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12 RUSSELL BRIMER

EMDOK (507)
FILED
San Francisco County Superior Court

APR - 6 2016

CLERK OF THE COURT
By: C. HEBERT

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO
16 UNLIMITED CIVIL JURISDICTION
17

18 RUSSELL BRIMER,

19 Plaintiff,

20 v.

21 ETON CORPORATION, *et al.*,

22 Defendants.

Case No. CGC-15-547495

~~PROPOSED~~ JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT

Date: April 6, 2016
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Harold E. Kahn

Reservation No. 02100406-04

1 In the above-entitled action, plaintiff Russell Brimer and defendant Eton Corporation,
2 having agreed through their respective counsel that Judgment be entered pursuant to the terms of
3 their settlement agreement in the form of a [Proposed] Consent Judgment ("Consent Judgment"),
4 and following this Court's issuance of an Order approving this Proposition 65 settlement and
5 Consent Judgment on April 6, 2016.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California
7 Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment
8 is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**.
9 By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under
10 Code of Civil Procedure § 664.6.

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IT IS SO ORDERED.

HAROLD KAHN

Dated: 4/6/16

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

1 Brian Johnson, State Bar No. 235965
Chris Tuttle, State Bar No. 264545
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5

6 Attorneys for Plaintiff
RUSSELL BRIMER,
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION
11

12 RUSSELL BRIMER,
13 Plaintiff,
14 v.
15 ETON CORPORATION; *et al.*,
16 Defendants.
17

Case No. CGC15547495
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”)
4 and defendant Eton Corporation (“Eton”), with Brimer and Eton each referred to individually as a
5 “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Brimer is a resident of the State of California who seeks to promote awareness of exposures
8 to toxic chemicals, and to improve human health by reducing or eliminating harmful substances
9 contained in consumer and commercial products.

10 **1.3 Defendant**

11 Eton employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Eton manufactures, imports, sells and/or distributes for sale in
16 California, earphone cords containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so
17 without providing the health hazard warning that Brimer alleges is required by Proposition 65.

18 **1.5 Covered Product Description**

19 The products covered by this Settlement Agreement are earphone cords containing DEHP
20 that are manufactured, sold and/or distributed for sale in California by Eton, including, but not
21 limited to, Grundig Mini400 Super Compact AM/FM/Shortwave Travel Radio with Earphones,
22 NGM400B, #3091820000, UPC #7 50254 80390 1 (“Covered Products”).

23 **1.6 Notice of Violation**

24 On March 31, 2015, Brimer served Eton, Sport Chalet, LLC (“Sport Chalet”) and the
25 requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that
26 Eton violated Proposition 65 when it failed to warn its customers and consumers in California that
27 the Covered Products expose users to DEHP. To the best of the Parties’ knowledge, no public
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1 enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth
2 in the Notice.

3 **1.7 Complaint**

4 On August 20, 2015, Brimer commenced the instant action, naming Eton, among others, as
5 a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

7 Eton denies the material, factual, and legal allegations contained in the Notice and
8 Complaint, and maintains that, to the best of its knowledge, all of the products that it has sold or
9 distributed for sale in California, including the Covered Products, have been, and are, in compliance
10 with all laws. Nothing in this Consent Judgment is or shall be construed as an admission by Eton of
11 any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this
12 Consent Judgment constitute or be construed as an admission by Eton of any fact, finding,
13 conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or
14 otherwise affect Eton's obligations, responsibilities, and duties under this Consent Judgment.
15 Notwithstanding the allegations in the Notice, Eton maintains that it has not knowingly
16 manufactured, or caused to be manufactured, the Covered Product for sale in California in violation
17 of Proposition 65.

18 **1.9 Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Eton as to the allegations contained in the Complaint, that venue is proper in the
21 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of
22 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
25 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

26 **2. INJUNCTIVE SETTLEMENT TERMS**

27 Commencing the Effective Date, and continuing thereafter, Eton shall only ship, sell, offer
28 for sale or manufacture for sale in California, Reformulated Covered Products. For purposes of this

1 Consent Judgment, “Reformulated Products” are defined as Covered Products with a maximum
2 DEHP concentration 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.
3 Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent
4 methodologies. As of the Effective Date, Eton represents that it is not currently offering the
5 Covered Products for sale in California, but agrees that if it recommences sales, it will only offer
6 Reformulated Products.

