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ENDORSED  
FILED  
ALAMEDA COUNTY  
APR 10 2017

CLERK OF THE SUPERIOR COURT,  
By Lanette Buffin, Deputy

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

12 ANTHONY FERREIRO,  
13 Plaintiff,  
14 vs.  
15 GREENBRIER INTERNATIONAL,  
16 INC. and DOLLAR TREE STORES,  
17 INC.,  
18 Defendants.

Case No. *7856075*

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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.

29 2. This complaint is a representative action brought by Plaintiff in the public interest  
30 of the citizens of the State of California to enforce the People's right to be informed of the health  
31 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in

BY FAX

1 headphones/ear muffs manufactured, sold and/or distributed by defendants Greenbrier  
2 International, Inc. (“Greenbrier”) and/or Dollar Tree Stores, Inc. (“Dollar Tree”) (Greenbrier and  
3 Dollar Tree are collectively referred to herein as, “Defendants”) in California.

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

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

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

20 6. Plaintiff alleges that Defendants produce, manufacture, distribute, import, sell,  
21 and/or offer for sale in California, without the required warning, Tool Bench Noise Reduction  
22 Ear Muff, UPC No. 6 39277 08412 5 (the “Product”) that contain DEHP.

23 7. Defendants’ failure to warn consumers, and other individuals in California of the  
24 health hazards associated with exposure to DEHP in conjunction with the sale, manufacture,  
25 and/or distribution of the Product is a violation of Proposition 65 and subjects Defendants to the  
26 enjoinder and civil penalties described herein.

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



1 VENUE AND JURISDICTION

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

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

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

16 SATISFACTION OF NOTICE REQUIREMENTS

17 17. On November 29, 2016, Plaintiff gave notice of alleged violation of Health and  
18 Safety Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California  
19 citizens to DEHP contained in the Product without proper warning, subject to a private action to  
20 Defendants, and to the California Attorney General's office and the offices of the County District  
21 attorneys and City Attorneys for each city with a population greater than 750,000 persons  
22 wherein the herein violations allegedly occurred.

23 18. The Notice complied with all procedural requirements of Proposition 65 including  
24 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at  
25 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
26 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a  
27 private action.

28



1 phase DEHP can be emitted into the ear canal during normal use of the product. This gas phase  
2 DEHP can potentially permeate skin and membranes of the eardrum, middle ear, and inner ear.  
3 Finally, while mouthing of the product does not seem likely, some amount of exposure through  
4 ingestion can occur by handling the product with subsequent touching of the user's hand to  
5 mouth.

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

9 28. Defendants have knowledge that the normal and reasonably foreseeable use of the  
10 Product exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur  
11 by their deliberate, non-accidental participation in the manufacture, importation, distribution,  
12 sale and offering of the Product to consumers in California.

13 29. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
14 Complaint.

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

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

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff demands judgment against Defendants and requests the  
21 following relief:

- 22 A. That the court assess civil penalties against Defendants in the amount of  
23 \$2,500 per day for each violation in accordance with Health and Safety  
24 Code § 25249.7(b);
- 25 B. That the court preliminarily and permanently enjoin Defendants  
26 mandating Proposition 65 compliant warnings on the Product;
- 27 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 28 D. That the court grant any further relief as may be just and proper.

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Dated: April 10, 2017

BRODSKY, & SMITH, LLC

By:  \_\_\_\_\_

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