

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY SMITH
3 9465 Wilshire Blvd., Ste. 300
4 Beverly Hills, CA 90212
5 Tel: (877) 534-2590
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 PRECILA BALABBO,
12 Plaintiff,

13 v.

14 GREENBRIER INTERNATIONAL, INC.,
15 DOLLAR TREE STORES, INC., DOLLAR
16 TREE, INC.,
17 Defendants.

Case No.: CGC-23-609575

CONSENT JUDGMENT

Judge: Richard B. Ulmer
Dept.: 302
Hearing Date: September 16, 2024
Hearing Time: 9:30 AM
Complaint Filed: October 6, 2023

17
18
19
20
21
22
23
24
25
26
27
28

1 **1. INTRODUCTION**

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

11 1.2 **Allegations and Representations.** Balabbo alleges that Defendant has exposed
12 individuals to di(2-ethylhexyl) phthalate (“DEHP”) from its sales of *Jot*TM 3 ring binders, UPC
13 # 639277721136 without providing a clear and reasonable exposure warning pursuant to
14 Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of
15 California to cause cancer and birth defects or other reproductive harm.

16 1.3 **Notice of Violation/Action.** On or about October 14, 2022, Balabbo served Dollar
17 Tree and various public enforcement agencies with documents entitled “60-Day Notice of
18 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
19 violated Proposition 65 for failing to warn consumers and customers that use of *Jot*TM 3 ring
20 binders, UPC # 639277721136 expose users in California to DEHP. No public enforcer has brought
21 and is diligently prosecuting the claims alleged in the Notice. On October 6, 2023, Balabbo filed a
22 complaint (the “Complaint”).

23 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
25 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
26 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
27 of all claims which were or could have been raised in the Action based on the facts alleged therein
28

1 and in the Notice.

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

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means *Jot*TM 3 ring binders, UPC
11 # 639277721136 that are manufactured, distributed, shipped into California and offered for sale in
12 California by Dollar Tree.

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

15 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

16 3.1 **Reformulation of Covered Products.** Commencing sixty (60) days after the
17 Effective Date,, and continuing thereafter, Covered Products that Dollar Tree directly
18 manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a)
19 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
20 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
21 "Reformulated Product" is a Covered Product that is in compliance with the standard set forth in
22 § 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any
23 Reformulated Product.

1 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
2 that contain concentrations less than or equal to 0.1% (1,000 parts per million (“ppm”)) of DEHP
3 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
4 and 8270C or other methodology utilized by federal or state government agencies for the purpose
5 of determining the phthalate content in a solid substance.

6 3.3 **Clear and Reasonable Warning.** Commencing 60 days after the Effective Date,
7 and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and
8 3.4 must be provided for all Covered Products that Defendant manufacturers, imports, distributes,
9 sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation
10 for Defendant to provide a warning for Covered Products that enter the stream of commerce prior
11 to the date this Consent Judgment is signed by both Parties. The warning shall consist of either the
12 **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

13 (a) **Warning.** The “Warning” shall consist of the statement:

14 ⚠ **WARNING:** This product can expose you to chemicals including di(2-
15 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause
16 cancer and birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

17 (b) **Alternative Warning:** Dollar Tree may, but is not required to, use the alternative
18 short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

19 ⚠ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

20 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
21 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
22 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
23 triangle with a black outline, except that if the sign or label for the Covered Products does not use
24 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
25 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
26 to or printed on the Covered Products’ packaging or labeling, or on a placard, shelf tag, sign or
27 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
28 displayed with such conspicuousness, as compared with other words, statements, or designs as to

1 render it likely to be read and understood by an ordinary individual under customary conditions of
2 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
3 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
4 the use of the Covered Products and shall be at least the same size as those other safety warnings.
5 If “consumer information,” as that term is defined in Title 27, California Code of Regulations,
6 Section 25600.1(c) as it may be amended from time to time, is provided in a foreign language,
7 Dollar Tree shall provide the **Warning** or **Alternative Warning** in the foreign language in
8 accordance with applicable warning regulations adopted by the State of California’s Office of
9 Environmental Health Hazard Assessment (“OEHHA”).

10 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Products’
11 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
12 Dollar Tree offers Products for sale to consumers in California. The requirements of this Section
13 shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the
14 word “**WARNING**,” appears on the product display page, or by otherwise prominently displaying
15 the warning to the purchaser prior to completing the purchase. To comply with this Section, Dollar
16 Tree shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability
17 to do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to
18 post the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers,
19 provide such sellers with written notice in accordance with Title 27, California Code of
20 Regulations, § 25600.2. Third-party internet sellers of the Covered Products that have been
21 provided with written notice in accordance with Title 27, California Code of Regulations, § 25600.2
22 are not released in Section 5 of this Agreement if they fail to meet the warning requirements herein.

23 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
24 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
25 Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered
26 Products and exposures at issue. If OEHHA adopts new warning regulations applicable to the
27
28

1 Covered Products and exposures at issue, Dollar Tree may choose to provide those warnings at its
2 discretion.

3 **4. MONETARY TERMS**

4 4.1 **Civil Penalty.** Dollar Tree shall pay \$4,000.00 as a Civil Penalty 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 OEHHA and the remaining 25% of the
7 Civil Penalty remitted to Balabbo, as provided by California Health & Safety Code § 25249.12(d).