7 **3. MONETARY SETTLEMENT TERMS**

8 **3.1 Payment Pursuant to Health and Safety Code § 25249.7(b)(2)**

9 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
10 claims referred to in this Consent Judgment, Eton shall pay \$2,900 in civil penalties in accordance
11 with this Section. The penalty payment will be allocated in accordance with California Health &
12 Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of
13 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
14 remitted to Brimer. Eton shall deliver its payment in a single check made payable to “Russell
15 Brimer, Client Trust Account” to be delivered to the address provided in Section 3.4, below.
16 Brimer’s counsel shall be responsible for remitting Eton’s penalty payment under this Consent
17 Judgment to OEHHA.

18 **3.2 Reimbursement of Attorneys’ Fees and Costs**

19 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without
20 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
21 to be resolved after the material terms of the agreement had been settled. Shortly after the other
22 settlement terms had been finalized, Eton expressed a desire to resolve Brimer’s fees and costs.
23 The Parties then negotiated a resolution of the compensation due to Brimer and his counsel under
24 general contract principles and the private attorney general doctrine codified at California Code of
25 Civil Procedure § 1021.5. For all work performed through the mutual execution of this agreement
26 and the Court’s approval of the same, but exclusive of fees and costs on appeal, if any, Eton shall
27 reimburse Brimer and his counsel \$30,000. Eton’s payment shall be delivered to the address in
28 Section 3.4 in the form of a check payable to “The Chanler Group.” The reimbursement shall

1 cover all fees and costs incurred by Brimer investigating, bringing this matter to Eton's attention,
2 litigating, and negotiating a settlement of the matter in the public interest.

3 **3.3 Payment Timing; Payments Held In Trust**

4 Eton shall deliver the civil penalty payment required by this Consent Judgment to its
5 counsel within fifteen days of the date that this agreement is fully executed by the Parties. Eton's
6 counsel shall confirm receipt of settlement funds in writing to Brimer's counsel and, thereafter,
7 hold the amounts paid in trust until such time as the Court grants the motion for approval of the
8 Parties' settlement contemplated by Section 5. Within two days of the Effective Date, Eton's
9 counsel shall deliver the settlement payment it has held in trust to Brimer's counsel at the address
10 provided in Section 3.4. Eton shall deliver attorney's fees and costs payments required by this
11 Consent Judgment as follows:

12 Within fifteen days of the Effective Date-\$15,000 in a single check made payable to "The
13 Chanler Group", to be delivered to the address provided in Section 3.4, below. Within sixty days
14 of the Effective Date-\$15,000 in a single check made payable to "The Chanler Group", to be
15 delivered to the address provided in Section 3.4, below.

16 **3.4 Payment Address**

17 All payments required by this Consent Judgment shall be delivered to the following
18 address:

19 The Chanler Group
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

24 **4. CLAIMS COVERED AND RELEASED**

25 **4.1 Brimer's Release of Proposition 65 Claims**

26 Brimer, acting on his own behalf and in the public interest, releases Eton and its parents,
27 subsidiaries, affiliated entities under common ownership, directors, officers, employees, agents,
28 shareholders, successors, assigns and attorneys ("Releasees") and each entity to whom it directly or
indirectly distributes or sells the Covered Products including, but not limited to, its downstream

1 distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and
2 licensees, including but not limited to Sport Chalet, (“Downstream Releasees”) for any violations
3 arising under Proposition 65 for unwarned exposures to DEHP from Covered Products
4 manufactured, imported, distributed or sold by Eton prior to the Effective Date, as set forth in the
5 Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
6 Proposition 65 by Eton with respect to the alleged or actual failure to warn about exposures to
7 DEHP from Covered Products manufactured, sold or distributed for sale by Eton after the Effective
8 Date.

