

RECEIVED
ALAMEDA COUNTY

SEP 8 '17

CLERK OF THE SUPERIOR COURT
By _____

1 Clifford A. Chanler, State Bar No. 135534
2 Brian Johnson, State Bar No. 235965
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 clifford@chanler.com
10 brian@chanler.com

11 Deputy Attorneys for Plaintiff
12 RUSSELL BRIMER

ENDORSED
FILED
ALAMEDA COUNTY

NOV - 9 2017

CLERK OF THE SUPERIOR COURT
By DIANNE HYATT Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

13 RUSSELL BRIMER
14 Plaintiff,
15 v.
16 PETEDGE MASSACHUSETTS BUSINESS
17 TRUST; et al.,
18 Defendants.

Case No. RG17847975

^{DIT}
[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT

Date: November 8, 2017
Time: 2:30 p.m.
Dept.: 518
Judge: Hon. Dennis Hayashi

Reservation No. R-1877230

21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff Russell Brimer and defendants Petedge Massachusetts Business Trust and Petedge, Inc. have agreed through their respective counsel that judgment be entered pursuant to the terms of their settlement agreement in the form of a stipulated judgment (“Consent judgment”), and following this Court’s issuance of an order approving their Proposition 65 settlement and Consent Judgment, and for good cause being shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6, judgment is hereby entered in accordance with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the terms of the settlement under Code of Civil Procedure section 664.6.

IT IS SO ORDERED.

Dated: 11/8/17



JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Clifford A. Chanler, State Bar No. 135534
Brian Johnson, State Bar No. 235965
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
Facsimile: (510) 848-8118
clifford@chanler.com
brian@chanler.com

Attorneys for Plaintiff
RUSSELL BRIMER

ENDORSED
FILED
ALAMEDA COUNTY
NOV - 9 2017
CLERK OF THE SUPERIOR COURT
By DIANNE HYATT
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER
Plaintiff,
v.
PETEDGE MASSACHUSETTS BUSINESS
TRUST; *et al.*,
Defendants.

Case No. RG17847975
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.*, and
Code Civ. Proc. § 664.6)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”), on the one hand, and defendants Petedge Massachusetts Business Trust and Petedge, Inc. (collectively, “Petedge”), on the other hand, with Brimer and Petedge each individually referred to as a “Party” and collectively as the “Parties.”

1.2 Plaintiff

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

1.3 Defendant

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

1.4 General Allegations

Brimer alleges that Petedge sells and distributes for sale in California, pet waste bag holders containing di(2-ethylhexyl) phthalate (“DEHP”), and that it does so without first providing the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm. Petedge denies Brimer’s allegations.

1.5 Product Description

For purposes of this Consent Judgment, “Products” are defined as pet waste bag holders that (i) are designed to resemble a purse, clutch, pouch or handbag, (ii) contain DEHP, and (iii) are sold or distributed for sale in California by Petedge including, without limitation, the *Clean Go Pet Waste Bag Holder Set*, #ZW31390212, UPC #7 21343 41305 9 (the “Notice Exemplar Product”).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1.6 Notice of Violation

On September 7, 2016, Brimer served Petedge, the California Attorney General, and all other requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). The Notice alleges that Petedge violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP that Brimer alleges is present in the Products.

1.7 Complaint

On or about February 2, 2017, Brimer filed the instant action (“Complaint”), naming Petedge as a defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

1.8 No Admission

Petedge denies the material, factual, and legal allegations contained in the Notice and Complaint and maintains that all of the products that it has sold and distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Petedge. This Section shall not, however, diminish or otherwise affect Petedge’s obligations, responsibilities, and duties under this Consent Judgment.

1.9 Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Petedge as to the allegations in the Complaint, that venue is proper in the Santa Clara County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” means the date on which the Court approves this Consent Judgment, including any unopposed tentative ruling.

