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FILED

SEP 06 2013

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By J. Chen, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF MARIN
12 UNLIMITED CIVIL JURISDICTION

13 RUSSELL BRIMER,

14 Plaintiff,

15 vs.

16 TELEBRANDS CORP. and DOES 1-150,

17 Defendants.

Case No. CIV 1205319

**[PROPOSED] JUDGMENT
PURSUANT TO PROPOSITION 65
SETTLEMENT AGREEMENT**

Case Filed: November 30, 2012

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant TELEBRANDS
2 CORP., having agreed through their respective counsel that a judgment be entered pursuant to the
3 terms of the Consent To Judgment entered into by the parties in resolution of this Proposition 65
4 action, and following the issuance of an order approving the Parties' Consent to Judgment on this day,
5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety Code §
6 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance with the
7 terms of the Consent To Judgment attached hereto as Exhibit A. By stipulation of the parties, the
8 Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.
9

10 **IT IS SO ORDERED.**

11
12 Dated: SEP 06 2013

PAUL M. HAAKENSON

13 Hon. Paul M. Haakenson
14 Judge Of The Superior Court
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EXHIBIT A

1 Gregory M. Sheffer, State Bar No. 173124
2 THE CHANLER GROUP
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710-2565
6 Telephone: (510) 848-8880
7 Facsimile: (510) 848-8118

8 Attorneys for Plaintiff
9 RUSSELL BRIMER

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MARIN
12 UNLIMITED CIVIL JURISDICTION

13 RUSSELL BRIMER,

14 Plaintiff,

15 v.

16 TELEBRANDS CORP.; and DOES 1-150,
17 inclusive

18 Defendants.

) Case No. CIV 1205319

) CONSENT TO JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 The parties to this Consent To Judgment (“Consent To Judgment”) are Plaintiff
4 Russell Brimer (“Brimer”) on the one hand, and Defendant Telebrands Corp. (“Telebrands”)
5 on the other hand (each a “Party and collectively “Parties”).

6 **1.2 Plaintiff**

7 Brimer is an individual residing in the State of California who seeks to promote
8 awareness of exposures to toxic chemicals and to improve human health by reducing or
9 eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 Telebrands employs ten or more persons, and is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health
13 and Safety Code section 25249.6 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Telebrands sells headphones with vinyl/PVC components
16 containing di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and
17 reasonable warning required by Proposition 65. DEHP is listed pursuant to Proposition 65
18 as a chemical known to the State of California to cause birth defects or other reproductive
19 harm.

20 **1.5 Notice of Violation**

21 On or about August 16, 2012, Brimer served Telebrands and certain requisite public
22 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that
23 Telebrands was in violation of Proposition 65 for failing to warn its customers and
24 consumers in California that headphones with vinyl/PVC components, including, but not
25 limited to, the *myZone Headphones, Item #5274 (#0 91298 02202 9)*, expose users to DEHP. To
26 the best of the Parties knowledge, no public enforcer has commenced and is diligently
27 prosecuting the allegations set forth in the Notice.

28 ///

1 **1.6 Withdrawal From Sale**

2 Telebrands alleges that it has ceased selling, shipping, or offering for sale in
3 California the MyZone Headphones and is not currently distributing or selling any Covered
4 Products, as defined below.

5 **1.7 Complaint**

6 On November 30, 2012, Brimer filed the instant action against Telebrands
7 (“Complaint”) for the alleged violations of Health and Safety Code section 25249.6 that are
8 the subject of the Notice.

9 **1.8 No Admission**

10 Telebrands denies the material, factual and legal allegations contained in the Notice
11 and Complaint, and it maintains that all of the products that it has sold and distributed in
12 California, including the MyZone Headphones, have been, and are, in compliance with all
13 laws. Nothing in this Consent To Judgment shall be construed as an admission of any fact,
14 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this
15 Consent To Judgment constitute or be construed as an admission of any fact, finding,
16 conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish
17 or otherwise affect Telebrands’ obligations, responsibilities, and duties under this Consent
18 To Judgment.

