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Superior Court of California  
County of Los Angeles

**MAR 23 2016**

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6  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF LOS ANGELES**

**BC 6 14 6 11**

11 SARA HAMMOND,  
in the public interest,  
12  
Plaintiff,

CASE NO.:  
COMPLAINT FOR PENALTY AND  
INJUNCTION

13 v.

14 GREENBRIER INTERNATIONAL, INC.,  
a Delaware Corporation; and DOES 1-20,  
15 inclusive;  
16  
Defendants.

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement Act  
of 1986 (*Health & Safety Code, § 25249.5,  
et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

17  
18 **NATURE OF THE ACTION**

19 1. This Complaint is a representative action brought by plaintiff Sara Hammond  
20 ("Plaintiff") in the public interest of the citizens of the State of California to enforce the public's  
21 right to be informed of the presence of di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical  
22 found in school supply/pencil cases containing Vinyl/PVC components ("Pencil Bags") sold in  
23 California. DEHP is a toxic chemical found in a variety of products.

24 2. By this Complaint, Plaintiff seeks to remedy Defendants' continuing failure to  
25 warn California citizens about the risk of exposure to DEHP present in and on Pencil Bags with  
26 Vinyl/PVC components manufactured, distributed, and offered for sale or use to consumers  
27 throughout the State of California.  
28

**BY FAX**

1           3.       Detectable levels of DEHP are commonly found in and on Pencil Bags with  
2 Vinyl/PVC components that Defendants manufacture, import, distribute, and or offer for sale to  
3 consumers throughout the State of California.

4           4.       Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
5 Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”), “[n]o person in the course of doing  
6 business shall knowingly and intentionally expose any individual to a chemical known to the  
7 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to  
8 such individual ...” Health & Safety Code § 25249.6.

9           5.       Pursuant to Proposition 65, on October 24, 2003, California identified and listed  
10 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became  
11 subject to the “clear and reasonable warning” requirements of Proposition 65 one year later on  
12 October 24, 2004. 27 California Code of Regulations (“C.C.R.”) § 27001(c); Health and Safety  
13 Code §§ 25249.8 & 25249.10(b).

14           6.       DEHP is hereinafter referred to as the “Listed Chemical”.

15           7.       Defendant Greenbrier International, Inc. (“Greenbrier”) manufactures, distributes,  
16 imports, sells and/or offers for sale in California Pencil Bags with Vinyl/PVC components  
17 containing DEHP without a warning, including but not limited to JOT Pencil Bag, Part # 206751  
18 1506, UPC # 6 39277 02439 8.

19           8.       All products containing the Listed Chemicals as identified in Paragraph 7 above  
20 shall hereinafter be referred to as the “Products”.

21           9.       Defendants’ failures to warn consumers in the State of California about their  
22 exposures to the Listed Chemical in conjunction with Defendant’s sales of the Products, is a  
23 violation of Proposition 65 and subjects Defendants to enjoinder of such conduct as well as  
24 civil penalties for each violation. Health & Safety Code § 25249.8(a) & (b)(1).

25           10.      For Defendants’ violations of Proposition 65, Plaintiff seeks permanent injunctive  
26 relief to compel Defendants to provide purchases or users of the Products with the required  
27 warning regarding the health hazards of the Listed Chemical in the Products. Health & Safety  
28 Code § 25249.7(a).

1 11. Pursuant to Health & Safety Code § 25249.7(b), Plaintiff also seeks civil penalties  
2 against Defendants for the violations of Proposition 65.

3 **PARTIES**

4 12. Plaintiff Sara Hammond (“Plaintiff”) is a citizen of the State of California who is  
5 dedicated to protecting the health of California citizens through the elimination or reduction of  
6 toxic exposures from consumer products, and she brings this action in the public interest  
7 pursuant to Health & Safety Code § 25249.7(d).

8 13. Defendant Greenbrier is a “person in the course of doing business” within the  
9 meaning of Health & Safety Code §§ 25249.6 and 25249.11.

10 14. Greenbrier manufactures, imports, distributes, sells, and/or offers the Products for  
11 sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
12 distributes, sells and/or offers the Products for sale or use in the State of California.

13 15. Defendants Does 1-20 are each “persons in the course of doing business” within  
14 the meaning of Health & Safety Code § 25249.11(b), which manufacture, distribute, sell, and/or  
15 offer the Products for sale in the State of California. At this time, the true names and capacities  
16 of defendants Does 1 through 20, inclusive, are unknown to Plaintiff, who, therefore, sues said  
17 defendants by their fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff is  
18 informed and believes, and on that basis alleges, that each of the fictitiously named defendants is  
19 responsible for the acts and occurrences alleged herein. When ascertained, their true names and  
20 capacities shall be reflected in an amended complaint.

21 16. Defendants Greenbrier and Does 1-20 are collectively referred to herein as  
22 “Defendants”.

