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FILED
 Superior Court Of California,
 Sacramento
 Dennis Jones, Executive
 Officer
 02/11/2008
 pcrscenti
 By _____, Deputy
 Case Number:
 34-2008-00003278-CU-MC-GDS

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 8 FOR THE COUNTY OF SACRAMENTO
 9 UNLIMITED CIVIL JURISDICTION

12 ANTHONY E. HELD, PH.D., P.E.

13 Plaintiff,

14 v.

15 DOLLAR TREE DISTRIBUTION, INC.;
 16 DOLLAR TREE MERCHANDISING;
 17 GREENBRIER INTERNATIONAL, INC.; and
 18 DOES 1 through 150, inclusive,

19 Defendants.

Case No. _____

COMPLAINT FOR CIVIL PENALTIES
 AND INJUNCTIVE RELIEF

(Cal. Health & Safety Code §25249.6 et seq.)

BY FAX

NATURE OF THE ACTION

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2 1. This Complaint is a representative action brought by plaintiff ANTHONY E.
3 HELD, PH.D., P.E., in the public interest of the citizens of the State of California, to enforce the
4 People's right to be informed of the presence of Di(2-ethylhexyl)phthalate (a toxic chemical) found
5 in inflatable vinyl toys/ children's items manufactured and sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to warn
7 California citizens about their exposure to Di(2-ethylhexyl)phthalate (DEHP) present in or on
8 certain inflatable vinyl toys/ children's items that defendants manufacture, distribute and/or offer
9 for sale to consumers throughout the State of California.

10 3. High levels of DEHP are commonly found in and on inflatable vinyl toys/ children's
11 items that defendants manufacture, distribute and/or offer for sale to consumers throughout the
12 State of California.

13 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code §25249.6 *et seq.* (Proposition 65), "No person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to the
16 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
17 such individual. . . ." (*Cal. Health & Safety Code §25249.6.*)

18 5. On January 1, 1988, California identified and listed DEHP as a chemical known to
19 cause birth defects and other reproductive harm. DEHP became subject to the warning
20 requirement one year later and was therefore subject to the "clear and reasonable warning"
21 requirements of Proposition 65, beginning on January 1, 1989. (*CCR §12000(c); Cal. Health &*
22 *Safety Code §25249.8.*) DEHP shall hereinafter be referred to as the "LISTED CHEMICAL."

23 6. Defendants manufacture, distribute, and/or sell inflatable vinyl toys/ children's
24 items containing DEHP including, but not limited to, *Luuu Inflatable Monkey*, #917843 (# 6 39277
25 17843 5), which contain excessive levels of the LISTED CHEMICAL. All such inflatable vinyl
26 toys/ children's items containing the LISTED CHEMICAL shall hereinafter be referred to as the
27 "PRODUCTS."
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1 doing business within the meaning of California Health & Safety Code §25249.11.

2 16. GREENBRIER manufactures, distributes, and/or offers the PRODUCTS for sale or
3 use in the State of California or implies by its conduct that it manufactures, distributes, and/or
4 offers the PRODUCTS for sale or use in the State of California.

5 17. Defendants DOES 1-50 (MANUFACTURER DEFENDANTS) are each persons
6 doing business within the meaning of California Health & Safety Code §25249.11.

7 18. MANUFACTURER DEFENDANTS engage in the process of research, testing,
8 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
9 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,
10 one or more of the PRODUCTS for sale or use in the State of California.

11 19. Defendants DOES 51-100 (DISTRIBUTOR DEFENDANTS) are each persons
12 doing business within the meaning of California Health & Safety Code §25249.11.

13 20. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
14 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
15 the State of California.

16 21. Defendants DOES 101-150 (RETAIL DEFENDANTS) are each persons doing
17 business within the meaning of California Health & Safety Code §25249.11.

18 22. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
19 of California.

20 23. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
21 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code
22 of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of
23 the fictitiously named defendants is responsible for the acts and occurrences herein alleged. When
24 ascertained, their true names shall be reflected in an amended complaint.

25 24. DOLLAR TREE DISTRIBUTION, DOLLAR TREE MERCHANDISING,
26 GREENBRIER, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and
27 RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as
28

1 "DEFENDANTS."

