

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT
2012 NOV 20 PM 12:48
CLERK OF THE COURT
BY: DEPUTY CLERK
STEPPE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Clifford A. Chanler, State Bar No. 135534
Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
RUSSELL BRIMER

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

RUSSELL BRIMER,

Plaintiff,

v.

SKULLCANDY, INC.; and DOES 1-150,
inclusive,

Defendants.

Case No. CGC-12-526256

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

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 with vinyl/PVC ear cushions 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 with vinyl/PVC ear cushions manufactured, distributed, and/or offered for sale or use to
9 consumers throughout the state of California.

10 3. High levels of DEHP are commonly found in and on the headphones with
11 vinyl/PVC ear cushions that defendants manufacture, distribute, and/or offer for sale to
12 consumers throughout the state of 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 with vinyl/PVC ear
24 cushions that contain excessive levels of DEHP, including, but not limited to, the *Skullcandy*
25 *Lowrider, Model #S5LWCY-033 (#8 78615 02664 3)*. All such headphones with vinyl/PVC ear
26 cushions containing DEHP are referred to collectively hereinafter as “PRODUCTS.”
27
28

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 through 100 (“DISTRIBUTOR DEFENDANTS”) are each
4 persons 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 through 150 (“RETAILER DEFENDANTS”) are each
10 persons in 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. SKULLCANDY, 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 San Francisco County Superior Court, pursuant to Code of
24 Civil Procedure §§ 393, 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 San
26 Francisco County, and/or because DEFENDANTS conducted, and continue to conduct,
27 business in this county with respect to the PRODUCTS.
28

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-

27
28

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;

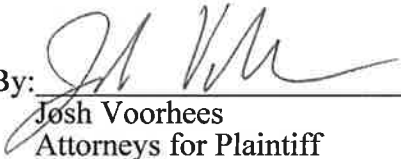
23 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
24 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
25 offering the PRODUCTS for sale or use in California without first providing “clear and/or
26 reasonable warnings” as defined by Cal. Code Regs., tit. 27, § 25601, as to the harms associated
27 with exposure the LISTED CHEMICAL;
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 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: November 20, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 
Josh Voorhees
Attorneys for Plaintiff
RUSSELL BRIMER