23 **VENUE AND JURISDICTION**

24 17. Venue is proper in Los Angeles Superior Court, pursuant to Code of Civil  
25 Procedure §§ 393, 395 and 395.5 because this Court is a court of competent jurisdiction, because  
26 Plaintiff seeks civil penalties against Defendants, because one of more instances of wrongful  
27 conduct occurred, and continue to occur, in the County of Los Angeles, and/or because  
28

1 Defendant conducted, and continues to conduct, business in this county with respect to the  
2 Products.

3 18. The Court has jurisdiction over this action pursuant to Health & Safety Code §  
4 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to  
5 California Constitution Article VI, section 10, which grants the Superior Court “original  
6 jurisdiction in all causes except those given by statute to other trial courts” because this case is  
7 not given by statute to other trial courts.

8 19. This Court has jurisdiction over Defendants because each is a business entity that  
9 does sufficient business, has sufficient minimum contacts in California or otherwise intentionally  
10 avails itself of the California market through the sale, marketing, importation, distribution or use  
11 of the Products in California and/or by having such other contacts with California so as to render  
12 the exercise of jurisdiction over it by the California courts consistent with traditional notions of  
13 fair play and substantial justice.

14 **FIRST CAUSE OF ACTION**

15 **(Violation of Proposition 65 – Against All Defendants)**

16 20. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,  
17 Paragraphs 1 through 19, inclusive.

18 21. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
19 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be  
20 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
21 harm.” Proposition 65, § 1(b).

22 22. Proposition 65 states, “No person in the course of doing business shall knowingly  
23 and intentionally expose any individual to a chemical known to the state to cause cancer or  
24 reproductive toxicity without first giving clear and reasonable warning to such individual ...”  
25 Health & Safety Code § 25249.6.

26 23. On November 12, 2016, Plaintiff’s sixty-day notice of violation, together with the  
27 requisite certificate of merit was served on Greenbrier, the California Attorney General, the  
28 District Attorneys of every county in California, and the City Attorneys of every California City

1 with a population greater than 750,000. The Notice stated that, as a result of Defendants' sales  
2 of the Products containing DEHP, purchasers and users in the State of California were being  
3 exposed to DEHP resulting from their reasonably foreseeable use of the Products, without the  
4 individual purchasers and users first having been provided with a "clear and reasonable warning"  
5 regarding such toxic exposures, as required by Proposition 65. Greenbrier was also served with  
6 "Appendix A: Office Of Environmental Health Hazard Assessment California Environmental  
7 Protection Agency, The Safe Drinking Water And Toxic Enforcement Act Of 1986 (Proposition  
8 65): A Summary" as required by 27 C.C.R. § 25903(b)(1).

9         24. Defendants have engaged in the manufacture, importation, distribution, sale and  
10 offering of the Products for sale or use in violation of Health & Safety Code § 25249.6, and  
11 Defendants' violations have continued to occur beyond their receipt of Plaintiff's sixty-day  
12 notice of violation. As such, Defendants' violations are ongoing and continuous in nature, and  
13 will continue to occur in the future.

14         25. After receiving Plaintiff's sixty-day notice of violation, the appropriate public  
15 prosecutors and enforcement agencies have failed to commence and diligently prosecute a cause  
16 of action against Defendants under Proposition 65.

17         26. The Products manufactured, imported, distributed, sold, and offered for sale or  
18 use in California by Defendants contain the Listed Chemical such that they require a "clear and  
19 reasonable" warning under Proposition 65.

20         27. Defendants knew or should have known that the Products they manufacture,  
21 import, distribute, sell, and offer for sale or use in California contain the Listed Chemical.

22         28. The Listed Chemical is present in or on the Products in such a way as to expose  
23 individuals to the Listed Chemical through dermal contact and/or ingestion during reasonably  
24 foreseeable use of the Products.

25         29. The normal and reasonably foreseeable uses of the Products have caused, and  
26 continue to cause, consumer exposures to the Listed Chemical, as such exposures are defined by  
27 the California Code of Regulations Title 27, § 252602(b).

28



1           2.       That the Court, pursuant to Health & Safety Code § 25249.7(a), permanently  
2 enjoin Defendants from manufacturing, distributing, or offering the Products for sale or use in  
3 California without first providing a “clear and reasonable warning” as defined by the California  
4 Code of Regulations title 27, § 25601 *et seq.*, as to the harms associated with exposures to the  
5 Listed Chemical;

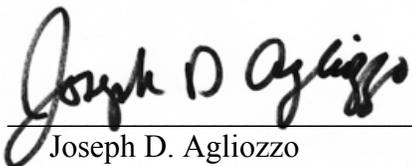
6           3.       That the Court, pursuant to Health & Safety Code § 25249.7(a), issue permanent  
7 injunctions mandating that Defendants recall all Products currently in the chain of commerce in  
8 California without a “clear and reasonable warning” as defined by California Code of  
9 Regulations title 27, § 25601 *et seq.*;

10          4.       That the Court grant Plaintiff her reasonable attorneys’ fees and costs of suit; and

11          5.       That the Court grant such other and further relief as may be just and proper.

12 Dated March 23, 2016

Respectfully Submitted,

13  
14 By:   
15       Joseph D. Agliozzo  
16       Attorney for Plaintiff  
17       SARA HAMMOND