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POWERCAM, INC.

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA
15 UNLIMITED CIVIL JURISDICTION
16

17
18 RUSSELL BRIMER,

19 Plaintiff,

20 v.

21 POWERCAM, INC.; and DOES 1-150,
22 inclusive,

23 Defendants.
24
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Case No. RG13675514

[PROPOSED]
CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and Powercam, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”) and defendant Powercam, Inc. (“Powercam”), with Brimer and Powercam collectively referred to as the “parties,” and individually as a “party.” Brimer is an individual residing in the State of California who has asserted that he seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products. Brimer alleges that Powercam employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

11 **1.2 General Allegations**

12 Brimer has alleged that Powercam has sold vinyl battery/power cables for portable electronic devices which contain the phthalate, di(2-ethylhexyl)phthalate (“DEHP”), without the requisite Proposition 65 warnings. DEHP is listed under Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

16 **1.3 Covered Products**

17 The products that are covered by this Consent Judgment are defined as vinyl/PVC battery/power cables for portable electronic devices containing DEHP including, but not limited to, *Motor Trend Power Charger Travel Charger for iPod & iPod Mini, Model MT-109 (#6 76965 18154 4)*, manufactured, imported and/or distributed by Powercam and offered for sale in the State of California, hereinafter “Products.”

22 **1.4 Notice of Violation**

23 On December 21, 2012, Brimer served Powercam and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided recipients with notice alleging that Powercam was in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in the State of California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation Standards**

3 Reformulated Products are defined as those Products containing DEHP in concentrations
4 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
5 Protection Agency testing methodologies 3580A and 8270C or any other methodologies utilized
6 by federal or state agencies for the purpose of determining DEHP content in a solid substance.

7 **2.2 Reformulation Commitment**

8 As of the Effective Date, all Products manufactured, imported and/or distributed by
9 Powercam, which are sold or offered for sale in the State of California, shall be Products that
10 qualify as Reformulated Products as defined in Section 2.1 above.

11 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

12 In settlement of all the claims referred to in this Consent Judgment, Powercam shall pay a
13 total of \$14,000 in civil penalties in accordance with this Section. Each penalty payment will be
14 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of
15 the funds remitted to the California Office of Environmental Health Hazard Assessment
16 (“OEHHA”) and the remaining 25% of the penalty remitted to Brimer, as follows:

17 **3.1 Initial Civil Penalty**

18 Powercam shall pay an initial civil penalty in the amount of \$4,000 within five (5) days of
19 the Effective Date or on or before August 19, 2013, whichever is date is earlier. Powercam shall
20 issue two separate checks made payable as follows: (a) “OEHHA” in the amount of \$3,000; and
21 (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,000. All penalty
22 payments shall be delivered to the addresses listed in Section 3.3 below.

23 **3.2 Final Civil Penalty**

24 Powercam shall pay a final civil penalty of \$10,000 on or before June 28, 2014. The final
25 civil penalty shall be waived in its entirety, however, if, no later than June 14, 2014, an officer of
26 Powercam provides Brimer with written certification that, as of the date of such certification and
27 continuing into the future, Powercam has met the reformulation standard specified in Section 2
28 above, such that all Products manufactured, imported and/or distributed by Powercam, that are sold

1 in California, are Reformulated Products. The certification in lieu of a final civil penalty payment
2 provided by this Section is a material term, and time is of the essence. Powercam shall issue two
3 separate checks for its final civil penalty payments made payable as follows: (a) "OEHHA" in the
4 amount of \$7,500; and (b) "The Chanler Group in Trust for Russell Brimer" in the amount of
5 \$2,500.

6 **3.3 Payment Procedures**

7 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

8 (a) All payments owed to Brimer, pursuant to Sections 3.1 through 3.2,
9 shall be delivered to the following payment address:

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

15 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
16 Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties")
17 at the following addresses:

18 For United States Postal Service Delivery:

19 Mike Gyrics
20 Fiscal Operations Branch Chief
21 Office of Environmental Health Hazard Assessment
22 P.O. Box 4010
23 Sacramento, CA 95812-4010

24 For Non-United States Postal Service Delivery:

25 Mike Gyrics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth
above in 3.3.1(a), as proof of payment to OEHHA.

3.3.2 Issuance of 1099 Forms. After each penalty payment, Powercam shall
issue separate 1099 forms for each payment to Brimer, whose address and tax identification

1 number shall be furnished upon request after this Consent Judgment has been fully executed by
2 the Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

3 **4. REIMBURSEMENT OF FEES AND COSTS**

4 The parties acknowledge that Brimer and his counsel offered to resolve this dispute without
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
6 issue to be resolved after the material terms of the agreement had been settled. Brimer then
7 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
8 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
9 Brimer and his counsel under general contract principles and the private attorney general doctrine
10 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
11 execution of this agreement. Powercam shall pay \$27,000 for fees and costs incurred as a result of
12 investigating, bringing this matter to Powercam’s attention, and negotiating a settlement in the
13 public interest, payable either in full on or before the Effective date or in six (6) installments of
14 \$4,500 due every thirty days after the Execution Date beginning on or about September 16, 2013,
15 and ending on or about February 17, 2014. Powercam shall issue a separate 1099 for fees and
16 costs (EIN: 94-3171522), shall make the check for each installment payable to “The Chanler
17 Group” and shall deliver the 1099 form and each payment to the address listed in Section 3.3.1(a)
18 above.

