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H. SALCIDO, DEPUTY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,
12 Plaintiff,

13 vs.

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

CASE NO.: **RG15797630**

JUDGE

DEPT.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

**(Violation of Health & Safety Code §25249.5
et seq.)**

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19 Plaintiff Anthony Ferreiro ("Plaintiff" or "Ferreiro"), by and through his attorneys,
20 alleges the following cause of action in the public interest of the citizens of the State of
21 California.

22 **BACKGROUND OF THE CASE**

23 1. Plaintiff brings this representative action on behalf of all California citizens to
24 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified
25 at the Health and Safety Code § 25249.5 *et seq* ("Proposition 65"), which reads, in relevant part,
26 "[n]o person in the course of doing business shall knowingly and intentionally expose any
27 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
28 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

1 2. This complaint is a representative action brought by Plaintiff in the public interest
2 of the citizens of the State of California to enforce the People’s right to be informed of the health
3 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
4 PVC Sewing Kits manufactured, sold and/or distributed by defendants Greenbrier International,
5 Inc. (“Greenbrier”) and/or Dollar Tree Stores, Inc. (“Dollar Tree”) (Greenbrier and Dollar Tree
6 are collectively referred to herein as, “Defendants”) in California.

7 3. DEHP is a harmful chemical known to the State of California to cause cancer and
8 reproductive toxicity. On January 1, 1988 the State of California listed DEHP as a chemical
9 known to the State to cause cancer and it has come under the purview of Proposition 65
10 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
11 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical
12 known to cause developmental male reproductive toxicity. *Id.*

13 4. Proposition 65 requires all businesses with ten (10) or more employees that
14 operate within California or sell products therein to comply with Proposition 65 regulations.
15 Included in such regulations is the requirement that businesses must label any product containing
16 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
17 intentionally” exposing any person to it.

18 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
19 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
20 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
21 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety
22 Code § 25249.7.

23 6. Plaintiff alleges that Defendants produce, manufacture, distribute, import, sell,
24 and/or offer for sale, without the required warning, *PVC Sewing Kits, UPC No. 6 3927782250 5*
25 (the “Product”) in California containing DEHP.

26 7. Defendants’ failure to warn consumers, and other individuals in California of the
27 health hazards associated with exposure to DEHP in conjunction with the sale, manufacture,
28

1 and/or distribution of the Product is a violation of Proposition 65 and subjects Defendants to the
2 enjoinder and civil penalties described herein.

3 8. Plaintiff seeks civil penalties against Defendants for their violations of
4 Proposition 65 in accordance with Health and Safety Code § 25249.7(b).

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
6 Defendants to provide purchasers or users of the Product with the required warnings related to
7 the dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety
8 Code § 25249.7(a).

9 **PARTIES**

10 10. Plaintiff is a citizen of the State of California acting in the interest of the general
11 public to promote awareness of exposures to toxic chemicals in products sold in California and
12 to improve human health by reducing hazardous substances contained in such items. He brings
13 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

14 11. Defendant Greenbrier is a mid-sized nondurable goods wholesaler in Chesapeake,
15 Virginia. It has 200 full time employees and generates an estimated \$22.1 million in annual
16 revenue. Through its business, Greenbrier effectively manufactures, imports, distributes, sells,
17 and/or offers the Product for sale or use in the State of California, or it implies by its conduct that
18 it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of
19 California. Greenbrier can be served care of its registered agent for service of process at c/o
20 Corporate Creations Network, Inc., 3411 Silverside Road, #104 Rodney Building, Wilmington,
21 DE 19810.

22 12. Defendant Dollar Tree is an American chain of discount variety stores that sells
23 items for \$1 or less. A Fortune 500 company, Dollar Tree is headquartered in Chesapeake,
24 Virginia and operates 13,600 stores throughout the 48 contiguous U.S. states and Canada.
25 Through its business, Dollar Tree effectively manufactures, imports, distributes, sells, and/or
26 offers the Product for sale or use in the State of California, or it implies by its conduct that it
27 manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of
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1 California. Dollar Tree can be served care of its registered agent for service of process at c/o
2 Corporate Creations Network, Inc., 1430 Truxton Ave., 5th Floor, Bakersfield, CA 93301.

3 13. Defendants Greenbrier and Dollar Tree are each a “person” in the course of doing
4 business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

5 **VENUE AND JURISDICTION**

6 14. Venue is proper in the County of Alameda because one or more of the instances
7 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants
8 conducted, and continue to conduct, business in the County of Alameda with respect to the
9 Product.