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent To Judgment only, the Parties stipulate that this Court
21 has jurisdiction over Telebrands as to the allegations in the Complaint, that venue is proper
22 in Marin County and that this Court has jurisdiction to enter and enforce the provisions of
23 this Consent To Judgment.

24 **2. DEFINITIONS**

25 **2.1 “Accessible Component”** means a component of a Covered Product that
26 could be used to grip or handle the Covered Product by a person during reasonably
27 foreseeable use.

28

1 **2.2** “Covered Products” means headphones with vinyl/PVC components,
2 including MyZone Headphones, sold or distributed for sale in the United States by
3 Telebrands.

4 **2.3** “Effective Date” means date this Consent To Judgment is approved by the
5 court.

6 **3. INJUNCTIVE RELIEF: REFORMULATION**

7 **3.1 Reformulation Standards**

8 Commencing on the Effective Date and continuing thereafter, Telebrands will not
9 sell, ship for sale, or offer for sale to any customer in the United States, or to any customer
10 that Telebrands reasonably knows maintains retail sales outlets in the United States, any
11 Covered Products unless each Accessible Component of such Covered Product, or any
12 portion thereof, contains a maximum DEHP concentration of no more than 1,000 parts per
13 million (“ppm”) (0.1%) when analyzed pursuant to any methodology utilized by federal or
14 state agencies for the purpose of determining DEHP content in a solid substance.

15 **4. ENFORCEMENT**

16 Any Party may, by motion or application for an order to show cause before this
17 Court, enforce the terms and conditions contained in this Consent To Judgment.

18 **5. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

19 In settlement of all the claims referred to in this Consent To Judgment, Telebrands
20 shall pay a total civil penalty of \$22,000.00 under this Section, as follows:

21 **5.1 Initial Civil Penalty**

22 Telebrands shall pay an initial civil penalty in the amount of \$10,000.00 within 5
23 calendar days of the Effective Date. The civil penalty shall be apportioned in accordance
24 with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted
25 to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)
26 and the remaining 25% of the penalty remitted to Brimer. Telebrands shall issue two
27 separate checks for the penalty payment: (a) one check made payable to “OEHHA” in the
28 amount of \$7,500.00 representing 75% of the total penalty; and (b) one check made payable
to “The Chanler Group in Trust for Brimer” in the amount of \$2,500.00, representing 25% of

1 the total penalty. Two separate 1099s shall be issued for the above payments. The checks
2 and 1099s shall be delivered to the addresses listed in Section 5.3 below.

3 **5.2 Final Civil Penalty**

4 Telebrands shall also pay a final civil penalty of \$12,000.00 within 30 calendar days
5 of the Effective Date. The final civil penalty shall be waived in its entirety, however, if an
6 Officer of Telebrands provides Brimer with written certification received by Brimer that, as
7 of the Effective Date and continuing into the future, Telebrands has met the reformulation
8 standard specified in Section 3.1 above, such that all Covered Products manufactured,
9 imported, distributed, sold and offered for sale in the United States by Telebrands are
10 Reformulated Products. Brimer must receive any such certification within 5 calendar days
11 of the Effective Date, and time is of the essence. Absent waiver, the final civil penalty shall
12 be apportioned in accordance with California Health & Safety Code § 25249.12 (c)(1) & (d),
13 with 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted
14 to Brimer, as provided by California Health & Safety Code § 25249.12(d). Absent waiver,
15 Telebrands shall issue two separate checks for the penalty payment: (a) one check made
16 payable to "OEHHA" in the amount of \$9,000.00, representing 75% of the total penalty; and
17 (b) one check made payable to "The Chanler Group in Trust for Russell Brimer" in the
18 amount of \$3,000.00, representing 25% of the total penalty. Two separate 1099s shall be
19 issued for the above payments. The checks and 1099s shall be delivered to the addresses
20 listed in Section 5.3 below.

