

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“Agreement”) is entered into by and between Center for Advanced Public Awareness (“CAPA”) and Greenbrier International, Inc. (“Greenbrier”), with CAPA and Greenbrier each individually referred to as a “Party” and, collectively, as the “Parties.” CAPA is a California-based non-profit organization proceeding in the public interest pursuant to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm are disclosed or eliminated from consumer products sold in California. Greenbrier is a person in the course of doing business for purposes of California Health & Safety Code §§ 25249.11(b).

1.2 Consumer Product Description

CAPA alleges that Greenbrier manufactures, imports, sells and/or distributes for sale, in or into California, a coated wires product containing the chemical Lead (“Pb”), specifically the *Toolbench Hardware 4 pc Wire Set 281345 2109 UPC 6 39277 61785 9* (the “Product” or “Products”), without providing the health hazard warning CAPA alleges is required by California Health & Safety Code §§ 25249.5 *et seq.* (“Proposition 65”). Pb is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

1.3 Notice of Violation

On September 13, 2022, CAPA served Greenbrier, Dollar Tree Stores, Inc., the California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Greenbrier and Dollar Tree Stores, Inc. violated Proposition 65 for not providing clear and reasonable warnings to its customers and to consumers in California that the Product can expose users to Pb, a known carcinogen and developmental and reproductive toxin. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1.4 No Admission

Greenbrier denies the material, factual, and legal allegations contained in the Notice, and maintains all products it sold or distributed for sale, in or into California, including the Product, have been, and are, in compliance with all laws. Nothing in this Agreement shall be construed as, nor shall compliance with this Agreement 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 Agreement.

1.5 Effective Date

For purposes of this Agreement, the term "**Effective Date**" shall mean the date on which the Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Commitment to Reformulate or Warn

Commencing on or before April 30, 2024 and continuing thereafter, each Product Greenbrier manufactures, imports, sells, distributes for sale or otherwise provides for sale, in or into California, shall be either: (a) Reformulated Products, as defined by the Reformulation Standard set forth in the following Section 2.2; or (b) Products bearing or accompanied by a clear and reasonable warning, pursuant to Sections 2.3 through 2.5.

2.2 Reformulated Products & Reformulation Standard Defined

For purposes of this Agreement, "Reformulated Products" are defined as Products:

- a) containing no more than 0.009% or 90 parts per million PB on any exterior surface of when analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3050B and 6020A or equivalent methodologies utilized by federal or state agencies for the purpose of determining Lead content in a solid substance; and
- b) yielding a test result of no more than 1.0 microgram of Pb on any exterior surface when sampled pursuant to the NIOSH 9100 testing protocol and analyzed pursuant to EPA 3050B and 6020A. ("Reformulation Standard.")

2.3 Clear and Reasonable Warnings

Pursuant to Section 2.1, for all Products that do not meet the Reformulation Standard for Reformulated Products, Greenbrier shall provide clear and reasonable warnings for all Products it provides for sale to customers in California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, et seq. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies.

(a) **Warning.** The Warning shall consist of the following statement:

⚠ WARNING: This product can expose you to chemicals including lead, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) **Short-Form Warning.** Greenbrier may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(b) (“Short-Form”), and subject to the additional requirements in Sections 2.5 and 2.6, as follows:

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

(c) **Foreign Language Requirement.** Where a consumer product sign, label or shelf tag used to provide a warning includes “Consumer Information”, as the term is defined in title 27 Cal. Code of Regs. § 25600.1(c), in a language other than English, then the accompanying warning must also be provided in those languages, in addition to English.

2.4 On-Product Warning Requirements

Pursuant to Section 2.1, for all Products that do not meet the Reformulation Standard, Greenbrier shall affix a warning on the Product Label, its immediate packaging, or directly on each Product that is manufactured, imported, distributed, sold or otherwise provided for sale to consumers in California. “Product Label” is defined as a display of written, printed, or graphic

material printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in at least 6-point type, and in no event shall it be smaller than the largest type size used for other Consumer Information on the Product.

The foregoing Section 2.3 warnings must print the word “**WARNING:**” in all capital letters, in bold font, and followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except, if the labeling does not use the color yellow, then the symbol may be in black and white. The symbol must also be in a size no smaller than the height of the word “**WARNING:**”. The warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Products and shall be at least the same size as those other safety warnings.

