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FILED
ALAMEDA COUNTY

JUN 22 2023

CLERK OF THE SUPERIOR COURT

By *Cynthia M. [Signature]*
Deputy

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 v.

14 GREENBRIER INTERNATIONAL, INC.,

15 Defendant.

Case No.: 22CV014107

CONSENT JUDGMENT

Judge: Stephen Kaus

Dept.: 19

Hearing Date: June 21, 2023

Hearing Time: 3:00 PM

Reservation #: 834818018707

Electronically Received 05/03/2023 02:39 PM

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1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Gabriel
3 Espinoza acting on behalf of the public interest (hereinafter “Espinoza”) and Greenbrier
4 International, Inc. (“Greenbrier” or “Defendant”) with Espinoza and Defendant collectively
5 referred to as the “Parties” and each of them as a “Party.” Espinoza is an individual residing in
6 California that seeks to promote awareness of exposures to toxic chemicals and improve human
7 health by reducing or eliminating hazardous substances contained in consumer products. Greenbrier
8 is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health
9 & Safety Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Espinoza alleges that Defendant has exposed
11 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of Tool Bench pliers, UPC #
12 639277865700 without providing a clear and reasonable exposure warning pursuant to Proposition
13 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to
14 cause cancer and reproductive toxicity.

15 **1.3 Notice of Violation/Action.** On or about July 14, 2021, Espinoza served Greenbrier,
16 Dollar Tree Stores, Inc. (“Dollar Tree”) and various public enforcement agencies with documents
17 entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the
18 “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and
19 customers that use of Tool Bench pliers, UPC # 639277865700 expose users in California to DEHP.
20 No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On
21 July 8, 2022, Espinoza filed a complaint (the “Complaint”).

22 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
24 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
25 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
26 claims which were or could have been raised in the Action based on the facts alleged therein and
27 in the Notice.

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1 1.5 Defendant denies the material allegations contained in Espinoza's Notice and
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
3 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
5 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
6 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
7 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8 2. **DEFINITIONS**

9 2.1 **Covered Products.** The term "Covered Products" means Tool Bench pliers, UPC #
10 639277865700 that are manufactured, distributed, shipped into California and offered for sale in
11 California by Greenbrier.

12 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
13 entered as a Judgment of the Court.

14 3. **INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

15 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
16 signed by both Parties, and continuing thereafter, Covered Products that Greenbrier directly
17 manufactures, imports, distributes, sells, or offers for sale in California¹ shall either be: (a)
18 reformulated Products pursuant to § 3.2, below; or (b) labeled with a clear and reasonable exposure
19 warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a "Reformulated
20 Product" is a Covered Product that is in compliance with the standard set forth in § 3.2 below. The
21 warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

22 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products
23 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
24 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
25 and 8270C or other methodology utilized by federal or state government agencies for the purpose
26 of determining the phthalate content in a solid substance.

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1 3.3 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
2 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
3 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,
4 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There
5 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream
6 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall
7 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

8 (a) **Warning.** The “Warning” shall consist of the statement:

9 ⚠ **WARNING:** This product can expose you to chemicals including di(2-
10 ethylhexyl) phthalate (DEHP), which are known to the State of California to cause
11 cancer and birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

12 (b) **Alternative Warning:** Greenbrier may, but is not required to, use the alternative
13 short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

14 ⚠ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

15 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
16 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
17 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
18 triangle with a black outline, except that if the sign or label for the Covered Product does not use
19 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
20 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
21 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
22 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
23 displayed with such conspicuousness, as compared with other words, statements, or designs as to
24 render it likely to be read and understood by an ordinary individual under customary conditions of
25 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
26 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
27 the use of the Covered Product and shall be at least the same size as those other safety warnings.
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1 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's
2 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
3 Greenbrier offers Products for sale to consumers in California. The requirements of this Section
4 shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the
5 word "**WARNING**," appears on the product display page, or by otherwise prominently displaying
6 the warning to the purchaser prior to completing the purchase. To comply with this Section,
7 Greenbrier shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has
8 the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the
9 ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet
10 sellers, provide such sellers with written notice in accordance with Title 27, California Code of
11 Regulations, § 25600.2. Third-party internet sellers of the Covered Product that have been provided
12 with written notice in accordance with Title 27, California Code of Regulations, § 25600.2 are not
13 released in Section 5 of this Agreement if they fail to meet the warning requirements herein.

14 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
15 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
16 Judgment or by complying with warning requirements adopted by OEHHA applicable to the
17 Covered Product and exposures at issue after the Effective Date

18 **4. MONETARY TERMS**

19 4.1 **Civil Penalty.** Greenbrier shall pay \$3,000.00 as a Civil Penalty pursuant to Health
20 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
21 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
22 Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code § 25249.12(d).

23 4.1.1 Within ten (10) days of the Effective Date, Greenbrier shall issue two
24 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$2,250.00; and
25 to (b) "Gabriel Espinoza" in the amount of \$750.00. Payment owed to Espinoza pursuant to this
26 Section shall be delivered to the following payment address:

27 Evan J. Smith, Esquire
28 Brodsky & Smith

1 Two Bala Plaza, Suite 805
2 Bala Cynwyd, PA 19004

3 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
4 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

5 For United States Postal Service Delivery:

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

11 For Non-United States Postal Service Delivery:

12 Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 1001 I Street
16 Sacramento, CA 95814

17 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith at the address set
18 forth above as proof of payment to OEHHA.