9 **4.2 Brimer’s Individual Release of Claims**

10 Brimer, in his individual capacity only and *not* in his representative capacity, also provides a
11 release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and
12 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
13 attorneys’ fees, damages, losses, claims, liabilities and demands of Brimer of any nature, character
14 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
15 exposures to DEHP in Covered Products manufactured, imported, distributed or sold by Eton
16 before the Effective Date.

17 **4.3 Eton’s Release of Brimer**

18 Eton, on its own behalf and on behalf of its past and current agents, representatives,
19 attorneys, successors and/or assignees, hereby waives any and all claims against Brimer and his
20 attorneys and other representatives, for any and all actions taken or statements made by Brimer and
21 his attorneys and other representatives in the course of investigating claims, seeking to enforce
22 Proposition 65 against it in this matter, or with respect to the Covered Products.

23 **4.4 Representations**

24 Eton represents that the sales data it provided to Brimer was truthful to its knowledge and a
25 material factor upon which Brimer has relied to determine the amount of civil penalties assessed
26 pursuant to Health & Safety Code § 25249.7 in this Consent Judgment.

27 If, within twelve months of the Effective Date, Brimer discovers and presents to Eton,
28 evidence demonstrating that the preceding representation and warranty was materially inaccurate,

1 then Eton shall have 30 days to meet and confer regarding Brimer's contention. Should this 30 day
2 period pass without any such resolution between Brimer and Eton, Brimer shall be entitled to file a
3 formal legal claim including, but not limited to, a claim for damages for breach of contract.

4 **5. COURT APPROVAL**

5 This Consent Judgment is not effective until it is approved and entered by the Court and
6 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
7 after it has been fully executed by the Parties. Brimer and Eton agree to support the entry of this
8 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner.
9 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
10 noticed motion is required for judicial approval of this Consent Judgment, which motion Brimer
11 shall draft and file and Eton shall support, including by appearing at the hearing if so requested. If
12 any third-party objection to the motion is filed, Brimer and Eton agree to work together to file a
13 reply and appear at any hearing. This provision is a material component of the Consent Judgment
14 and shall be treated as such in the event of a breach.

15 **6. SEVERABILITY**

16 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment,
17 any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the
18 remaining provisions shall not be adversely affected.

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of California
21 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
22 is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then
23 Eton may provide Brimer with written notice of any asserted change in the law, and shall have no
24 further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
25 Covered Products are so affected.

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1 **8. NOTICE**

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

6 To Eton:

7 George Gigounas
8 DLA Piper LLP (US)
9 555 Mission Street
Suite 2400
San Francisco, CA 94105-2933

To Brimer:

The Chanler Group
Attn: Prop 65 Coordinator
2560 Ninth St.
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

10 Any Party may, from time to time, specify in writing to the other Party a change of address to
11 which all notices and other communications shall be sent.
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13 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

14 This Consent Judgment may be executed in counterparts and by facsimile or portable
15 document format (pdf) signature, each of which shall be deemed an original and, all of which, when
16 taken together, shall constitute one and the same document.
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18 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

19 Brimer and his counsel agree to comply with the reporting form requirements referenced in
20 California Health and Safety Code section 25249.7(f).

21 **11. MODIFICATION**

22 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
23 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
24 any party and the entry of a modified Consent Judgment by the Court thereon.

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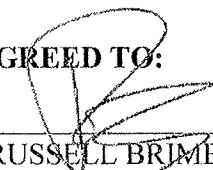
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1 **12. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

5
6 **AGREED TO:**
7 
8 _____
9 RUSSELL BRIMER.
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11 Dated: 1/27/2016
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AGREED TO:

ETON CORPORATION
By: _____
(Print Name)
Its: _____
(Title)
Dated: _____

1 **12. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

6 **AGREED TO:**

7 _____
8 RUSSELL BRIMER.

9 Dated: _____

AGREED TO:

10 _____
11 ETON CORPORATION

12 By: APRIL HOZOUR
13 (Print Name)

14 Its: CEO
15 (Title)

16 Dated: 2/03/16

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