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Attorneys for Plaintiff
RUSSELL BRIMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,
Plaintiff,
v.
COMPTREE INC.; FRY'S ELECTRONICS;
et al.,
Defendants.

Case No. CGC-16-551474
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Plaintiff**

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

10 **1.3 Defendants**

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

14 **1.4 Products Covered**

15 This Consent Judgment covers and applies to: stools with vinyl/PVC upholstery including,
16 but not limited to, *Merax Bar Stool, #1101, PP009528BAA, #0066541-001*; vinyl/PVC cables
17 including, but not limited to, *Laptop Security Combination Lock & Cable for PowerMac G5, #210-*
18 *037-001*; and the *Merax Desk Organizer, #901-026, UPC #8 34784 01618 2*, that are imported,
19 manufactured, distributed for sale, sold, and/or offered for sale in California by Comptree
20 (collectively “Products”).

21 **1.5 General Allegations**

22 Brimer alleges that Comptree imported, manufactured, distributed for sale, shipped for sale,
23 sold, and/or offered for sale in California, Products containing DEHP without first providing the
24 health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a
25 chemical known to the State of California to cause birth defects or other reproductive harm.

26 **1.6 Notices of Violation**

27 On or about January 29, 2016, Brimer served Comptree, and certain requisite public
28 enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”) alleging that

1 Comptree violated Proposition 65 by failing to warn its customers and consumers in California that
2 the *Merax Desk Organizer, #901-026, UPC #8 34784 01618 2* exposed users to DEHP. Thereafter,
3 on October 28, 2016, Brimer served Comptree with a new Notice (the January 29, 2016 Notice and
4 October 28, 2016 Notice shall be collectively referred to hereinafter as “Notices”) alleging that
5 Comptree violated Proposition 65 by failing to warn its customers and consumers in California that
6 the products in the October 28, 2016 Notice exposed users to DEHP. To the best of the Parties’
7 knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth
8 in the Notices.

9 **1.7 Complaint**

10 On April 13, 2016, Brimer filed the instant action in the Superior Court of the State of
11 California for the County of San Francisco as *Brimer v. Comptree Inc., et al*, case no. CGC-16-
12 551474 (“Complaint”) naming Comptree as one of the defendants for the alleged violations of
13 Health and Safety Code Section 25249.6 that are the subject of the January 29, 2016, 60-Day Notice
14 of Violation. Provided that no other public enforcer has commenced and is diligently prosecuting the
15 allegations set forth in the October 28, 2016 60-Day Notice of Violation, the Complaint shall be
16 deemed amended *nunc pro tunc* to include the products identified in the October 28, 2016 60-Day
17 Notice of Violation.

18 **1.8 No Admission**

19 Comptree denies the material, factual, and legal allegations contained in the Notices and
20 Complaint, and maintains that all of the products it has imported, manufactured, distributed for sale,
21 shipped for sale, sold, and/or offered for sale in California, including the Products, have been, and
22 are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
23 admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall
24 compliance with this Consent Judgment constitute or be construed as an admission of any fact,
25 finding, conclusion of law, issue of law, or violation of law. This Section shall not, however,
26 diminish or otherwise affect Comptree’s obligations, responsibilities, and duties under this Consent
27 Judgment.

28

1 **1.9 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over Comptree as to the allegations contained in the Complaint, that venue is proper in
4 the County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions
5 of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure Section 664.6.

6 **1.10 Effective Date**

7 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
8 the Motion to Approve this Consent Judgment is granted and this Consent Judgment is entered by
9 the Court.

10 **2. INJUNCTIVE RELIEF: REFORMULATION**

11 **2.1 Reformulated Products**

12 Commencing on the Effective Date, and continuing thereafter, Comptree agrees not to
13 manufacture for sale, or purchase for sale, or offer for sale in California Products unless they are
14 “Reformulated Products.” For purposes of this Consent Judgment, “Reformulated Products” are
15 Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) when
16 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
17 8270C or other methodology utilized by federal or state government agencies for the purpose of
18 determining DEHP content in a solid substance.

