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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

RG13675985

RUSSELL BRIMER,
Plaintiff,

v.

VISUAL LAND, INC.; and DOES 1-150,
inclusive,
Defendants.

Case No. _____
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(Health & Safety Code, § 25249.6 *et seq.*)

By Fax Original

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff Russell Brimer in the
3 public interest of the citizens of the State of California to enforce the People’s right to be informed
4 of the presence of lead, a toxic chemical found in vinyl/PVC headphone cords sold in California.

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

9 3. Detectable levels of lead are commonly found in and on vinyl/PVC headphone cords
10 that defendants manufacture, sell, and distribute for sale to consumers throughout the State of
11 California.

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

17 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed lead
18 as a chemical known to cause birth defects and other reproductive harm. Lead became subject to
19 the “clear and reasonable warning” requirements of the act one year later on February 27, 1988.
20 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). Lead is
21 referred to hereinafter as the “LISTED CHEMICAL.”

22 6. Defendants manufacture, distribute, import, sell, and/or distribute for sale vinyl/PVC
23 headphone cords containing LISTED CHEMICAL without a warning including, but not limited to,
24 the *V-Touch Pro Touch Screen Media Player with In-Ear Headphones, Model ME-965L-4GB-BLK*
25 *(#8 28063 49652 9)*. All such vinyl/PVC headphone cords containing LISTED CHEMICAL are
26 referred to collectively hereinafter as “PRODUCTS.”

27 7. Defendants’ failure to warn consumers and other individuals in the State of California
28 about their exposure to the LISTED CHEMICAL in conjunction with defendants’ sales of the

1 PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder of such
2 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

3 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
4 permanent injunctive relief to compel defendants to provide purchasers or users of the PRODUCTS
5 with the required warning regarding the health hazards of the LISTED CHEMICAL. Health &
6 Safety Code § 25249.7(a).

7 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
8 penalties against defendants for their violations of Proposition 65.

9 **PARTIES**

10 10. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is dedicated
11 to protecting the health of California citizens through the elimination or reduction of toxic
12 exposures from consumer products; and he brings this action in the public interest pursuant to
13 Health and Safety Code section 25249.7(d).

14 11. Defendant VISUAL LAND, INC. ("VLI") is a person in the course of doing business
15 within the meaning of Health and Safety Code section 25249.11.

16 12. VLI manufactures, imports, sells, and/or distributes the PRODUCTS for sale or use in
17 the State of California, or implies by its conduct that it manufactures, imports, sells, and/or
18 distributes the PRODUCTS for sale or use in the State of California.

19 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons in
20 the course of doing business within the meaning of Health and Safety Code section 25249.11.

21 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate, and
22 manufacture, or imply by their conduct that they research, test, design, assemble, fabricate, and
23 manufacture one or more of the PRODUCTS offered for sale or use in the State of California.

24 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person in
25 the course of doing business within the meaning of Health and Safety Code section 25249.11.

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

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

3 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the State
4 of California.

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

10 20. VLI, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and
11 RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as
12 “DEFENDANTS.”

13 **VENUE AND JURISDICTION**

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

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

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

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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 or about December 28, 2012, plaintiff’s sixty-day notice of violation, together
15 with the requisite certificate of merit, was provided to VLI 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 section 25249.6,
23 and 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, sold, and distributed for sale or use in
2 California by DEFENDANTS contain the LISTED CHEMICAL such that they require a “clear and
3 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.

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