

ENDORSED
FILED
ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 ALAMEDA COUNTY

13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 ZEIKOS INC.; and DOES 1-150, inclusive,

18 Defendants.

19 **RG12643160**

20 Case No. _____

21 **COMPLAINT FOR CIVIL PENALTIES
22 AND INJUNCTIVE RELIEF**

23 (Health & Safety Code. § 25249.6 *et seq.*)

NATURE OF THE ACTION

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2 1. This Complaint is a representative action brought by plaintiff, RUSSELL
3 BRIMER, in the public interest of the citizens of the State of California to enforce the People’s
4 right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical
5 found in headphones sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risk of exposure to DEHP present in and on the headphones
8 manufactured, distributed, and/or offered for sale or use to consumers throughout the state of
9 California.

10 3. High levels of DEHP are commonly found in and on the headphones that
11 defendants manufacture, distribute, and/or offer for sale to consumers throughout the state of
12 California.

13 4. Under The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
14 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the
15 course of doing business shall knowingly and intentionally expose any individual to a chemical
16 known to the state to cause cancer or reproductive toxicity without first giving clear and
17 reasonable warning to such individual ...” (Cal. Health & Safety Code § 25249.6.)

18 5. On October 24, 2003, California identified and listed DEHP pursuant to
19 Proposition 65 as a chemical known to cause birth defects and other reproductive harm. DEHP
20 became subject to the “clear and reasonable warning” requirements of the Act one year later on
21 October 24, 2004. (Cal. Code Regs., tit. 27, § 27001(c); Cal. Health & Safety Code §§ 25249.8
22 & 25249.10(b).) DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, and/or sell headphones that contain excessive
24 levels of DEHP, including, but not limited to, the *iHop DJ Style Headphones Team Logo*,
25 *NFF10271SAF (#1 87016 33283 4)*. All such headphones containing DEHP are referred to
26 collectively hereinafter as “PRODUCTS.”
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1 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
2 manufacturing, one or more of the PRODUCTS for sale or use in the state of California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
4 in the course of doing business within the meaning of California Health & Safety Code
5 § 25249.11.

6 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
7 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
8 in the State of California.

9 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
10 the course of doing business within the meaning of California Health & Safety Code
11 § 25249.11.

12 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
13 state of California.

14 19. At this time, the true names of defendants DOES 1 through 150, inclusive, are
15 unknown to plaintiff, who therefore sues said defendants by their fictitious names pursuant to
16 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
17 each of the fictitiously named defendants is responsible for the acts and occurrences alleged
18 herein. When ascertained, their true names shall be reflected in an amended complaint.

19 20. ZEIKOS, MANUFACTURER DEFENDANTS, DISTRIBUTOR
20 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
21 referred to as “DEFENDANTS.”

22 **VENUE AND JURISDICTION**

23 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
24 Procedure §§ 394, 395, and 395.5, because this Court is a court of competent jurisdiction,
25 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda
26 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this
27 county with respect to the PRODUCTS.

1 PRODUCTS, without the individual purchasers and users first having been provided with a
2 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

3 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
4 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
5 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day
6 notice of violation. Plaintiff further alleges that DEFENDANTS’ violations are ongoing and
7 continuous in nature and, as such, will continue to occur in the future.

8 29. After receiving the claims asserted in the sixty-day notice of violation, the
9 appropriate public enforcement agencies have failed to commence and diligently prosecute a
10 cause of action against DEFENDANTS under Proposition 65.

11 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
12 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
13 allowable state limits, such that they require a “clear and reasonable” Proposition 65 warning.

14 31. DEFENDANTS knew or should have known that the PRODUCTS they
15 manufactured, distributed, and/or offered for sale or use in California contain the LISTED
16 CHEMICAL.

17 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
18 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

19 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
20 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
21 defined by Cal. Code Regs., tit. 27, § 25602(b).

22 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
23 the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact
24 and/or ingestion.

25 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
26 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-

1 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for
2 sale or use to individuals in the state of California.

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers and/or other individuals in the state of California who were or who could become
5 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
6 reasonably foreseeable use of the PRODUCTS.

7 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
8 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
9 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold
10 by DEFENDANTS without a “clear and reasonable warning”, have suffered, and continue to
11 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

12 38. As a consequence of the above-described acts, DEFENDANTS are liable for a
13 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
14 Safety Code § 25249.7(b).

15 39. As a consequence of the above-described acts, California Health & Safety Code
16 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

19 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

20 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
21 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
22 alleged herein;


23 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
24 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
25 offering the PRODUCTS for sale or use in California without first providing “clear and/or
26 reasonable warnings” as defined by Cal. Code Regs., tit. 27, § 25601, as to the harms associated
27 with exposure the LISTED CHEMICAL;

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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: August 9, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 
Brian C. Johnson
Attorneys for Plaintiff
RUSSELL BRIMER