

1 Laralei Paras, State Bar No. 203319
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 RUSSELL BRIMER

ENDORSED
FILED
ALAMEDA COUNTY

APR 15 2014

CLERK OF THE SUPERIOR COURT
By Lanetta Duffin, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 POWERCAM, INC.; and DOES 1-150,
18 inclusive,

19 Defendants.

Case No.

RG13675514

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code. § 25249.6 *et seq.*)

20
21
22
23
24
25
26
27
28
BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff Russell Brimer in the
3 public interest of the citizens of the State of California to enforce the People’s right to be informed
4 of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in vinyl/PVC power
5 cables for portable electronic devices sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
7 California citizens about the risk of exposure to DEHP present in and on vinyl/PVC power cables
8 for portable electronic devices manufactured, distributed, and offered for sale or use to consumers
9 throughout the State of California.

10 3. Detectable levels of DEHP are commonly found in and on vinyl/PVC power cables
11 for portable electronic devices that defendants manufacture, sell, and distribute for sale to
12 consumers throughout the State of California.

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
14 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to the
16 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
17 such individual” Health & Safety Code § 25249.6.

18 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
19 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
20 subject to the “clear and reasonable warning” requirements of the act one year later on October 24,
21 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
22 DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, import, sell, and/or distribute for sale in the State of
24 California vinyl/PVC power cables for portable electronic devices containing DEHP without a
25 warning including, but not limited to, the *Motor Trend Power Charger Travel Charger for iPod &*
26 *iPod Mini, Model MT-109 (#6 76965 18154 4)*. All such vinyl/PVC power cables for portable
27 electronic devices containing DEHP are referred to collectively hereinafter as “PRODUCTS.”

28 ///

1 7. Defendants' failure to warn consumers and other individuals in the State of California
2 about their exposure to the LISTED CHEMICAL in conjunction with defendants' sales of the
3 PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder of such
4 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

5 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
6 permanent injunctive relief to compel defendants to provide purchasers or users of the PRODUCTS
7 with the required warning regarding the health hazards of the LISTED CHEMICAL. Health &
8 Safety Code § 25249.7(a).

9 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
10 penalties against defendants for their violations of Proposition 65.

11 **PARTIES**

12 10. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is dedicated
13 to protecting the health of California citizens through the elimination or reduction of toxic
14 exposures from consumer products; and he brings this action in the public interest pursuant to
15 Health and Safety Code section 25249.7(d).

16 11. Defendant POWERCAM, INC. ("POWERCAM") is a person in the course of doing
17 business within the meaning of Health and Safety Code section 25249.11.

18 12. POWERCAM manufactures, imports, sells, and/or distributes the PRODUCTS for
19 sale or use in the State of California, or implies by its conduct that it manufactures, imports, sells,
20 and/or distributes the PRODUCTS for sale or use in the State of California.

21 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons in
22 the course of doing business within the meaning of Health and Safety Code section 25249.11.

23 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate, and
24 manufacture, or imply by their conduct that they research, test, design, assemble, fabricate, and
25 manufacture one or more of the PRODUCTS offered for sale or use in the State of California.

26 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person in
27 the course of doing business within the meaning of Health and Safety Code section 25249.11.

28 ///

1 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
2 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in
3 the State of California.

4 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in the
5 course of doing business within the meaning of Health and Safety Code section 25249.11.

6 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the State
7 of California.

8 19. At this time, the true names of defendants DOES 1 through 150, inclusive, are
9 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
10 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis alleges,
11 that each of the fictitiously named defendants is responsible for the acts and occurrences alleged
12 herein. When ascertained, their true names shall be reflected in an amended complaint.

13 20. POWERCAM, MANUFACTURER DEFENDANTS, DISTRIBUTOR
14 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be referred
15 to as “DEFENDANTS.”

16 **VENUE AND JURISDICTION**

17 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
18 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
19 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
20 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because
21 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the
22 PRODUCTS.

23 22. The California Superior Court has jurisdiction over this action pursuant to California
24 Constitution Article VI, section 10, which grants the Superior Court “original jurisdiction in all
25 causes except those given by statute to other trial courts.” The statute under which this action is
26 brought does not specify any other basis of subject matter jurisdiction.

27 23. The California Superior Court has jurisdiction over DEFENDANTS based on
28 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or

1 association that is a citizen of the State of California, has sufficient minimum contacts in the State
2 of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS'
3 purposeful availment renders the exercise of personal jurisdiction by California courts consistent
4 with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of Proposition 65 - Against All Defendants)**

7 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
8 Paragraphs 1 through 23, inclusive.

9 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
10 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be informed
11 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

12 26. Proposition 65 states, “[n]o person in the course of doing business shall knowingly
13 and intentionally expose any individual to a chemical known to the state to cause cancer or
14 reproductive toxicity without first giving clear and reasonable warning to such individual”
15 Health & Safety Code § 25249.6.

16 27. On or about December 21, 2012, plaintiff’s sixty-day notice of violation, together
17 with the requisite certificate of merit, was provided to POWERCAM and certain public
18 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS
19 containing the LISTED CHEMICAL, purchasers and users in the State of California were being
20 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the
21 PRODUCTS, without the individual purchasers and users first having been provided with a “clear
22 and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

23 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale, and
24 offering of the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6,
25 and DEFENDANTS’ violations have continued to occur beyond their receipt of plaintiff’s sixty-day
26 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature, and
27 will continue to occur in the future.

28 ///

1 29. After receiving plaintiff's sixty-day notice of violation, the appropriate public
2 enforcement agencies have failed to commence and diligently prosecute a cause of action against
3 DEFENDANTS under Proposition 65.

4 30. The PRODUCTS manufactured, imported, sold and distributed for sale or use in
5 California by DEFENDANTS contain the LISTED CHEMICAL such that they require a "clear and
6 reasonable" warning under Proposition 65.

7 31. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,
8 import, distribute, sell, and offer for sale or use in California contain the LISTED CHEMICAL.

9 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
10 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
11 reasonably foreseeable use.

12 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
13 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are defined
14 by title 27 of the California Code of Regulations, section 25602(b).

15 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of
16 the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact and/or
17 ingestion.

18 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the
19 reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental
20 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for
21 sale or use to individuals in the State of California.

22 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
23 consumers and other individuals in the State of California who were or who would become exposed
24 to the LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably
25 foreseeable uses of the PRODUCTS.

26 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
27 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
28 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by

1 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer,
2 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

3 38. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
4 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for
5 each violation.

6 39. As a consequence of the above-described acts, Health and Safety Code section
7 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

8 **PRAYER FOR RELIEF**

9 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

10 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil
11 penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;


12 2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily
13 and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the
14 PRODUCTS for sale or use in California without first providing a “clear and reasonable warning”
15 as defined by title 27 of the California Code of Regulations, section 25601 *et seq.*, as to the harms
16 associated with exposures the LISTED CHEMICAL;

17 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

18 4. That the Court grant such other and further relief as may be just and proper.

19 Dated: April 12, 2013

20 Respectfully Submitted,
21 THE CHANLER GROUP

22 By: 
23 Laralei S. Paras
24 Attorneys for Plaintiff
25 RUSSELL BRIMER
26
27
28