21 **5.3 Payment Procedures**

22 **5.3.1 Issuance of Payments.** Payments shall be delivered as follows:

- 23 (a) All payments owed to Brimer, pursuant to Sections 5.1 through
24 5.2, shall be delivered to the following payment address:

25 The Chanler Group
26 Attn: Proposition 65 Controller
27 2560 Ninth Street
28 Parker Plaza, Suite 214
Berkeley, CA 94710

- (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
Sections 3.1 through 3.2, shall be delivered directly to OEHHA

1 (Memo line "Prop 65 Penalties") at the following addresses:

2 For United States Postal Service Delivery:

3 Mike Gyrics
4 Fiscal Operations Branch Chief
5 Office of Environmental Health Hazard Assessment
6 P.O. Box 4010
7 Sacramento, CA 95812-4010

8 For Non-United States Postal Service Delivery:

9 Mike Gyrics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 1001 I Street
13 Sacramento, CA 95814

14 With a copy of the checks payable to OEHHA mailed to The
15 Chanler Group at the address set forth above in 5.3.1(a), as proof
16 of payment to OEHHA.

17 **5.3.2 Issuance of 1099 Forms.** For each payment, Telebrands shall issue
18 separate 1099 forms for each payment, as follows:

- 19 (a) For each penalty payment owed in Sections 5.1 through 5.2, a
20 1099 shall be issued to the Office of Environmental Health
21 Hazard Assessment, 1001 I Street, Sacramento, CA 95814
22 (EIN: 68-0284486) in the amount of 75% of the total penalty
23 payment;
- 24 (b) For each penalty payment owed in Sections 5.1 through 5.2, a
25 1099 shall be issued to Brimer, whose address and tax
26 identification number shall be furnished upon request, in the
27 amount of 25% of the total penalty payment.

28 Any failure by defendant to deliver the above-referenced civil penalty payments to
either OEHHA or The Chanler Group within two days of the required date shall result in
imposition of a 10% simple interest assessment on the undelivered payment(s) until
delivery.

1 **6. REIMBURSEMENT OF FEES AND COSTS**

2 The parties acknowledge that Brimer and his counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
4 leaving this fee issue to be resolved after the material terms of the agreement had been
5 settled. Brimer then expressed a desire to resolve the fee and cost issue shortly after the
6 other settlement terms had been finalized. The parties then attempted to (and did) reach an
7 accord on the compensation due to Brimer and his counsel under general contract principles
8 and the private attorney general doctrine codified at California Code of Civil Procedure
9 (CCP) § 1021.5, for all work performed through the mutual execution of this agreement.
10 Telebrands shall pay \$38,250.00 for fees and costs incurred as a result of investigating,
11 bringing this matter to Telebrands' attention, and negotiating a settlement in the public
12 interest. Telebrands shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall
13 make the check payable to "The Chanler Group" and shall deliver payment within 5
14 calendar days of the Effective Date, to the following address:

15 The Chanler Group
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710-2565

20 Any failure by defendant to deliver the above-referenced fee/cost reimbursement
21 payments to The Chanler Group within two days of the required date shall result in
22 imposition of a 10% simple interest assessment on the undelivered payment(s) until
23 delivery.

24 **7. CLAIMS COVERED AND RELEASED**

25 **7.1 Public Release of Proposition 65 Claims**

26 In consideration of the promises and commitments herein contained, Brimer, on his
27 own behalf and on behalf of his past and current agents, representatives, attorneys,
28 successors, and/or assignees, and in the public interest, hereby waives and releases
Telebrands, its parents, subsidiaries, affiliated entities under common ownership or control,
directors, officers, employees, and attorneys ("Releasees"); and each entity to whom
Telebrands directly or indirectly distributes or sells Covered Products, including but not

1 limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members,
2 licensors, and licensees (“Downstream Defendant Releasees”), from all claims for violations
3 of Proposition 65 based on exposures to DEHP from the Covered Products through the
4 Effective Date. This waiver and release is limited to those claims arising under Proposition
5 65 for unwarned exposures to DEHP from Covered Products sold by Telebrands before the
6 Effective Date. Telebrands’ and Releasees’ compliance with this Consent To Judgment
7 constitute compliance with Proposition 65.

