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RUSSELL BRIMER

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA  
11 UNLIMITED CIVIL JURISDICTION

12  
13 RUSSELL BRIMER

14 Plaintiff,

15 v.

16 PETEDGE MASSACHUSETTS BUSINESS  
TRUST; *et al.*,

17 Defendants.  
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Case No. RG17847975

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.*, and  
Code Civ. Proc. § 664.6)

1     **1. INTRODUCTION**

2             **1.1 Parties**

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

7             **1.2 Plaintiff**

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

11            **1.3 Defendant**

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

15            **1.4 General Allegations**

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

21            **1.5 Product Description**

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

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1           **1.6 Notice of Violation**

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

7           **1.7 Complaint**

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

11           **1.8 No Admission**

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

20           **1.9 Jurisdiction**

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

25           **1.10 Effective Date**

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

2 Andy Katz, President  
3 Petedge, Inc.  
4 100 Cummings Center, Suite 307B  
5 Beverly, MA 01915

6 Anatoly M. Darov, Esq.  
7 Burns & Levinson LLP  
8 125 Summer Street  
9 Boston, MA 02110-1624

10 For Brimer:

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

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

18 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

22 **10. POST EXECUTION ACTIVITIES**

23 Brimer agrees to comply with the reporting form requirements referenced in Health and  
24 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety  
25 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In  
26 furtherance of obtaining such approval, Brimer and Petedge agree to mutually employ their best  
27 efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain  
28 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.



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**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 Katz, President  
PETEDGE MASSACHUSETTS BUSINESS  
TRUST and PETEDGE, INC.

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