1 **2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS**

2 **2.1 Commitment to Reformulate or Provide Warnings**

3 Petedge represents that it does not presently manufacture, distribute, sell or offer for sale the
4 Notice Exemplar Product identified in the Notice. Petedge commits, however, that should it
5 recommence the manufacture, distribution, sale, or offering for sale of the Notice Exemplar Product
6 in the future, and for all Products sold or distributed for sale in California after the Effective Date, it
7 shall only ship, sell or distribute for sale either (a) Reformulated Products as defined by Section 2.2,
8 or (b) Products offered with a clear and reasonable warning pursuant to Section 2.3.

9 **2.2 Reformulated Products Defined**

10 For purposes of this Consent Judgment, "Reformulated Products" are defined as Products,
11 including the Notice Exemplar Product, with no more than 1,000 parts per million (0.1%) DEHP
12 content when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
13 3580A and 8270C, or any equivalent methods used by the State of California or federal agencies to
14 determine DEHP content in a solid substance.

15 **2.3 Clear and Reasonable Warnings**

16 Commencing on the Effective Date and continuing thereafter, for any Products sold or
17 distributed for sale in California by Petedge that are not Reformulated Products, Petedge agrees to
18 only offer such Products with a clear and reasonable warning in accordance with this Section.
19 Petedge further agrees that any warning used will be prominently placed in relation to the Product
20 with such conspicuousness when compared with other words, statements, designs, or devices. For
21 purposes of this Consent Judgment, a clear and reasonable warning for the Products satisfying these
22 criteria shall consist of a warning affixed directly to a Product or its accompanying labeling or
23 packaging sold in California containing the following statement:

24 **WARNING:** This product contains chemicals, including
25 DEHP, which is known to the State of
26 California to cause birth defects and other
 reproductive harm.

27 If Petedge sells Products via an internet website to customers in California, the warning requirements
28 of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on

1 which a Product is displayed and/or described; (b) on the same page as the price for the Product; or
2 (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process.
3 Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral
4 triangle may appear adjacent to or immediately following the display, description, price, or checkout
5 listing of the Product, provided the warning statement appears elsewhere on the same web page in a
6 manner that clearly associates it with the Product(s) to which the warning applies.

7 **3. MONETARY SETTLEMENT TERMS**

8 **3.1 Civil Penalty Payment**

9 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all claims alleged in
10 the Notice and Complaint, and referred to in this Consent Judgment, Petedge shall pay a civil penalty
11 of \$2,250. Petedge's payment will be allocated according to Health and Safety Code section
12 25249.12(c)(1) and (d) with seventy-five percent (75%) of the penalty paid to the California Office of
13 Environmental Health Hazard Assessment ("OEHHA") and remaining twenty-five percent (25%) of
14 the penalty retained by Brimer. Petedge shall deliver its payment in two checks for the following
15 amounts made payable to (a) "OEHHA" in the amount of \$1,687.50, and (b) "Russell Brimer, Client
16 Trust Account" in the amount of \$562.50. Brimer's counsel shall be responsible for delivering
17 OEHHA's portion of the penalty paid under this Consent Judgment.

18 **3.2 Reimbursement of 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, thereby leaving the issue to be
21 resolved after the material terms of their settlement had been finalized. Shortly after the other
22 settlement terms had been finalized, Petedge and Brimer negotiated a resolution of the compensation
23 due to Brimer and his counsel under general contract principles and the private attorney general
24 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
25 through the mutual execution of this Consent Judgment. Under these legal principles, Petedge agrees
26 to pay \$26,000 for all fees and costs incurred investigating, bringing this matter to Petedge's
27 attention, and litigating and negotiating a settlement in the public interest. Petedge shall deliver its
28

1 payment in a single check payable to "The Chanler Group."

2 **3.3 Payment Timing; Payments Held in Trust**

3 All settlement payments due under this Consent Judgment shall be delivered to Petedge's
4 counsel within fifteen (15) days of the date that this Consent Judgment is fully executed by the
5 Parties. Petedge's counsel shall provide Brimer's counsel with written confirmation upon its receipt
6 of Petedge's settlement funds. Thereafter, Petedge's counsel shall hold the settlement payments in
7 trust until, and disburse the payments within two days after, the Effective Date.