19 **3. MONETARY SETTLEMENT TERMS**

20 **3.1 Civil Penalty Payments**

21 Pursuant to Health & Safety Code Section 25249.7(b), in settlement of all the claims referred
22 to in this Consent Judgment and all the claims raised or made arising from alleged or actual
23 exposures to DEHP in the Products sold or distributed for sale by Comptree, or that could have been
24 raised or made, by Brimer in the Complaint, Comptree has been assessed civil penalties in the
25 amount of \$4,000. The penalty payment shall be allocated according to Health and Safety Code
26 Section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of
27 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid
28 to Brimer. Brimer’s counsel shall be responsible for remitting Comptree’s penalty payment under

1 this Settlement Agreement to OEHHA. Within five (5) business days of the Effective Date
2 Comptree shall issue a check payable to "Russell Brimer, Client Trust Account," in the amount of
3 \$1,000, and a check made payable to "OEHHA" in the amount of \$3,000, sent to the address
4 provided in Section 3.3 below.

5 **3.2 Reimbursement of Attorney's Fees and Costs**

6 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without
7 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
8 to be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
9 other settlement terms had been finalized, Comptree expressed a desire to resolve Brimer's fees and
10 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Brimer
11 and his counsel under general contract principles and the private attorney general doctrine codified
12 at California Code of Civil Procedure Section 1021.5 for all work performed through the mutual
13 execution of this Consent Judgment. Within five (5) business days of the Effective Date, Comptree
14 shall remit a check made payable to "The Chanler Group" in the amount of \$29,000, sent to the
15 address in section 3.3 below, for the fees and costs incurred by Brimer investigating, bringing this
16 matter to Comptree's attention, litigating and negotiating a settlement in the public interest.

17 **3.3 Payment Address**

18 All payments required by this Consent Judgment shall be delivered to the following
19 address:
20 The Chanler Group
21 Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

22 **4. CLAIMS COVERED AND RELEASED**

23 **4.1 Brimer's Public Release of Proposition 65 Claims**

24 Brimer, acting on his own behalf and in the public interest, releases Comptree and its
25 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
26 and attorneys (collectively, "Releasees") and each entity to whom Comptree directly or indirectly
27 distributes or sells the Products including, but not limited to, Fry's Electronics, Inc. and any and all
28 of Comptree's downstream distributors, wholesalers, customers, retailers, franchisers, cooperative

1 members, licensors and licensees (collectively “Downstream Releasees”) for any violations arising
2 under Proposition 65 for unwarned exposures to DEHP from Products sold by Comptree or any
3 Downstream Releasees prior to the Effective Date, as set forth in the Notices.

4 Upon entry of this Consent Judgment by the court, compliance with the terms of this
5 Consent Judgment shall be deemed to constitute compliance with Proposition 65 with respect to
6 DEHP in the Products imported, manufactured, distributed for sale, shipped for sale, sold, and/or
7 offered for sale by Comptree or any Downstream Releasees before the Effective Date, as set forth
8 in the Notices.

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 Comptree, 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 the Products sold or distributed for sale by Comptree before the Effective
16 Date.

17 Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code,
18 which provides as follows:

19 A general release does not extend to claims which the creditor does not know or suspect to
20 exist in his or her favor at the time of executing the release, which if known by him or her
must have materially affected his settlement with the debtor.

21 Brimer, in his individual capacity only and not in his representative capacity, on behalf of himself
22 and his agents, attorneys, representatives, successors and assigns, expressly waives and relinquishes
23 any and all rights and benefits that he may have under, or that may be conferred on him by, the
24 provisions of Section 1542 of the California Civil Code as well as under any other state or federal
25 statute or common law principle of similar effect, to the fullest extent that he may lawfully waive
26 such rights or benefits pertaining to the alleged or actual exposures to DEHP in the Products. In
27 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
28 complete release notwithstanding the discovery or existence of any such additional or different

1 claims or facts arising out of alleged or actual exposures to DEHP in the Products sold or distributed
2 for sale by Comptree before the Effective Date.