2.5 Internet Product Warning Requirements

In compliance with Section 2.1, for all Products that do not meet the Reformulation Standard for Reformulated Products that are manufactured, imported, distributed, sold or offered for sale via the internet to Consumers located in California, or sold in or into California, by Greenbrier directly or through third-party websites over which Greenbrier has the ability to control the application of warnings, Greenbrier shall provide warnings for each Product, both on the Product Label, in accordance with Section 2.4, and by prominently displaying the warning to consumers residing in California prior to purchase or during the checkout process such that the consumer does not have to seek out the information being provided. The warning or a clearly marked hyperlink to the warning, using the word “**WARNING**” and given in conjunction with the sale of Products via the internet, shall appear on: (a) the same web page on which the Product is displayed; (b) the same web page as the order form for the Product; (c) the same page as the price for any Product; or (d) one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display, description or price of the Product for which it is given in the same type size or larger than other Consumer Information provided for the Product. For third-party

websites, as a condition of sale, Greenbrier shall notify the sellers the Products must be accompanied by a warning, prior to sale in or into California and shall supply the warning requirements, as detailed above.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalties

Pursuant to Health and Safety Code § 25249.7(b), Greenbrier agrees to pay a civil penalty of \$2,500 within fourteen (14) days of the Effective Date. Greenbrier's civil penalty payment will be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%) retained by CAPA. Greenbrier shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,875; and (b) "Center for Advanced Public Awareness" in the amount of \$625. CAPA's counsel shall deliver to OEHHA and CAPA their respective portions of the civil penalty payments.

3.2 Reimbursement of Attorneys' Fees and Costs

CAPA and its counsel offered to resolve the allegations in the Notice without reaching terms on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties finalized the other material settlement terms, they negotiated and reached an accord on the amount of reimbursement to be paid to CAPA's counsel, under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution and reporting of this Agreement to the Office of the California Attorney General. Within fourteen (14) days of the Effective Date, Greenbrier agrees to issue a check in the amount of \$12,000 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Greenbrier's attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

3.3 Payments

All payments payable and due under this Agreement shall be delivered to CAPA's counsel at following address:

Seven Hills LLP
Attn: Kimberly Gates Johnson
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.1 CAPA's Release of Greenbrier

This Agreement is a full, final and binding resolution between CAPA, as an individual and *not* on behalf of the public, and Greenbrier, of any violation of Proposition 65 that was or could have been asserted by CAPA on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, against Greenbrier, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Greenbrier directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, including without limitation Dollar Tree Stores, Inc., franchisees, cooperative members, and licensees (collectively, Releasees), based on their failure to warn, arising under Proposition 65, about alleged exposures to Lead/Pb contained in the Products that were manufactured, distributed, sold and/or offered for sale by Greenbrier in California before April 30, 2024, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, CAPA as an individual and *not* on behalf of the public, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of CAPA's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that CAPA may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees

arising under Proposition 65 with respect to Lead in the Products manufactured, distributed, sold and/or offered for sale by Greenbrier prior to the Effective Date (collectively, Claims) against Greenbrier and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof or to any distributors or suppliers who sold the Products or any component parts thereof to Greenbrier. Nor shall this Section 4.1 release apply to any Releasees who have been instructed by Greenbrier pursuant to Section 2 to provide a warning on Products that are not Reformulated Products and have failed to do so. Nothing in this Section affects CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Greenbrier's Products, as defined by Section 1.2.

4.2 Greenbrier's Release of CAPA

Greenbrier, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against CAPA and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by CAPA and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

4.3 Mutual Waiver of California Civil Code Section 1542

The Parties each acknowledge familiarity with Section 1542 of the California Civil Code which provides:

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

The Parties, each on their own behalf, and on behalf of their past and current agents, representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and

all rights and benefits which it/they may have under, or which may be conferred upon it/them by the provisions of California Civil Code Section 1542, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent they may lawfully waive such rights or benefits pertaining to the released matters, as specifically defined by preceding Sections 4.1 and 4.2. Nothing in this Section 4.3 shall affect KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Products.

KASB and Greenbrier each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code Section 1542.

5. SEVERABILITY

If, subsequent to the execution of this Agreement, any provision of this Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

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

7. NOTICE

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

For Greenbrier:

David Barnes
Hogan Lovells US LLP

For CAPA:

Kimberly Gates Johnson, Partner
Seven Hills LLP

Four Embarcadero Center, Suite 3500
San Francisco, CA 94111

4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

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

8. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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

9. COMPLIANCE WITH REPORTING REQUIREMENTS

CAPA and its counsel agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

10. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

11. MODIFICATION


This Agreement may be modified only by a written agreement of the Parties.

12. AUTHORIZATION

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

AGREED TO:

Date: 3/21/24

By: 
Linda DeRose-Droubay, CEO
Center for Advanced Public Awareness

AGREED TO:

Date: 3/18/24

By: 
Alvin Liu, Assistant General Counsel
Greenbrier International Inc.