8 4.1.1 Within ten (10) days of the Effective Date, Dollar Tree shall issue two
9 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$3,000.00; and
10 to (b) "Brodsky Smith in Trust for Balabbo" in the amount of \$1,000.00. Payment owed to
11 Balabbo pursuant to this Section shall be delivered to the following payment address:

12 Evan J. Smith, Esquire
13 Brodsky Smith
14 Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

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

17 For United States Postal Service Delivery:

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

21 For Non-United States Postal Service Delivery:

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

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

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Dollar Tree shall pay \$41,000.00 to Brodsky Smith as complete reimbursement for Balabbo's attorneys' fees and costs incurred as a result of investigating, bringing this matter to the attention of Dollar Tree, litigating and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

5. RELEASE OF ALL CLAIMS

5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo acting on his own behalf, and on behalf of the public interest, and Dollar Tree, and its parents, shareholders, members, directors, officers, managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they obtain and to whom they directly or indirectly distribute or sell Covered Products, including but not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers, including but not limited to Dollar Tree, its parents, subsidiaries, and affiliates, franchisees, and cooperative members ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to DEHP from use of the Covered Products manufactured, distributed, or sold by Dollar Tree within 60 days after the Effective Date as set forth in the Notice. It is the Parties' intention that this Consent Judgment shall have preclusive effect such that no other actions by private enforcers, whether purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and take any action with respect to any violation of Proposition 65 based on exposure to DEHP from use of the Covered Products that was alleged in the Complaint, or that could have been brought pursuant to the Notice against Dollar Tree and the Downstream Releasees ("Proposition 65 Claims"). Dollar Tree's compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Dollar Tree with regard to exposure to DEHP from use of the Covered Products.

1 5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
2 agents, representatives, attorneys, and successors and assignees, and *not* in her representative
3 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
4 legal action and releases Dollar Tree, Defendant Releasees, and Downstream Releasees from any
5 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
6 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
7 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
8 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
9 from Covered Products manufactured, distributed, or sold by Dollar Tree, Defendant Releasees or
10 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
11 Balabbo hereby specifically waives any and all rights and benefits which she now has, or in the
12 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
13 provides as follows:

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

18 5.3 Dollar Tree waives any and all claims against Balabbo, her attorneys and other
19 representatives, for any and all actions taken, or statements made (or those that could have been
20 taken or made) by Balabbo and her attorneys and other representatives, whether in the course of
21 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
22 and with respect to Covered Products.

23 **6. INTEGRATION**

24 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
25 any and all prior negotiations and understandings related hereto shall be deemed to have been
26 merged within it. No representations or terms of agreement other than those contained herein exist
27 or have been made by any Party with respect to the other Party or the subject matter hereof.

1 **7. GOVERNING LAW**

2 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed or
4 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
5 Defendant may move to modify this Consent Judgment to reflect such changes to the law, as set
6 forth in Section 11.

7 **8. NOTICES**

8 8.1 Unless specified herein, all correspondence and notices required to be provided
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
10 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
11 by the other party at the following addresses:

12 For Defendant:

13 David Barnes
14 Hogan Lovells US LLP
15 4 Embarcadero Center, Ste. 3500
 San Francisco, CA 94111

16 And

17 For Balabbo:

18 Evan Smith
19 Brodsky Smith
 9465 Wilshire Blvd., Ste. 300
 Beverly Hills, CA 90212

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

22 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

23 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
24 which shall be deemed an original, and all of which, when taken together, shall constitute one and
25 the same document.

26

27

28

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

3 10.1 Balabbo agrees to comply with the requirements set forth in California Health &
4 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Defendant agrees it shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
9 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY'S FEES**

18 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.

7 **AGREED TO:**

8
9 Date: _____

10 By: _____
11 PRECILA BALABBO

AGREED TO:

Date: 7 / 29 / 24

By: Alvin Lii
GREENBRIER INTERNATIONAL, INC.

AGREED TO:

12
13
14 Date: 7 / 29 / 24

15 By: Alvin Lii
16 DOLLAR TREE STORES, INC.

AGREED TO:

17
18
19 Date: 7 / 29 / 24

20 By: Alvin Lii
21 DOLLAR TREE, INC.

22
23 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

24
25 Dated: _____

26 _____
27 Judge of Superior Court

1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.

7 **AGREED TO:**

AGREED TO:

8
9 Date: 7 / 29 / 24

Date: _____

10 By: *Precila Balabbo*
11 **PRECILA BALABBO**

By: _____
GREENBRIER INTERNATIONAL, INC.

AGREED TO:

12
13
14 Date: _____

15 By: _____
16 **DOLLAR TREE STORES, INC.**

AGREED TO:

17
18 Date: _____

19 By: _____
20 **DOLLAR TREE, INC.**

21
22
23
24
25 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

26 Dated: _____

27 _____
Judge of Superior Court