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PAGECOMM, INC.

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SANTA CLARA
14 UNLIMITED CIVIL JURISDICTION
15

16 RUSSELL BRIMER,
17 Plaintiff,
18 v.
19 PAGECOMM INTERNATIONAL, INC.; and
20 DOES 1-150, inclusive,
21 Defendants.
22

Case No. 113CV250148
[PROPOSED]
CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”) and Pagecomm International, Inc. (“Pagecomm”), with Brimer and Pagecomm collectively referred to as the “parties,” and individually as a “party.” Brimer is an individual residing in the State of California who 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. Pagecomm 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 alleges that Pagecomm has manufactured, imported, distributed and/or sold vinyl headset cords containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings. DEHP is on the Proposition 65 list as known to cause birth defects and other reproductive harm.

16 **1.3 Product Description**

17 As used in this Consent Judgment, “Products” shall mean headset cords containing DEHP including, but not limited to, *Cellet Hands-Free Headset, EP25BX/ EUNI10 (8 00768 00170 3) and Cellet Hands-Free Headset, EP35P & PST (8 00768 50006 0)*, manufactured, imported, distributed and/or sold by Pagecomm for sale in the State of California.

21 **1.4 Notices of Violation**

22 On December 28, 2012, Brimer served Pagecomm and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided recipients with notice alleging that Pagecomm was in violation of Proposition 65 for failing to warn consumers and customers that its vinyl headset cords exposed users in State of California to DEHP.

26 On September 27, 2013, Brimer served Pagecomm and various public enforcement agencies with a document entitled “Supplemental 60-Day Notice of Violation” (the “Supplemental Notice”) that provided recipients with notice alleging that Pagecomm was in violation of Proposition 65 for

1 failing to warn consumers and customers that its vinyl headset cords exposed users in State of
2 California to DEHP. The Notice and Supplemental Notice are referred to collectively herein as the
3 “Notices.” No public enforcer has diligently prosecuted the allegations set forth in the Notices.

4 1.5 **Complaint**

5 On or about October 2, 2013, Brimer filed a first amended complaint in the Superior Court in
6 and for the County of Santa Clara against Pagecomm, Inc. and Does 1 through 150, *Brimer v.*
7 *Pagecomm, Inc., et al.*, Case No. 113CV250148, alleging violations of Proposition 65, based on the
8 alleged exposures to DEHP contained in certain vinyl headset cords containing DEHP sold by
9 Pagecomm (“Complaint”).

10 1.6 **No Admission**

11 Pagecomm denies the material, factual and legal allegations contained in Brimer’s Notices
12 and Complaint and maintains that all products that it has sold, manufactured, imported and/or
13 distributed in the State of California, including the Products, have been and are in compliance with
14 all laws. Nothing in this Consent Judgment shall be construed as an admission by Pagecomm of
15 any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment
16 constitute or be construed as an admission by Pagecomm of any fact, finding, conclusion, issue of
17 law, or violation of law. However, this Section shall not diminish or otherwise affect Pagecomm’s
18 obligations, responsibilities and duties under this Consent Judgment.

19 1.7 **Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the parties stipulate that this Court has
21 jurisdiction over Pagecomm as to the allegations contained in the Complaint, that venue is proper in
22 the County of Santa Clara, and that this Court has jurisdiction to enter and enforce the provisions of
23 this Consent Judgment.

24 1.8 **Execution Date**

25 For purposes of this Consent Judgment, the term “Execution Date” shall mean the date this
26 Consent Judgment is signed by both parties.

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1.9 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date the Court enters Judgment pursuant to the terms of this Consent Judgment.

1.10 Accessible Component

For purposes of this Consent Judgment, the term “Accessible Component” means a component of the Products that could be touched by a person during reasonably foreseeable use.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Product Warnings

Commencing on the Execution Date, Pagecomm shall only sell, ship or offer for sale in California Products that are: (1) sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a) and (b); or (2) exempt pursuant to Section 2.2 as Reformulated Products as defined in Section 2.3.

Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product(s) the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales.

(i) Product Labeling. Pagecomm may affix a warning to the packaging, labeling or directly on any Products that are not Reformulated Products sold in retail outlets in California that states:

WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

(ii) Point-of-Sale Warnings. Alternatively, Pagecomm may provide warning signs in the form below to its retailers in California with instructions to post the signs in close proximity to the point of display of any such Products for the benefit of its retailers’ customers.

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WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

Where any such Products are sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the following statement must be used:

WARNING: The following product(s) contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm:

[list product(s) for which warning is required]

(b) **Mail Order Catalog and Internet Sales.** In the event that Pagecomm sells any Products that are not Reformulated Products via mail order catalog or the Internet to customers located in California after the Execution Date, Pagecomm shall provide a warning for such Products sold via mail order catalog or the Internet to California residents pursuant to section 2.1(a)(i) above, in the mail order catalog or on the website. Warnings given in the mail order catalog or on the website shall identify the specific Product(s) to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog must be in the same type size or larger than the Product(s) description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product(s):

WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product(s), Pagecomm may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front or back cover of the catalog or on the same page as any order form for the Product(s):

1 not intend to expand or restrict any obligations or responsibilities that may be imposed upon
2 Pagecomm by laws other than Proposition 65, nor do the Parties intend this Consent Judgment to
3 affect any defenses available to Pagecomm under laws other than Proposition 65.

4 **2.4 Vendor Notification Requirement**

5 To the extent is has not already done so, no more than thirty (30) days after the Execution
6 Date, Pagecomm shall provide the reformulation standards specified in section 2.3 for
7 Reformulated Products to any and all of its vendors of Products that will be sold or offered for sale
8 to California consumers, and shall instruct each vendor to use its best efforts to provide only
9 Reformulated Products, as defined in Section 2.3.

10 **3. MONETARY PAYMENTS**

11 **3.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

12 In settlement of all the claims referred to in this Consent Judgment, Pagecomm shall pay a
13 total of \$16,500 in accordance with this Section. Each penalty payment will be allocated in
14 accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds
15 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the
16 remaining 25% of the penalty remitted to Brimer, as follows:

17 **3.1.1 Initial Civil Penalty.** Pagecomm shall pay an initial civil penalty in the
18 amount of \$5,500. Pagecomm shall issue two separate checks made payable as follows: (a) the
19 first to “OEHHA” in the amount of \$4,125 due within five (5) days of the Execution Date; and (b)
20 the second to “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,375 due within
21 five (5) days of the Execution Date and to be held in trust until Court approval of this Consent
22 Judgment. All penalty payments shall be delivered to the addresses listed in Section 3.4 below.

23 **3.1.2 Final Civil Penalty.** Pagecomm shall pay a final civil penalty of \$11,000 on
24 or before July 31, 2014. The final civil penalty shall be waived in its entirety if an officer of
25 Pagecomm provides Brimer with written certification that, as of the Effective Date, Pagecomm has
26 met and continues to meet the Reformulation Standard specified in Section 2.3 above such that all
27 Products manufactured, produced, assembled, imported, distributed, shipped, sold or offered for
28 sale in State of California as of the Effective Date and continuing into the future are Reformulated

1 Products. Brimer must receive any such certification on or before July 15, 2014, and time is of the
2 essence. Unless waived in its entirety, Pagecomm shall issue two separate checks for any
3 remaining portion of the final civil penalty, with 75% of the funds remitted to OEHHA and 25% of
4 the funds remitted to “The Chanler Group in Trust for Russell Brimer.”