10 15. This Court has jurisdiction over this action pursuant to California Constitution
11 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
12 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
13 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
14 this Court has jurisdiction over this lawsuit.

15 16. This Court has jurisdiction over Defendants because they have sufficient
16 minimum contacts with the State of California, and/or have otherwise purposefully availed
17 themselves of the California market. Such purposeful availment has rendered the exercise of
18 jurisdiction by California courts consistent and permissible with traditional notions of fair play
19 and substantial justice.

20 **SATISFACTION OF NOTICE REQUIREMENTS**

21 17. On May 21, 2015, Plaintiff gave notice of alleged violation of Health and Safety
22 Code § 25249.6 (the “Notice”) to Defendants and Dollar Tree, Inc. concerning the exposure of
23 California citizens to DEHP contained in the Product without proper warning, subject to a
24 private action to Defendants, Dollar Tree Inc. and to the California Attorney General’s office and
25 the offices of the County District attorneys and City Attorneys for each city with a population
26 greater than 750,000 persons wherein the herein violations allegedly occurred.

27 18. The Notice complied with all procedural requirements of Proposition 65 including
28 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at

1 least one person with relevant and appropriate expertise who reviewed relevant data regarding
2 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a
3 private action.

4 19. After receiving the Notice, and to Plaintiff's best information and belief, none of
5 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
6 a cause of action against Defendants and/or Dollar Tree, Inc. under Proposition 65 to enforce the
7 alleged violations which are the subject of Plaintiff's notice of violation.

8 20. Plaintiff is commencing this action more than sixty (60) days from the date of his
9 notice to Defendant, as required by law.

10 **FIRST CAUSE OF ACTION**

11 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

12 21. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 20 of
13 this complaint as though fully set forth herein.

14 22. Defendants have, at all times mentioned herein, acted as a manufacturer,
15 distributor, and/or retailer of the Product.

16 23. The Product contains DHEP, a hazardous chemical found on the Proposition 65
17 list of a chemical known to be hazardous to human health.

18 24. The Product does not comply with the Proposition 65 warning requirements.

19 26. Plaintiff, based on his best information and belief, avers that at all relevant times
20 herein, and at least since April 21, 2015, continuing until the present, that Defendants have
21 continued to knowingly and intentionally expose California users and consumers of the Product
22 to DEHP without providing required warnings under Proposition 65.

23 27. The exposures that are the subject of this notice result from the purchase,
24 acquisition, handling and recommended use of the product. Consequently, the primary route of
25 exposure to these chemicals is through direct skin exposure. Direct skin exposure to DEHP
26 through the user's hands is likely to occur when the user manipulates the plastic sewing case
27 during intended use. Indirect exposure is possible both through the production of vapor phase
28 DEHP inside the sealed case or through physical contact of the kit contents with the interior

1 surface of the clear plastic case. Indirect dermal exposure through the hands can result through
2 the intended use of the kit contents (i.e. sewing) that are contaminated with DEHP. As one
3 potential use of the sewing kit is as a “travel size” sewing kit, the sewing kit may potentially be
4 packed inside a suitcase, purse, or other secondary containment. Clothing and/or items in the
5 same containment as the sewing kit can potentially become contaminated with DEHP that has
6 leached from the exterior of the sewing kit case through vapor phase or direct contact. Indirect
7 dermal exposure to DEHP can result if contaminated items are worn or used and come into
8 contact with bare skin. Finally, while mouthing of the product does not seem likely, some
9 amount of exposure through ingestion can occur by handling the product with subsequent
10 touching of the users hand to mouth.

11 28. Plaintiff, based on his best information and belief, avers that such exposures will
12 continue every day until clear and reasonable warnings are provided to Product purchasers and
13 users or until this known toxic chemical is removed from the Product.

14 29. Defendants have knowledge that the normal and reasonably foreseeable use of the
15 Product exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur
16 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
17 sale and offering of the Product to consumers in California.

18 30. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
19 Complaint.

20 31. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
21 described acts, Defendant are liable for a maximum civil penalty of \$2,500 per day per violation.

22 32. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
23 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff demands judgment against Defendants and requests the
26 following relief:


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- A. That the court assess civil penalties against Defendants in the amount of \$2,500 per day for each violation in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin Defendants mandating Proposition 65 compliant warnings on the Product;
- C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- D. That the court grant any further relief as may be just and proper.

Dated: December 22, 2015

BRODSKY & SMITH, LLC

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