19 **5. RELEASE OF ALL CLAIM**

20 **5.1 Brimer’s Release of Powercam**

21 Brimer, acting on his own behalf, and on behalf of his agents, successors and assigns, and
22 in the public interest, releases Powercam, its parents, subsidiaries, affiliated entities that are under
23 common ownership, directors, officers, employees, attorneys, and each entity to whom Powercam
24 directly or indirectly distributes or sells Products, including, but not limited to, downstream
25 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and
26 licensees who manufacture, use, maintain, distribute or sell the Products (“Releasees”), from all
27 claims for violations of Proposition 65, up through the Effective Date, based on exposure to DEHP
28 from the Products as set forth in the Notice. Compliance with the terms of this Consent Judgment

1 constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products
2 as set forth in the Notice.

3 Brimer, also, in his individual capacity, and on behalf of his agents, successors and assigns,
4 only, and *not* in his representative capacity, provides a release herein which shall be effective as a
5 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
6 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Brimer of any nature,
7 character or kind, whether known or unknown, suspected or unsuspected, related to the Products
8 manufactured, distributed or sold by Powercam prior to the Effective Date.

9 **5.2 Powercam's Release of Brimer**

10 Powercam on behalf of itself, its past and current agents, representatives, attorneys,
11 successors, and/or assignees, hereby waives any and all claims against Brimer, his attorneys and
12 other representatives, for any and all actions taken or statements made (or those that could have
13 been taken or made) by Brimer and his attorneys and other representatives, whether in the course
14 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
15 respect to the Products.

16 **6. SEVERABILITY**

17 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
18 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
19 provisions remaining shall not be adversely affected.

20 **7. COURT APPROVAL**

21 This Consent Judgment is not effective until it is approved and entered by the Court and
22 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
23 after it has been fully executed by all parties. In the event the Court does not approve this Consent
24 Judgment within one year, the funds paid pursuant to Section 3 of this Consent Judgment shall be
25 returned to Powercam.

26 **8. SEVERABILITY**

27 If, subsequent to the approval of this Consent Judgment, any of the provisions of it are held
28 by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be

1 adversely affected. If not approved by the Court, this Consent Judgment shall be of no force and
2 effect.

3 **9. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of California
5 and apply within the State of California.

6 **10. NOTICES**

7 Unless specified herein, all correspondence and notices required to be provided pursuant to
8 this Consent Judgment shall be in writing and: (i) personally delivered; (ii) sent by first-class,
9 (registered or certified mail) return receipt requested; or (iii) sent by overnight courier to one party
10 from the other party at the following addresses:

11 To Powercam:

12 Ralph Husni, President
13 Powercam, Inc.
14 140 58th Street, Suite D1
Brooklyn, NY 11220

15 with a copy on behalf of Powercam to:

16 Daniel G. Emilio
17 Emilio Law Group, apc
18 12832 Valley View Street, Ste 106
Garden Grove, CA 92845

19 To Brimer:

20 Proposition 65 Coordinator
21 The Chanler Group
22 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

25 **11. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

26 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
27 each of which shall be deemed an original, and all of which, when taken together, shall constitute
28 one and the same document. A facsimile or pdf signature shall be as valid as the original.

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12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Brimer and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

13. ADDITIONAL POST EXECUTION ACTIVITIES

The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Brimer’s counsel shall prepare a motion for this Consent Judgment’s approval by the Court, and Brimer and Powercam, and their respective counsel, agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.

14. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

15. AUTHORIZATION

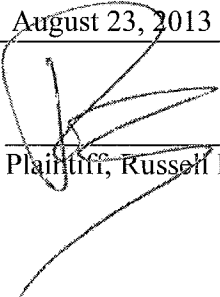
The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

Date: August 23, 2013 _____

AGREED TO:

Date: _____

By:  _____
Plaintiff, Russell Brimer

By: _____
Ralph Husni, President
Defendant, Powercam, Inc.

1 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

2 Brimer and his attorneys agree to comply with the reporting form requirements referenced
3 in California Health & Safety Code § 25249.7(f).

4 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

5 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
6 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
7 obtaining such approval, Brimer's counsel shall prepare a motion for this Consent Judgment's
8 approval by the Court, and Brimer and Powercam, and their respective counsel, agree to mutually
9 employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain
10 approval of the Consent Judgment by the Court in a timely manner.

11 **14. ENTIRE AGREEMENT**

12 This Consent Judgment contains the sole and entire agreement and understanding of the
13 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
14 negotiations, commitments, and understandings related hereto. No representations, oral or
15 otherwise, express or implied, other than those contained herein have been made by any Party
16 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
17 to exist or to bind any of the Parties.

18 **15. AUTHORIZATION**

19 The undersigned are authorized to execute this Consent Judgment and have read,
20 understood, and agree to all of the terms and conditions of this Consent Judgment.

21 AGREED TO:

AGREED TO:

22
23 Date: _____

Date: 8/13/13

24
25 By: _____
26 Plaintiff, Russell Brimer

By: Ralph Husni
Ralph Husni, President
Defendant, Powercam, Inc.

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