8 **3.4 Payment Address**

9 All payments required by this Consent Judgment shall be delivered to:

10 The Chanler Group
11 Attn: Proposition 65 Controller
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710

13 **4. CLAIMS COVERED AND RELEASED**

14 **4.1 Brimer's Public Release of Proposition 65 Claims**

15 Brimer, acting on his own behalf and in the public interest, releases Petedge and its parents,
16 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
17 attorneys ("Releasees") and each entity to whom Petedge directly or indirectly distributes or sells
18 the Products including, but not limited to, its downstream distributors, wholesalers, customers,
19 retailers, franchisers, cooperative members, licensors, and licensees ("Downstream Releasees") for
20 any violation arising under Proposition 65 alleging a failure to warn about exposures to DEHP in
21 Products sold by Petedge prior to the Effective Date, as set forth in the Notice. Compliance with
22 the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to the
23 failure to warn about exposures to DEHP in Products sold by Petedge after the Effective Date.

24 **4.2 Brimer's Individual Release of Claims**

25 Brimer, in his individual capacity only and *not* in his representative capacity, also provides a
26 release to Petedge, Releasees, and Downstream Releasees which shall be effective as a full and final
27 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
28 attorneys' fees, damages, losses, claims, liabilities, and demands of Brimer of any nature, character or

1 kind, arising out of alleged or actual exposures to DEHP in Products manufactured, imported, sold or
2 distributed for sale by Petedge before the Effective Date.

3 **4.3 Petedge's Release of Brimer**

4 Petedge, on its own behalf, and on behalf of its past and current agents, representatives,
5 attorneys, successors, and assignees, hereby waives any and all claims against Brimer and his
6 attorneys and other representatives, for any and all actions taken or statements made, whether in the
7 course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter,
8 or with respect to the Products.

9 **5. COURT APPROVAL**

10 This Consent Judgment is not effective until it is approved and entered by the Court and shall
11 be null and void if it is not approved and entered by the Court within one year after it has been fully
12 executed by the Parties, or by such additional time to which the Parties may agree in writing.

13 **6. SEVERABILITY**

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

17 **7. GOVERNING LAW**

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

24 **8. NOTICE**

25 Unless specified herein, all correspondence and notice required by this Consent Judgment
26 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
27 return receipt requested; or (iii) a recognized overnight courier to the following addresses:
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

For Petedge:

Andy Katz, President
Petedge, Inc.
100 Cummings Center, Suite 307B
Beverly, MA 01915

Anatoly M. Darov, Esq.
Burns & Levinson LLP
125 Summer Street
Boston, MA 02110-1624

For Brimer:

The Chanler Group
Attn: Proposition 65 Coordinator
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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

9. COUNTERPARTS: FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. POST EXECUTION ACTIVITIES

Brimer agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance of obtaining such approval, Brimer and Petedge agree to mutually employ their best efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for approval, responding to any objection or opposition any third-party may file or lodge, and appearing before the Court at the hearing, if so requested.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11. MODIFICATION

This Consent Judgment may only be modified by: (i) a written agreement of the Parties and entry of a modified consent judgment by the Court thereon; or (ii) a successful motion or application of any Party, and the entry of a modified consent judgment by the Court thereon.

12. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understand, and agree to all of the terms and conditions set forth herein.

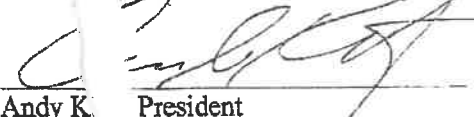
AGREED TO:

AGREED TO:

Date: 7.6.17

Date: 7/6/17

By: 
RUSSELL BRIMER

By: 
Andy K. Petedge President
PETEDGE MASSACHUSETTS BUSINESS
TRUST at PETEDGE, INC.

4846-6251-1435.1