19 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Greenbrier shall pay
20 \$35,000.00 to Brodsky & Smith ("Brodsky Smith") as complete reimbursement for Espinoza's
21 attorneys' fees and costs incurred as a result of investigating, bringing this matter to the attention
22 of Greenbrier, litigating and negotiating and obtaining judicial approval of a settlement in the public
23 interest, pursuant to Code of Civil Procedure § 1021.5.

24 **5. RELEASE OF ALL CLAIMS**

25 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
26 acting on his own behalf, and on behalf of the public interest, and Greenbrier, and its parents,
27 shareholders, members, directors, officers, managers, employees, representatives, agents,
28 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
retailers, including but not limited to, Dollar Tree, and its parents, subsidiaries, and affiliates,

1 franchisees, and cooperative members (“Downstream Releasees”), of all claims for violations of
2 Proposition 65 based on exposure to DEHP from use of the Covered Products manufactured,
3 distributed, or sold by Greenbrier prior to the Effective Date as set forth in the Notice. It is the
4 Parties’ intention that this Consent Judgment shall have preclusive effect such that no other actions
5 by private enforcers, whether purporting to act in his, her, or its interests or the public interest shall
6 be permitted to pursue and take any action with respect to any violation of Proposition 65 based on
7 exposure to DEHP from use of the Covered Products that was alleged in the Complaint, or that
8 could have been brought pursuant to the Notice against Greenbrier and the Downstream Releasees
9 (“Proposition 65 Claims”). Compliance with the terms of this Consent Judgment constitutes
10 compliance with Proposition 65 with regard to exposure to DEHP from use of the Covered
11 Products.

12 5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current
13 agents, representatives, attorneys, and successors and assignees, and *not* in his representative
14 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
15 legal action and releases Greenbrier, Defendant Releasees, and Downstream Releasees from any
16 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
17 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
18 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
19 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
20 from Covered Products manufactured, distributed, or sold by Greenbrier, Defendant Releasees or
21 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
22 Espinoza hereby specifically waives any and all rights and benefits which he now has, or in the
23 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
24 provides as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
26 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
27 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
28 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
 DEBTOR OR RELEASED PARTY.

1 5.3 Greenbrier waives any and all claims against Espinoza, his attorneys and other
2 representatives, for any and all actions taken, or statements made (or those that could have been
3 taken or made) by Espinoza and his attorneys and other representatives, whether in the course of
4 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
5 and with respect to Covered Products.

6 **6. INTEGRATION**

7 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
8 any and all prior negotiations and understandings related hereto shall be deemed to have been
9 merged within it. No representations or terms of agreement other than those contained herein exist
10 or have been made by any Party with respect to the other Party or the subject matter hereof.

11 **7. GOVERNING LAW**

12 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California and apply within the State of California. In the event that Proposition 65 is repealed or
14 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
15 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
16 to the extent that, Covered Products are so affected.

17 **8. NOTICES**

18 8.1 Unless specified herein, all correspondence and notices required to be provided
19 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
20 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
21 by the other party at the following addresses:

22 For Defendant:

23 David Barnes
24 Arnold & Porter Kaye Scholer LLP
25 Three Embarcadero Center, 10th Floor
26 San Francisco, CA 94111

26 And

27 For Espinoza:

28 Evan Smith

1 Brodsky & Smith
2 9595 Wilshire Blvd., Ste. 900
3 Beverly Hills, CA 90212

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

6 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

7 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
8 which shall be deemed an original, and all of which, when taken together, shall constitute one and
9 the same document.

10 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
11 **APPROVAL**

12 10.1 Espinoza agrees to comply with the requirements set forth in California Health &
13 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
14 Defendant agrees it shall support approval of such Motion.

15 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
16 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
17 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
18 days, the case shall proceed on its normal course.

19 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
20 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
21 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
22 its normal course on the trial court's calendar.

23 **11. MODIFICATION**

24 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
25 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.
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1 **12. ATTORNEY'S FEES**

2 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

4 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
5 pursuant to law.

6 **13. RETENTION OF JURISDICTION**

7 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

9 **14. AUTHORIZATION**

10 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective Parties and have read, understood, and agree to all of the terms and conditions of this
12 document and certify that he or she is fully authorized by the Party he or she represents to execute
13 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
14 explicitly provided herein each Party is to bear its own fees and costs.

15 **AGREED TO:**

AGREED TO:

16
17 Date: _____

Date: 5/2/23

18 By: _____

By: 

19 GABRIEL ESPINOZA

GREENBRIER INTERNATIONAL, INC.

20
21 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

22
23 Dated: _____

Judge of Superior Court

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13 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
14 explicitly provided herein each Party is to bear its own fees and costs.

15 **AGREED TO:**

AGREED TO:

16
17 Date: 5/3/23

Date: _____

18 By: [Signature]
19 GABRIEL ESPINOZA

By: _____
GREENBRIER INTERNATIONAL, INC.

20
21 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

22
23 Dated: 6-22-23

[Signature]
Judge of Superior Court