8 **7.2 Private Release in Plaintiff’s Individual, Non-representative Capacity**

9 Brimer, in his individual capacity only and not in his representative capacity, also
10 provides a release to Telebrands, Releasees, and Downstream Defendant Releasees which
11 shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
12 action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and
13 demands of Brimer of any nature, character or kind, whether known or unknown, suspected
14 or unsuspected, arising out of alleged or actual unwarned exposures to DEHP from Covered
15 Products.

16 Brimer’s Section 7 release is expressly limited to those claims that arise under
17 Proposition 65, as such claims relate to Telebrands’, Releasees’, and Downstream Defendant
18 Releasees’ alleged failure to warn about exposures to or identification of DEHP in the
19 Covered Products and as such claims are identified in the Proposition 65 60-Day Notice to
20 Telebrands.

21 This Section 7 release is expressly limited to any alleged violations that occur prior to
22 the Effective Date and does not release any person, party or entity from any liability for any
23 violation of Proposition 65 regarding the Covered Products that occur after the Effective
24 Date.

25 The Parties further understand and agree that this Section 7 release shall not extend
26 upstream to any entities, other than Telebrands, Releasees, and Downstream Defendant
27 Releasees, that manufactured the Covered Products or any component parts thereof, or any
28 distributors or suppliers who sold the Covered Products or any component parts thereof to
Defendant.

1 **7.3 Telebrands' Release of Brimer**

2 Telebrands waives any and all claims against Brimer and his attorneys and other
3 representatives, for any and all actions taken or statements made (or those that could have
4 been taken or made) by Brimer and his attorneys and other representatives, whether in the
5 course of investigating claims, otherwise seeking enforcement of Proposition 65 against it in
6 this matter, or with respect to the Covered Products.

7 **8. NOTICE**

8 When any Party is entitled to receive any notice under this Consent To Judgment,
9 the notice shall be sent by: (a) first class, registered or certified mail; (b) personal delivery;
10 and (c) a recognized overnight courier on any one Party by the other Party at the following
11 addresses:

12 For Brimer:

13 The Chanler Group
14 Attn: Proposition 65 Coordinator
15 Parker Plaza
16 2560 Ninth Street, Suite 214
17 Berkeley, CA 94710

18 For Telebrands:

19 Bala Iyer
20 Executive Vice President
21 Telebrands Corp.
22 79 Two Bridges Rd.
23 Fairfield, NJ 07004-1029

24 With a copy to:

25 Jeffrey B. Margulies, Esq.
26 Fulbright & Jaworski, L.L.P.
27 555 South Flower Street, Forty-First Floor
28 Los Angeles, CA 90071

 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.

1 **9. POST SETTLEMENT ACTIVITIES AND COURT APPROVAL**

2 **9.1** Brimer agrees to comply with the reporting form requirements referenced in
3 Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant
4 to Health and Safety Code section 25249.7(f)(4), a noticed motion is required to obtain
5 judicial approval of the settlement. Telebrands agrees to draft, and Brimer agrees to file, the
6 necessary moving papers, and Telebrands shall support the motion for approval of the
7 Consent To Judgment, and appear at the hearing of the motion if requested.

8 **9.2** If this Consent To Judgment is not approved by the Court within nine
9 months after it has been fully executed by all Parties, (a) this Consent To Judgment and any
10 and all prior agreements between the parties as to the Notices or Complaint referenced
11 herein shall terminate and become null and void, and the action shall revert to the status
12 that existed prior to the execution date of this Consent To Judgment; (b) no term of this
13 Consent To Judgment or any draft thereof, or of the negotiation, documentation, or other
14 part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such
15 matter be admissible in evidence for any purpose in this action, or in any other proceeding;
16 and (c) the parties agree to meet and confer to determine whether to modify the terms of the
17 Consent To Judgment and to resubmit it for approval.

18 **10. ATTORNEYS' FEES**

19 Except as otherwise provided in this Consent To Judgment, including a successful
20 enforcement of this Consent To Judgment under section 4, which may entitle Brimer to
21 attorney's fees under Code of Civil Procedure section 1021.5 or any other applicable law,
22 each Party and their privies, shall bear its own attorneys' fees and costs.

