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ENDORSED

2013 OCT -2 P 3: 12

David H. Yamamoto, Clerk of the Superior Court
County of Santa Clara, California
By: **J. CAO-NGUYEN**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

PAGECOMM INTERNATIONAL, INC.;
and DOES 1-150, inclusive,

Defendants.

Case No. 113CV250148

**FIRST AMENDED COMPLAINT
FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

By Fax

NATURE OF THE ACTION

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2 1. This First Amended Complaint is a representative action brought by plaintiff Russell
3 Brimer in the public interest of the citizens of the State of California to enforce the People’s right to
4 be informed of the presence of DEHP, a toxic chemical found in vinyl/PVC headset cords sold in
5 California.

6 2. By this First Amended Complaint, plaintiff seeks to remedy defendants’ continuing
7 failure to warn California citizens about the risk of exposure to di(2-ethylhexyl)phthalate (“DEHP”)
8 present in and on vinyl/PVC headset cords manufactured, distributed, and offered for sale or use to
9 consumers throughout the State of California.

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

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
14 Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of doing
15 business shall knowingly and intentionally expose any individual to a chemical known to the state
16 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
17 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. Significant levels of the LISTED CHEMICAL have been discovered in or on the
24 vinyl/PVC materials of headset cords that are manufactured, imported, distributed, and/or sold by
25 defendants.

26 7. One example of headset cords with vinyl/PVC materials containing the LISTED
27 CHEMICAL that are manufactured, imported, distributed and/or sold by defendants is the *Sun*
28 *Wireless 3.5mm Stereo Hands-Free Headset (#8 00768 50006 0)*.

1 responsible for the acts and occurrences alleged herein. When ascertained, their true names and
2 capacities shall be reflected in an amended complaint.

3 16. PAGECOMM and DOES 1 through 150 shall, where appropriate, collectively be
4 referred to as “DEFENDANTS.”

5 **VENUE AND JURISDICTION**

6 17. Venue is proper in the Santa Clara County Superior Court, pursuant to Code of Civil
7 Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because
8 plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of wrongful
9 conduct occurred, and continue to occur, in Santa Clara County, and/or because DEFENDANTS
10 conducted, and continue to conduct, business in this county with respect to the PRODUCTS.

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

15 19. The California Superior Court has jurisdiction over DEFENDANTS based on
16 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
17 association that is a citizen of the State of California, has sufficient minimum contacts in the State
18 of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS’
19 purposeful availment renders the exercise of personal jurisdiction by California courts consistent
20 with traditional notions of fair play and substantial justice.

21 **FIRST CAUSE OF ACTION**

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

23 20. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
24 Paragraphs 1 through 19, inclusive.

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

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

5 23. On or about December 28, 2012, plaintiff’s sixty-day notice of violation, together
6 with the requisite certificate of merit, was provided to PAGECOMM and certain public
7 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS
8 containing the LISTED CHEMICAL, purchasers and users in the State of California were being
9 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the
10 PRODUCTS, without the individual purchasers and users first having been provided with a “clear
11 and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

12 24. DEFENDANTS have engaged in the manufacture, importation, distribution, sale, and
13 offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6, and
14 DEFENDANTS’ violations have continued to occur beyond their receipt of plaintiff’s sixty-day
15 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature, and
16 will continue to occur in the future.

17 25. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
18 enforcement agencies have failed to commence and diligently prosecute a cause of action against
19 DEFENDANTS under Proposition 65.

20 26. The PRODUCTS manufactured, imported, sold, and distributed for sale or use in
21 California by DEFENDANTS contain the LISTED CHEMICAL such that they require a “clear and
22 reasonable” warning under Proposition 65.

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

25 28. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
26 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
27 reasonably foreseeable use.

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

4 30. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of
5 the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact and/or
6 ingestion.

7 31. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the
8 reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental
9 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for
10 sale or use to individuals in the State of California.

11 32. DEFENDANTS failed to provide a “clear and reasonable warning” to those
12 consumers and other individuals in the State of California who were or who would become exposed
13 to the LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably
14 foreseeable uses of the PRODUCTS.

15 33. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
16 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
17 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by
18 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer,
19 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

20 34. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
21 described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each
22 violation.

23 35. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
24 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

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1 **PRAYER FOR RELIEF**

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

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

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

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

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

12 Dated: October 7 , 2013

13 Respectfully Submitted,

14 THE CHANLER GROUP

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16 By: 

17 Laralei S. Paras
18 Attorneys for Plaintiff
19 RUSSELL BRIMER
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