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

4 Comptree, 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 by Brimer and
7 his attorneys and other representatives, whether in the course of investigating claims, otherwise
8 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

9 Comptree acknowledges that it is familiar with Section 1542 of the California Civil Code,
10 which provides as follows:

11 A general release does not extend to claims which the creditor does not know or suspect to
12 exist in his or her favor at the time of executing the release, which if known by him or her
13 must have materially affected his settlement with the debtor.

14 Comptree on behalf of itself and its agents, attorneys, representatives, successors and
15 assigns, expressly waives and relinquishes any and all rights and benefits that it may have under, or
16 that may be conferred on it by, the provisions of Section 1542 of the California Civil Code as well as
17 under any other state or federal statute or common law principle of similar effect, to the fullest
18 extent that it may lawfully waive such rights or benefits pertaining to the alleged or actual exposures
19 to DEHP in the Products. In furtherance of such intention, the release hereby given shall be and
20 remain in effect as a full and complete release notwithstanding the discovery or existence of any
21 such additional or different claims or facts arising out of alleged or actual exposures to DEHP in the
22 Products sold or distributed for sale by Comptree before the Effective Date.

23 **5. COURT APPROVAL**

24 This Consent Judgment is not effective until it is approved and entered by the Court and shall
25 be null and void if, for any reason, it is not approved and entered by the Court within one (1) year
26 after it has been fully executed by the Parties, or by such additional time as the Parties may agree in
27 writing.
28

1 **6. SEVERABILITY**

2 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
3 of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of
4 the remaining provisions shall not be adversely affected.

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the state of California
7 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or
8 is otherwise rendered inapplicable by reason of law generally, or as to the Products, including
9 without limitation the delisting of DEHP, then Comptree may provide written notice to Brimer of
10 any asserted change in the law, and shall have no further injunctive obligations pursuant to this
11 Consent Judgment with respect to, and to the extent that, the Products are so affected. Nothing in
12 this Consent Judgment shall have any application to products sold outside of the state of California,
13 or be interpreted to relieve Comptree from any obligation to comply with any pertinent state or
14 federal toxics control laws.

15 **8. NOTICE**

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

19 **To Comptree Inc.**

20 Joseph Huang, President
21 Comptree Inc.
22 18961 Arenth Avenue
City of Industry, CA 91748

To Comptree's counsel:

Audrey Khoo, Esq.
Chang & Coté, LLP
19138 East Walnut Dr., Suite 100
Rowland Heights, CA 91748

23 **To Russell Brimer's counsel**

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

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

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9. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or portable document format (PDF) 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, the Parties agree Brimer shall employ his best efforts, and those of his counsel, to support the entry of this agreement as judgment and obtain judicial approval of the Parties' settlement in a timely manner, and Comptree shall cooperate and support the entry of this agreement as judgment. For purposes of this Section, "best efforts" shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers, supporting the motion, and appearing at the hearing before the Court.

11. MODIFICATION

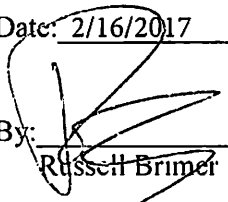
This Consent Judgment may be modified only by: (i) a written agreement of the Parties and entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any Party, and the entry of a modified consent judgment by the Court.

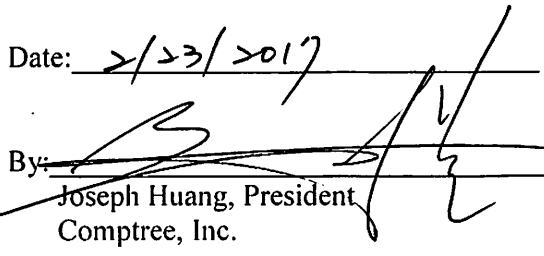
12. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: 2/16/2017
By: 
Russell Brimer

Date: 2/23/2017
By: 
Joseph Huang, President
Comptree, Inc.