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9 Sara Hammond

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 SARA HAMMOND,
13 in the public interest,

14 Plaintiff,

15 vs.

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

19 Defendants.

CASE NO.: BC614611

[PROPOSED] 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**

20 **1. INTRODUCTION**

21 **1.1 Parties**

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

25 **1.2 Plaintiff**

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

1 **1.3 Defendant**

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

5 **1.4 General Allegations**

6 1.4.1 Plaintiff alleges that Greenbrier manufactured, imported, sold and/or
7 distributed for sale in California, pencil bags/pouches consisting of PVC components containing
8 Di(2 ethylhexyl) phthalate (“DEHP”) without providing the clear and reasonable health hazard
9 warnings required by Proposition 65.

10 1.4.2 Plaintiff alleges that exposure to DEHP occurs via ingestion from hand to
11 mouth transfer and via dermal contact with the products vinyl/PVC components.

12 **1.5 Product Description**

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

16 **1.6 Notice of Violation**

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

23 **1.7 Complaint**

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

27 **1.8 No Admission**

28

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

10 **1.9 Consent to Jurisdiction**

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

16 **1.10 Effective Date**

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

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

21 **2.1 Cessation of sales of noticed product**

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

27 **2.2. Reformulation**

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

6 **3. MONETARY SETTLEMENT**

7 **3.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

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

15 **3.1.1 Civil Penalty Payment**

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

19 **3.2 Reimbursement of Fees and Costs**

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

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

5 **3.3 Payment Procedures**

6 **3.3.1 Payment Addresses.**

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

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

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

15 For United States Postal Service Delivery:

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

21 For Non-United States Postal Service Delivery or Courier:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 1001 I Street
26 Sacramento, CA 95814

27 **3.3.2 Proof of Payment to OEHHA.** A copy of the check payable to
28 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.

25 **3.3.3 Tax Documentation.** Greenbrier shall provide a separate 1099 form for
26 each payment required by this Consent Judgment to: (a) Hammond whose address and tax
27 identification number shall be furnished upon request after this Consent Judgment has been
28 fully executed by the Parties; (b) California Office of Environmental Health Hazard

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

3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1 Plaintiff's Release of Proposition 65 Claims**

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

16 **4.2. Plaintiff's Individual Release of Claims**

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

24 **4.3 Waiver of California Civil Code Section 1542**

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

1 general and extend to all claims, whether or not known, claimed or suspected by Hammond.

2 California Civil Code section 1542 reads as follows:

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

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

22 **5. COURT APPROVAL**

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

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

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

10 **6. SEVERABILITY**

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

14 **7. GOVERNING LAW**

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

22 **8. NOTICE**

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

27 To Greenbrier:

To Hammond:

28 Peg Carew Toledo

Law Office of Joseph D. Aglio

1 Peg Carew Toledo, Law Corporation
2 3001 Douglas Blvd., Suite 340
3 Roseville, CA 95661

PO Box 3582
Manhattan Beach, CA 90266

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 AND PDF SIGNATURES**

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

10 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

13 **11. MODIFICATION**

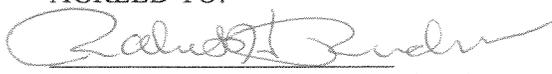
14 This Consent Judgment may be modified only by written agreement of the Parties
15 and upon entry of a modified Consent Judgment by the Court thereon.

16 **12. AUTHORIZATION**

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

20 AGREED TO:

21 Plaintiff Sara Hammond

AGREED TO:

22 Defendant Greenbrier International, Inc.

23 Dated September 19, 2016

Dated September 19, 2016