5 3.2 Representations

6 Pagecomm represents that the sales data and other information concerning its size, knowledge
7 of DEHP, and prior reformulation and/or warning efforts, that it provided to Brimer in negotiating
8 this Consent Judgment was truthful to its knowledge at the time of execution of this Consent
9 Judgment and a material factor upon which Brimer relied to determine the amount of civil penalties
10 assessed pursuant to Health & Safety Code § 25249.7. If, within nine months of the Effective Date,
11 Brimer discovers and presents to Pagecomm, evidence demonstrating that the preceding
12 representation and warranty was materially inaccurate, then Pagecomm shall have 30 days to meet
13 and confer regarding Brimer’s contention. Should this 30 day period pass without any such
14 resolution between Brimer and Pagecomm, Brimer shall be entitled to file a formal legal claim
15 including, but not limited to, a claim for damages for breach of contract.

16 3.3 Reimbursement of Fees and Costs

17 The parties acknowledge that Brimer and his counsel offered to resolve this dispute without
18 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
19 issue to be resolved after the material terms of the agreement had been settled. Pagecomm then
20 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
21 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
22 Brimer and his counsel under general contract principles and the private attorney general doctrine
23 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
24 execution of this agreement, except fees that may be incurred on appeal. Pagecomm shall pay
25 \$41,000 for fees and costs incurred as a result of investigating, bringing this matter to Pagecomm’s
26 attention, and negotiating a settlement in the public interest, as well as the fees and costs incurred
27 (and to be incurred) obtaining the Court’s approval of this Consent Judgment in the public interest
28 in two checks made payable to “The Chanler Group”. The first check in the amount of \$15,000 is

1 due within five (5) business days of the Execution Date. The second check in the amount of
2 \$26,000 is due within five (5) business days of the Effective Date. Pagecomm shall be liable for
3 payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this
4 Section that are not received within two business days of the due date.

5 **3.4 Payment Procedures**

6 **3.4.1. Issuance of Payments.** Payments shall be delivered as follows:

7 (a) All payments owed to Brimer and his counsel, pursuant to Sections
8 3.1 through 3.3, shall be delivered to the following payment address:

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

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

17 For United States Postal Service Delivery:

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

23 For Non-United States Postal Service Delivery:

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

3.4.2 **Proof of Payment to OEHHA.** Pagecomm shall mail a copy of each check
payable to OEHHA, simultaneous with payment, to The Chanler Group at the address set forth in
Section 3.4.1(a) above, as proof of payment to OEHHA.

3.4.3 **Tax Documentation.** Pagecomm shall issue a separate 1099 form for each
payment required by this Section to: (a) Russell Brimer, whose address and tax identification
number shall be furnished upon request after this Consent Judgment has been fully executed by the

1 Parties; (b) OEHHA, who shall be identified as “California Office of Environmental Health Hazard
2 Assessment” (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box
3 4010, Sacramento, CA 95814; and (c) “The Chanler Group” (EIN: 94-3171522) to the address set
4 forth in Section 3.4.1(a) above.

5 4. CLAIMS COVERED AND RELEASED

6 4.1 Brimer’s Release of Pagecomm

7 Brimer, acting on his own behalf and in the public interest, waives all rights to institute or
8 participate in, directly or indirectly, any form of legal action and releases Pagecomm, its parents,
9 subsidiaries, affiliated entities, successors, and/or assignees, that are under common ownership,
10 directors, officers, employees, shareholders, attorneys, and each entity to whom Pagecomm directly
11 or indirectly distributes or sells Products including, but not limited to, Cellet Hands-Free Headsets,
12 EP25BX/ EUNI10 (8 00768 00170 3) and Cellet Hands-Free Headsets, EP35PST (8 00768 50006
13 0), including, but not limited to, downstream distributors, wholesalers, customers, retailers,
14 franchisees, cooperative members, licensors, and licensees (“Releasees”), from all claims including,
15 without limitation, all actions and causes of action in law or in equity, suits, liabilities, demands,
16 obligations, damages, costs, fines, penalties, losses or expenses, investigation fees, expert fees, and
17 attorneys’ fees of any nature whatsoever arising from any violation of Proposition 65 up through
18 the Effective Date based on exposure to DEHP from Products including, but not limited to, Cellet
19 Hands-Free Headsets, EP25BX/ EUNI10 (8 00768 00170 3) and Cellet Hands-Free Headsets,
20 EP35P & PST (8 00768 50006 0) line of the Products, as set forth in the Notices. Compliance with
21 the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
22 exposures to DEHP from the Products including, but not limited to, Cellet Hands-Free Headsets,
23 EP25BX/ EUNI10 (8 00768 00170 3) and Cellet Hands-Free Headsets, EP35P&PST (8 00768
24 50006 0).