23 **11. OTHER TERMS**

24 **11.1** If, subsequent to court approval of this Consent To Judgment, any of the
25 provisions of this Consent To Judgment are held by a court to be unenforceable, the validity
26 of the enforceable provisions remaining shall not be adversely affected, unless the Court
27 finds that any unenforceable provision is not severable from the remainder of the Consent
28 To Judgment.

1 **11.2** The terms of this Consent To Judgment shall be governed by the laws of the
2 State of California and apply within the State of California. In the event that Proposition 65
3 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or
4 as to the Covered Products, then Telebrands may provide written notice to Brimer of any
5 asserted change in the law, and shall move this Court for an Order relieving it of further
6 obligations pursuant to this Consent To Judgment with respect to, and to the extent that, the
7 Covered Products are so affected. Nothing in this Consent To Judgment shall be interpreted
8 to relieve Telebrands from any obligation to comply with any pertinent state or federal
9 toxics control laws.

10 **11.3** This Consent To Judgment contains the sole and entire agreement and
11 understanding of the Parties with respect to the entire subject matter set forth in this
12 Consent To Judgment, and any and all prior discussions, negotiations, commitments, or
13 understandings related thereto, if any, are deemed merged. There are no warranties,
14 representations, or other agreements between the Parties except as expressly set forth in this
15 Consent To Judgment. No representations, oral or otherwise, express or implied, other than
16 those specifically referred to in this Consent To Judgment have been made by any Party. No
17 other agreements not specifically contained or referenced in this Consent To Judgment, oral
18 or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation,
19 modification, waiver, or termination of this Consent To Judgment shall be binding unless
20 executed in writing by the Party to be bound. No waiver of any of the provisions of this
21 Consent To Judgment shall be deemed or shall constitute a waiver of any of the other
22 provisions whether or not similar, nor shall such waiver constitute a continuing waiver.

23 **11.4** This Consent To Judgment may be modified only by: (a) an agreement or
24 stipulation of the Parties and the entry of a modified consent judgment by the Court, or (b)
25 by the successful motion, application, or such other procedure as is available at law to any
26 Party, and the entry of a modified consent judgment by the Court thereon.

27 **11.5** Nothing in this Consent To Judgment shall release, or in any way affect any
28 rights that Telebrands might have against any other Party.

1 **11.6** This Consent To Judgment may be executed in counterparts and by facsimile
2 or portable document format (PDF) signature, each of which shall be deemed an original,
3 and all of which, when taken together, shall constitute one and the same document.

4 **11.7** Each signatory to this Consent To Judgment certifies that he or she is fully
5 authorized by the Party he or she represents to agree to the terms and conditions of this
6 Consent To Judgment, and to enter into and execute the Consent To Judgment on behalf of
7 the Party represented and to legally bind that Party.

8 **11.8** The Parties, including their counsel, have participated in the preparation of
9 this Consent To Judgment and this Consent To Judgment is the result of the joint efforts of
10 the Parties. This Consent To Judgment was subject to revision and modification by the
11 Parties and has been accepted and approved as to its final form by all Parties and their
12 counsel. Accordingly, any uncertainty or ambiguity existing in this Consent To Judgment
13 shall not be interpreted against any Party as a result of the manner of the preparation of this
14 Consent To Judgment. Each Party to this Consent To Judgment agrees that any statute or
15 rule of construction providing that ambiguities are to be resolved against the drafting Party
16 should not be employed in the interpretation of this Consent To Judgment and, in this
17 regard, the Parties hereby waive California Civil Code Section 1654.

18 **AGREED TO:**

19 Plaintiff, RUSSELL BRIMER

20 
21 _____
22 Signature

23 Date: May 21, 2013

AGREED TO:

Defendant, TELEBRANDS CORP.



Signature

By: BALA IYER

Print Name

Its: EXECUTIVE VICE PRESIDENT
Title

Date: 5/22/13