2 **VENUE AND JURISDICTION**

3 25. Venue is proper in the Sacramento County Superior Court, pursuant to Code of
4 Civil Procedure §§394, 395, 395.5, because this Court is a court of competent jurisdiction, because
5 one or more instances of wrongful conduct occurred, and continues to occur, in the County of
6 Sacramento and/or because DEFENDANTS conducted, and continue to conduct, business in this
7 County with respect to the PRODUCTS.

8 26. The California Superior Court has jurisdiction over this action pursuant to
9 California Constitution Article VI, §10, which grants the Superior Court "original jurisdiction in all
10 causes except those given by statute to other trial courts." The statute under which this action is
11 brought does not specify any other basis of subject matter jurisdiction.

12 27. The California Superior Court has jurisdiction over DEFENDANTS based on
13 plaintiff's information and good faith belief that each defendant is a person, firm, corporation, or
14 association that either are citizens of the State of California, have sufficient minimum contacts in
15 the State of California, or otherwise purposefully avail themselves of the California market.
16 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
17 courts consistent with traditional notions of fair play and substantial justice.

18
19 **FIRST CAUSE OF ACTION**

20 **(Violation of Proposition 65)**

21 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
22 Paragraphs 1 through 27, inclusive.

23 29. The citizens of the State of California have expressly stated in the Safe Drinking
24 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.5, *et seq.*
25 (Proposition 65) that they must be informed "about exposures to chemicals that cause cancer, birth
26 defects and other reproductive harm." (*Cal. Health & Safety Code §25249.6.*)

27 30. Proposition 65 states, "No person in the course of doing business shall knowingly
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1 and intentionally expose any individual to a chemical known to the state to cause cancer or
2 reproductive toxicity without first giving clear and reasonable warning to such individual..." (Id.)

3 31. On November 20, 2007, a sixty-day notice of violation, together with the requisite
4 certificate of merit, was provided to DOLLAR TREE DISTRIBUTION, DOLLAR TREE
5 MERCHANDISING, GREENBRIER, and various public enforcement agencies stating that as a
6 result of DEFENDANTS' sale of PRODUCTS, purchasers and users in the State of California
7 were being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of
8 the PRODUCTS, without the individual purchasers and users first having been provided with a
9 "clear and reasonable warning" regarding such toxic exposures.

10 32. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
11 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and
12 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use in
13 violation of California Health & Safety Code §25249.6 has continued to occur beyond
14 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
15 believes that such violations will continue to occur into the future.

16 33. After receipt of the claims asserted in the sixty-day notice of violation, the
17 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause
18 of action against DEFENDANTS under Proposition 65.

19 34. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
20 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
21 limits.

22 35. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
23 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
24 CHEMICAL.

25 36. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as to
26 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during the
27 reasonably foreseeable use of the PRODUCTS.
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1 37. The normal and reasonably foreseeable use of the PRODUCTS has caused and
 2 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
 3 by 22 CCR §12601(b).

4 38. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
 5 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
 6 and/or ingestion.

7 39. DEFENDANTS, and each of them, intended that such exposures to the LISTED
 8 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their
 9 deliberate, non-accidental participation in the manufacture, distribution, and/or offer for sale or use
 10 of PRODUCTS to individuals in the State of California.

11 40. DEFENDANTS failed to provide a "clear and reasonable warning" to those
 12 consumers and/or other individuals in the State of California who were or who could become
 13 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
 14 reasonably foreseeable use of the PRODUCTS.

15 41. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
 16 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
 17 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by
 18 DEFENDANTS without "clear and reasonable warning," have suffered, and continue to suffer,
 19 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

20 42. As a consequence of the above-described acts, DEFENDANTS, and each of them,
 21 are liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California
 22 Health & Safety Code §25249.7(b).

23 43. As a consequence of the above-described acts, California Health & Safety Code
 24 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against
 25 DEFENDANTS.

26 44. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
 27 set forth hereinafter.
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PRAYER FOR RELIEF

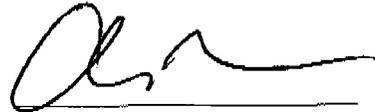
Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to California Health & Safety Code §25249.7(b), assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation alleged herein;
2. That the Court, pursuant to California Health & Safety Code §25249.7(a), preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing, distributing or offering the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as defined by 22 CCR §12601, as to the harms associated with exposures to the LISTED CHEMICAL;
3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
4. That the Court grant such other and further relief as may be just and proper.

Dated: February 7, 2008

Respectfully Submitted,

HIRST & CHANLER LLP



Christopher M. Martin
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.