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

1 suspected or unsuspected, limited to and arising out of alleged or actual exposures to the DEHP in
2 the Products including, but not limited to, Cellet Hands-Free Headsets, EP25BX/ EUNI10 (8 00768
3 00170 3) and Cellet Hands-Free Headsets, EP35P& PST (8 00768 50006 0) manufactured,
4 imported, distributed and/or sold by Releasees for sale in the State of California prior to the
5 Effective Date as set forth in the Notices.

6 4.2 Pagecomm's Release of Brimer

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

13 5. COURT APPROVAL

14 This Consent Judgment is not effective until it is approved and entered by the Court and shall
15 be null and void if, for any reason, it is not approved and entered by the Court within one year after
16 it has been fully executed by all parties. In the event the Court does not approve this Consent
17 Judgment within one year, the funds paid pursuant to Section 3 of this Consent Judgment shall be
18 returned to Pagecomm.

19 Brimer and Pagecomm agree to support the entry of this agreement as a Consent Judgment
20 and obtain approval of the Consent Judgment by the Court in a timely manner. The Parties
21 acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is
22 required to obtain judicial approval of this Consent Judgment, which Brimer shall draft and file. If
23 any third-party objection to the noticed motion is filed, Brimer and Pagecomm shall work together
24 to file a reply and appear at any hearing before the Court. This provision is a material component
25 of the Consent Judgment and shall be treated as such in the event of a breach.

26 6. GOVERNING LAW

27 The terms of this Consent Judgment shall be governed by the laws of the State of California
28 and the obligations of Pagecomm hereunder as to the Products apply only within the State of

1 California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered
2 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
3 rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered
4 inapplicable by reason of law generally as to the Products, then Pagecomm shall notify Brimer and
5 his counsel and may have no further obligations pursuant to this Consent Judgment with respect to,
6 and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be
7 interpreted to relieve Pagecomm from any obligation to comply with any pertinent state or federal
8 toxics control law.

9 **7. NOTICES**

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

14 To Pagecomm:

15 Rick Kim, President
16 Pagecomm International, Inc.
17 12850 Moore Street
18 Cerritos, CA 90703

19 With a copy to:

20 John P. Lee, Esq.
21 Kim Shapiro Park & Lee, APLC
22 3435 Wilshire Boulevard, Suite 2050
23 Los Angeles, California 90010

To Brimer:

24 Proposition 65 Coordinator
25 The Chanler Group
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710-2565

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

31 **8. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

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

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

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

4 10. **MODIFICATION**

5 This Consent Judgment may be modified only: (1) by written agreement of the parties and
6 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
7 of any party and entry of a modified Consent Judgment by the Court.

8 11. **AUTHORIZATION**

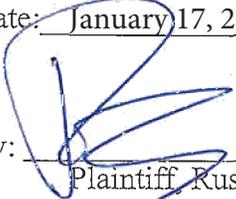
9 The undersigned are authorized to execute this Consent Judgment and have read, understood,
10 and agree to all of the terms and conditions of this Consent Judgment.

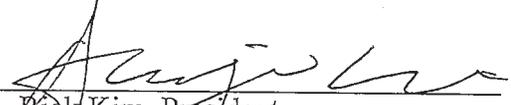
11 AGREED TO:

AGREED TO:

12 Date: January 17, 2014

13 Date: 1/16/2014

14 By:  _____
15 Plaintiff, Russell Brimer

16 By:  _____
17 Rick Kim, President
18 Defendant, Pagecomm International, Inc.