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Superior Court of California
County of Los Angeles
NOV 10 2016
Sherri R. Carter, Executive Officer/Clerk
By Sally Fletcher, Deputy

BY FAX

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Attorney for Plaintiff,
Sara Hammond

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SARA HAMMOND,
in the public interest,

Plaintiff,

vs.

GREENBRIER INTERNATIONAL, INC., a Delaware Corporation; and Does 1-20, inclusive;

Defendants.

CASE NO.: BC614611

~~[PROPOSED]~~ JUDGMENT PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT AND CONSENT JUDGMENT

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

Date: November 10, 2016
Time: 8:30 am
Dept: 50
Judge: Honorable Teresa A. Beaudet
RES ID: **160804148518**

In the above-entitled action, plaintiff Sara Hammond and defendant Greenbrier International, Inc. having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a [Proposed] Consent Judgment ("Consent Judgment") attached hereto as Exhibit "A" and incorporated herein by reference, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment on 11/10, 2016,

IT IS HEREEBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

DATED: 11/10/16

By: Irene A. Brandlet

JUDGE OF THE SUPERIOR COURT

Exhibit A - Proposed Consent Judgment Executed by the Parties

Joseph D. Agliozzo (SBN 167292)
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1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between Plaintiff Sara Hammond ("Hammond" or "Plaintiff") and defendant Greenbrier International, Inc. ("Greenbrier" or "Defendant") with Hammond and Greenbrier referred to individually as a "Party" and collectively as the "Parties".

1.2 Plaintiff

Hammond is a resident of the State of California who represents that she seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful substances contained in consumer products.

1.3 **Defendant**

Plaintiff alleges that Greenbrier employs ten or more people and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65").

1.4 **General Allegations**

1.4.1 Plaintiff alleges that Greenbrier manufactured, imported, sold and/or distributed for sale in California, pencil bags/pouches consisting of PVC components containing Di(2 ethylhexyl) phthalate ("DEHP") without providing the clear and reasonable health hazard warnings required by Proposition 65.

1.4.2 Plaintiff alleges that exposure to DEHP occurs via ingestion from hand to mouth transfer and via dermal contact with the products vinyl/PVC components.

1.5 **Product Description**

The product covered by this Consent Judgment is, pencil bags including but not limited to the JOT Pencil Bag, Part # 206751 1506, UPC # 6 39277 02439 8 (hereinafter the "Product").

1.6 **Notice of Violation**

On November 12, 2015, Plaintiff served Greenbrier and certain requisite public enforcement agencies with 60 Day Notice of Violation (the "Notice") alleging that Greenbrier violated Proposition 65 when it failed to warn customers and consumers in California that the Product exposed users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.7 **Complaint**

On March 23, 2016, plaintiff commenced the instant action ("Complaint") the operative pleading in this action, naming Greenbrier as a defendant, and asserting a cause of action for the alleged violations of Proposition 65 that are the subject of the Notice.

1.8 **No Admission**

Greenbrier denies the material, factual, and legal allegations contained in the Notice and Complaint. Greenbrier maintains that all of the products it has manufactured, sold or distributed for sale in California, including the Product, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Greenbrier of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Greenbrier of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect Greenbrier's obligations responsibilities, and duties under this Consent Judgment.

1.9 **Consent to Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Greenbrier as to the allegations contained in the Complaint, that venue is proper in the County of Los Angeles; and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure section 664.6.

1.10 **Effective Date**

For purposes of this Consent Judgment, the "Effective Date" means the date on which this Consent Judgment is approved and entered by the Court.

2. **INJUNCTIVE RELIEF: CESSATION OF SALES IN CALIFORNIA OF NOTICED PRODUCT**

2.1 **Cessation of sales of noticed product**

Defendant has already ceased sales the Product for distribution in California shortly after receipt of the Notice. Defendant shall not sell the Product in its current formulation for distribution in California in the future, and shall not resume sales of the product in California unless the product meets the reformulation standard set forth in Paragraph 2.2.

2.2. **Reformulation**

Upon the Effective Date, Greenbrier agrees to only manufacture for sale or purchase for sale in or into California, "Reformulated Products." For purposes of this Consent Judgment, "Reformulated Products" are Products containing no more than 1,000 parts per million (0.1%) DEHP in any accessible component (i.e., any component that may be touched during use).

3. **MONETARY SETTLEMENT**

3.1 **Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

In settlement of all the claims referred to in this Consent Judgment, Greenbrier will pay the sum of $2,000 as civil penalties. All civil penalty payments will be allocated in accordance with California Health & Safety Code section 25249.12(c)(l) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and 25% of the penalty remitted to "Sara Hammond". The civil penalty payment shall be delivered on the date due as set forth above at the addresses provided below.

3.1.1 **Civil Penalty Payment**

Within ten (10) business days of the date this Consent Judgment is entered by the Court, Greenbrier shall make a civil penalty payment of $2,000 ($1,500 payable to OEHHA, $500 payable to Sara Hammond).

3.2 **Reimbursement of Fees and Costs**

The Parties acknowledge that Hammond and her counsel have maintained a policy of providing defendant the option of resolving Proposition 65 disputes without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving the fee issue to be resolved separately from the material terms of the settlement agreement. In this case, Greenbrier agreed to resolve Hammond's outstanding fees and costs at the same time as the other material items and to have them included as part of this Consent Judgment. Under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this agreement including the fees and costs incurred as a result of

investigating, bringing this matter to Greenbrier's attention, negotiating a settlement in the public interest, and seeking court approval of the same, Greenbrier agrees to pay Hammond, within ten (10) business days of the Court's approval and entry of this Consent Judgment, fees and costs in the amount of $21,000 payable to Law Office of Joseph D. Agliozzo.

