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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

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.

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 California 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.

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  
12 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

15           **⚠ WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

16           3.4    A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word  
17 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
18 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
19 triangle with a black outline, except that if the sign or label for the Covered Product does not use  
20 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
21 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed  
22 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or  
23 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is  
24 displayed with such conspicuousness, as compared with other words, statements, or designs as to  
25 render it likely to be read and understood by an ordinary individual under customary conditions of  
26 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of  
27 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning  
28 the use of the Covered Product and shall be at least the same size as those other safety warnings.

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, 10<sup>th</sup> 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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**12. ATTORNEY'S FEES**

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

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

**13. RETENTION OF JURISDICTION**

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

**14. AUTHORIZATION**

14.1 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 document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 5/2/23 \_\_\_\_\_

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

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

GABRIEL ESPINOZA

GREENBRIER INTERNATIONAL, INC.

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court

1 **12. ATTORNEY'S FEES**

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3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

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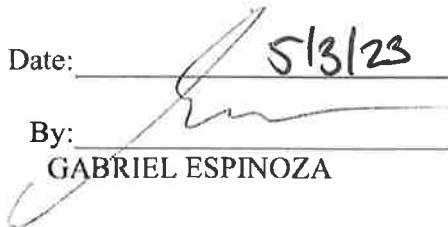
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11 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
12 document and certify that he or she is fully authorized by the Party he or she represents to execute  
13 the Consent Judgment on behalf of the 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: 5/13/23

Date: \_\_\_\_\_

18 By:   
19 GABRIEL ESPINOZA

By: \_\_\_\_\_  
GREENBRIER INTERNATIONAL, INC.

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

22  
23 Dated: \_\_\_\_\_

\_\_\_\_\_  
24 Judge of Superior Court