposed to Lead without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead is listed as known to cause cancer and birth defects or other reproductive harm.

1.2.2 On January 27, 2020, APS&EE sent a Sixty-Day Notice of Violation (the “Notice”), along with a Certificate of Merit, to Dollar Tree and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

### **1.3 No Admissions**

Dollar Tree denies all allegations in APS&EE's Notice and maintains that the Products have been, and are, in compliance with all laws, and that Dollar Tree has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by Dollar Tree, but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities under this Agreement.

### **1.4 Compromise**

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

### **1.5 Effective Date**

The "Effective Date" shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party's counsel.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Standard**

As of sixty (60) days after the Effective Date, Dollar Tree shall not manufacture, distribute, sell, offer for sale, or caused to have the Products sold in California unless (a) the Product contains no more than 1.0 microgram of lead based on a wipe sample collected using NIOSH Method 9100 from the part of the Product that contains the Exterior Decorations ("Reformulated Products"), or (b) the Product is accompanied by a clear and reasonable warning as described below in Section 2.2. "Exterior Decorations" is defined as all colored artwork, designs and/or markings on the exterior surface of the Products.

## **2.2 Proposition 65 Warnings**

**2.2.1** For any Products that are not Reformulated Products, such Products shall be accompanied by a clear and reasonable warning. Dollar Tree shall provide the following warning statements as follows:

**“WARNING:** This product can expose you to Lead which is 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).

If Dollar Tree has reason to believe the Products may expose consumers to additional chemicals listed under Proposition 65, then it may replace “Lead which is” with “chemicals, including Lead, which are” in the warning statement. The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

The Products shall carry said warning directly on each unit, label, or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale. A Product that is sold by Dollar Tree on the internet to persons located in California shall also provide the warning message by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product.

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

### **3. PAYMENTS**

#### **3.1 Civil Penalty Pursuant To Proposition 65**

In settlement of all claims referred to in this Agreement, Dollar Tree shall pay a total civil penalty of two thousand dollars (\$2,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,500.00) for State of California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining 25% (\$500.00) for APS&EE.

Dollar Tree shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to "OEHHA" in the amount of \$1,500.00; and (2) a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of \$500.00.

Dollar Tree shall remit the payments within ten (10) business days of the Effective Date, to:

Lucas T. Novak, Esq.  
LAW OFFICES OF LUCAS T. NOVAK  
8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

#### **3.2 Reimbursement Of APS&EE's Fees And Costs**

Dollar Tree shall reimburse APS&EE's reasonable experts' and attorney's fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement. Accordingly, Dollar Tree shall issue a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of seventeen thousand dollars (\$17,000.00). Dollar Tree shall remit the payment within ten (10) business days of the Effective Date, to:

Lucas T. Novak, Esq.  
LAW OFFICES OF LUCAS T. NOVAK  
8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

#### **4. RELEASES**

##### **4.1 APS&EE's Release Of Dollar Tree**

APS&EE, acting in its individual capacity, in consideration of the promises and monetary payments contained herein, hereby releases and discharges Dollar Tree, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as all downstream entities in the distribution chain of the Products, and all predecessors, successors and assigns of any of them (collectively "Released Parties"), from any violation of Proposition 65 regarding failure to warn about Lead exposure from the Products sold or offered for sale by Dollar Tree prior to the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3 above, APS&EE, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that it may have as of the Effective Date, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Released Parties, relating to or arising from the Products.

##### **4.2 Dollar Tree's Release Of APS&EE**

Dollar Tree, by this Agreement, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against Dollar Tree in this matter. If any Released Party should institute any such action, then APS&EE's release of said Released Party in this Agreement shall be rendered void and unenforceable.

#### **4.3 Waiver Of Unknown Claims**

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

#### **4.4 Deemed Compliance with Proposition 65**

Compliance by Dollar Tree with this Agreement constitutes compliance with Proposition 65 with respect to exposure to Lead from the Exterior Decorations of the Products.

#### **4.5 Public Benefit**

It is the Parties' understanding that the commitments Dollar Tree has agreed to herein, and actions to be taken by Dollar Tree under this Agreement, would confer a significant public benefit to the general public, as set forth in California Civil Procedure Code section 1021.5. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Dollar Tree's failure to provide a warning concerning exposure to Lead from the Exterior Decorations of the Products it has distributed, sold or offered 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 Agreement, provided that Dollar Tree is in material compliance with this Agreement.

**5. SEVERABILITY**

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

**6. GOVERNING LAW**

The terms of this Agreement shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, Dollar Tree shall provide written notice of APS&EE of any asserted change in the law, and shall have no further obligations pursuant to this Agreement with respect to, and to the extent that, the Products are so affected.

**7. NOTICE**

All correspondence and notice required to be provided under this Agreement shall be in writing and delivered personally or sent by certified mail addressed as follows:

<b>TO DOLLAR TREE:</b> Peg Carew Toledo, Esq. Arnold & Porter Three Embarcadero Center 10th Floor San Francisco, CA 94111	<b>TO APS&amp;EE:</b> Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
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**8. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed

Agreement shall have the same force and effect as the originals.

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

APS&EE agrees to comply with the reporting requirements referenced in California Health & Safety Code section 25249.7(f).

10. **MODIFICATION**

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

11. **ENTIRE AGREEMENT**

This 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.

9. **AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

**AGREED TO:**

Date:

8/19/20

By:

[Signature]  
Authorized Representative of APS&EE, LLC

**AGREED TO:**

Date:

[Signature]

By:

8/19/20  
Authorized Representative of Dollar Tree Stores, Inc.



**AGREED TO:**

Date:



By:

8/19/20

Authorized Representative of Greenbrier International, Inc.

**AGREED TO:**

Date:



By:

8/19/20

Authorized Representative of Dollar Tree Distribution, Inc.