3.3 **Payment Procedures**

3.3.1 **Payment Addresses**.

(a) All Payments owed to Hammond and her counsel, pursuant to Sections 3.1 and 3.2 shall be delivered to the following address:

Law Office of Joseph D. Agliozzo
PO Box 3582
Manhattan Beach, CA 90266

(b) All payments owed to OEHHA pursuant to Section 3.1 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following addresses, as appropriate:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery or Courier:

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

3.3.2 **Proof of Payment to OEHHA**. A copy of the check payable to OEHHA shall be mailed, simultaneous with payment, to Law Office of Joseph D. Agliozzo at the address set forth in Section 3.3.1(a) above.

3.3.3 **Tax Documentation.** Greenbrier shall provide a separate 1099 form for each payment required by this Consent Judgment to: (a) Hammond whose address and tax identification number shall be furnished upon request after this Consent Judgment has been fully executed by the Parties; (b) California Office of Environmental Health Hazard

Assessment; and (c) Law Office of Joseph D. Agliozzo, and deliver such form to the payee at the payment addresses provided in Section 3.3.1, above.

4. **CLAIMS COVERED AND RELEASED**

4.1 **Plaintiff's Release of Proposition 65 Claims**

Hammond, acting on her own behalf and in the public interest, releases Greenbrier, its former and current parents, subsidiaries, shareholders, affiliated entities under common ownership, directors, officers, agents, employees, attorneys, independent sales representatives, partners, licensors, and each entity which directly or indirectly distributes or sells the Product, including, but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, and each of their successors and assigns (collectively, "Releasees"), from all claims alleging violations of Proposition 65 based on unwarned exposures to DEHP in the Product prior to the Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Product, as set forth in the Notice and Complaint.

4.2. **Plaintiff's Individual Release of Claims**

Hammond, in her individual capacity only and not in any representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Product as manufactured, imported, distributed, or sold by Greenbrier prior to the Effective Date.

4.3 **Waiver of California Civil Code Section 1542**

Hammond in her individual capacity only and *not* in any representative capacity expressly waives any benefits that California Civil Code section 1542 or any other laws, legal decisions and/or legal principles of similar effect might provide to her now or in the future and agrees that the releases described in paragraphs 4.1 and 4.2, above, are

general and extend to all claims, whether or not known, claimed or suspected by Hammond. California Civil Code section 1542 reads as follows:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Hammond certifies that she has read the provisions of California Civil Code section 1542, and that the effect and import of those provisions have been explained to her. Hammond further acknowledges and agrees that this waiver of rights under California Civil Code section 1542 (or any other laws, legal decisions, or legal principles of similar effect might provide to her now or in the future) has been separately bargained for and is an essential and material term of this Consent Judgment and, without such waiver, this Consent Judgment would not have been entered into. Hammond understands that the facts with respect to which this Consent Judgment are given may hereafter prove to be different from the facts now known or believed by her, and she hereby accepts and assumes the risk thereof and agrees that this Consent Judgment shall be and shall remain, in all respects, effective and not subject to termination or rescission by reason of any such difference in facts. Hammond understands and acknowledges the significance and consequence of such specific waiver of unknown claims and hereby assumes full responsibility for any injuries, damages, losses or liabilities that she may hereinafter incur or discover from the waiver of these unknown claims.

5. **COURT APPROVAL**

This Consent Judgment is not effective until it is approved in its entirety and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court, within one year after it has been fully executed by all Parties. Hammond and Greenbrier agree to support the entry of this agreement as a Consent Judgment and to obtain approval of the Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a noticed motion is

required for judicial approval of this Consent Judgment which motion Hammond shall draft and file and Greenbrier shall support, appearing at the hearing if so requested. If any third-party objection to the motion is filed, Hammond and Greenbrier agree to work together to file a reply and appear at any hearing. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

If the Court does not approve the Consent Judgment, the Parties shall meet and confer as to whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a course of action to take, then the case shall proceed in its normal course on the Court's trial calendar.

6. **SEVERABILITY**

If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

7. **GOVERNING LAW**

The terms of this Consent Judgment shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Product specifically, then Greenbrier may provide Hammond with notice of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Product is so affected. Nothing in this Consent Judgment shall be interpreted to relieve Greenbrier from its obligation to comply with any pertinent state or federal law or regulation.

8. **NOTICE**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the following addresses:

To Greenbrier:	To Hammond:
Peg Carew Toledo	Law Office of Joseph D. Agliozzo

Peg Carew Toledo, Law Corporation
3001 Douglas Blvd., Suite 340
Roseville, CA 95661

PO Box 3582
Manhattan Beach, CA 90266

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

9. **COUNTERPARTS – FACSIMILE AND PDF SIGNATURES**

This Consent Judgment may be executed in counterparts and by facsimile or portable document format (pdf) signature, each of which shall be deemed, and as valid as, an original, and all of which, when taken together, shall constitute one and the same document.

10. **COMPLIANCE WITH REPORTING REQUIREMENTS**

Hammond and her counsel agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

11. **MODIFICATION**

This Consent Judgment may be modified only by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon.

12. **AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

Plaintiff Sara Hammond

Dated September 19, 2016

AGREED TO:

Defendant Greenbrier International, Inc.

Dated September 19, 2016