

ENDORSED
FILED
ALAMEDA COUNTY

MAR 19 2013

CLERK OF THE SUPERIOR COURT
By Kmel Dhillon Deputy

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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 RUSSELL BRIMER,
16 Plaintiff,
17 v.

18 JAZWARES, INC., and DOES 1-150,
19 inclusive,
20 Defendants.

Case No. RG13 672019

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(Health & Safety Code. § 25249.6 *et seq.*)

BY FAX

1 NATURE OF THE ACTION

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

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

10 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC headphone
11 cables that defendants manufacture, distribute, and offer for sale to consumers throughout the State
12 of California.

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

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

23 6. Defendants manufacture, distribute, import, sell, and/or offer for sale vinyl/PVC
24 headphone cables containing DEHP without a warning including, but not limited to, the *Star Wars*
25 *Folding Stereo Headphones, #15280 – 03085 – HP, #11005 - (#6 81326 15280 4)*. All vinyl/PVC
26 headphone cables containing DEHP that defendants manufacture, distribute, import, sell, and/or
27 offer for sale in California are referred to collectively hereinafter as “PRODUCTS.”
28

1 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in
2 the State of California.

3 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in the
4 course of doing business within the meaning of Health and Safety Code § 25249.11.

5 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the State
6 of California.

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

12 20. JAZWARES, MANUFACTURER DEFENDANTS, DISTRIBUTOR
13 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be referred
14 to as “DEFENDANTS.”

15 VENUE AND JURISDICTION

16 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
17 Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because
18 plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of wrongful
19 conduct occurred, and continue to occur, in Alameda County, and/or because DEFENDANTS
20 conducted, and continue to conduct, business in this county with respect to the PRODUCTS.

21 22. The California Superior Court has jurisdiction over this action pursuant to California
22 Constitution Article VI, section 10, which grants the Superior Court “original jurisdiction in all
23 causes except those given by statute to other trial courts.” The statute under which this action is
24 brought does not specify any other basis of subject matter jurisdiction.

25 23. The California Superior Court has jurisdiction over DEFENDANTS based on
26 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
27 association that is a citizen of the State of California, has sufficient minimum contacts in the State
28 of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS’

1 purposeful availment renders the exercise of personal jurisdiction by California courts consistent
2 with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Proposition 65 - Against All Defendants)**

5 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
6 Paragraphs 1 through 23, inclusive.

7 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
8 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be informed
9 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

10 26. Proposition 65 states, “[n]o person in the course of doing business shall knowingly
11 and intentionally expose any individual to a chemical known to the state to cause cancer or
12 reproductive toxicity without first giving clear and reasonable warning to such individual”
13 Health & Safety Code § 25249.6.

14 27. On December 21, 2012, plaintiff’s sixty-day notice of violation, together with the
15 requisite certificate of merit, was provided to JAZWARES and certain public enforcement agencies
16 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED
17 CHEMICAL, purchasers and users in the State of California were being exposed to the LISTED
18 CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS, without the
19 individual purchasers and users first having been provided with a “clear and reasonable warning”
20 regarding such toxic exposures, as required by Proposition 65.

21 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale, and
22 offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6, and
23 DEFENDANTS’ violations have continued to occur beyond their receipt of plaintiff’s sixty-day
24 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature, and
25 will continue to occur in the future.

26 29. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
27 enforcement agencies have failed to commence and diligently prosecute a cause of action against
28 DEFENDANTS under Proposition 65.

1 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or
2 use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require a
3 “clear and reasonable” warning under Proposition 65.

4 31. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,
5 import, distribute, sell, and offer for sale or use in California contain the LISTED CHEMICAL.

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

9 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
10 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are defined
11 by title 27 of the California Code of Regulations, section 25602(b).

12 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of
13 the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact and/or
14 ingestion.

15 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the
16 reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental
17 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for
18 sale or use to individuals in the State of California.

19 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
20 consumers and other individuals in the State of California who were or who would become exposed
21 to the LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably
22 foreseeable uses of the PRODUCTS.

23 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
24 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
25 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by
26 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer,
27 irreparable harm for which they have no plain, speedy, or adequate remedy at law.
28

1 38. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
2 described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each
3 violation.

4 39. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
5 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

6 **PRAYER FOR RELIEF**

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

8 1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil
9 penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

10 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
11 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS
12 for sale or use in California without first providing a "clear and reasonable warning" as defined by
13 title 27 of the California Code of Regulations, section 25601 *et seq.*, as to the harms associated with
14 exposures the LISTED CHEMICAL;

15 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

16 4. That the Court grant such other and further relief as may be just and proper.

17 Dated: March 19, 2013

18 Respectfully Submitted,

19 THE CHANLER GROUP

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21 By: 

22 Laralei S. Paras
23 Attorneys for Plaintiff
24 RUSSELL BRIMER
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