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Christopher M. Martin, State Bar No. 186021
Josh Voorhees, State Bar No. 241436
Stephen E. Cohen, State Bar No. 284416
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
LAURENCE VINOCUR

ENDORSED
FILED
ALAMEDA COUNTY
FEB 09 2015
CLERK OF THE SUPERIOR COURT
By _____ Deputy

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

LAURENCE VINOCUR,

Plaintiff.

v.

YAMAHA CORPORATION OF AMERICA;
and DOES 1-150, inclusive,

Defendants.

Case No. RG 15 757875

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff, LAURENCE
3 VINOCUR, in the public interest of the citizens of the State of California, to enforce the
4 People’s right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic
5 chemical found in benches with vinyl/PVC seats, headphones with vinyl/PVC components, bags
6 with vinyl/PVC shoulders strap pads, and vinyl/PVC musical instrument cases sold in the State
7 of California.

8 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
9 warn California citizens about reproductive toxicity associated with their exposure to DEHP
10 present in or on benches with vinyl/PVC seats, headphones with vinyl/PVC components, bags
11 with vinyl/PVC shoulders strap pads, and vinyl/PVC musical instrument cases stools that
12 defendants manufacture, import, distribute, sell and/or offer for sale to consumers throughout
13 the State of California.

14 3. High levels of DEHP are commonly found in and on benches with vinyl/PVC
15 seats, headphones with vinyl/PVC components, bags with vinyl/PVC shoulders strap pads, and
16 vinyl/PVC musical instrument cases that defendants manufacture, import, distribute, sell and/or
17 offer for sale to consumers throughout the State of California.

18 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
19 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the
20 course of doing business shall knowingly and intentionally expose any individual to a chemical
21 known to the State to cause cancer or reproductive toxicity without first giving clear and
22 reasonable warning to such individual ...” (Cal. Health & Safety Code, § 25249.6.)

23 5. On October 24, 2003, California identified and listed DEHP as a chemical known
24 to cause birth defects and other reproductive harm. DEHP became subject to the warning
25 requirement one year later and was therefore subject to the “clear and reasonable warning”
26 requirements of Proposition 65 beginning on October 24, 2004. (27 CCR § 27001 (c); *Cal.*
27 *Health & Safety Code § 25249.8.*) DEHP is hereinafter referred to as the “LISTED
28 CHEMICAL.”

1 toxic exposures from consumer products; he brings this action in the public interest pursuant to
2 California Health & Safety Code § 25249.7(d).

3 12. Defendant YAMAHA CORPORATION OF AMERICA (“YAMAHA”) is a
4 person in the course of doing business within the meaning of California Health & Safety Code §
5 25249.11.

6 13. YAMAHA manufactures, imports, distributes, sells and/or offers the PRODUCTS
7 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
8 distributes, sells and/or offers the PRODUCTS for sale or use in the State of California.

9 14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
10 persons in the course of doing business within the meaning of California Health & Safety Code
11 § 25249.11.

12 15. MANUFACTURER DEFENDANTS engage in the process of researching,
13 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
14 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
15 manufacturing, one or more of the PRODUCTS offered for sale or use in the State of California.

16 16. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
17 in the course of doing business within the meaning of California Health & Safety Code §
18 25249.11.

19 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
20 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
21 in the State of California.

22 18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
23 the course of doing business within the meaning of California Health & Safety Code §
24 25249.11.

25 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
26 State of California.

27 20. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
28 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to

1 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
2 each of the fictitiously named defendants is responsible for the acts and occurrences alleged
3 herein. When ascertained, their true names shall be reflected in an amended complaint.

4 21. YAMAHA, MANUFACTURER DEFENDANTS, DISTRIBUTOR
5 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
6 referred to as “DEFENDANTS.”

7 VENUE AND JURISDICTION

8 22. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
9 Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, because
10 one or more instances of wrongful conduct occurred, and continue to occur, in the County of
11 Alameda, and/or because DEFENDANTS conducted, and continue to conduct, business in this
12 County with respect to the PRODUCTS.

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

17 24. The California Superior Court has jurisdiction over DEFENDANTS based on
18 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation,
19 or association that is a citizen of the State of California, has sufficient minimum contacts in the
20 State of California, or otherwise purposefully avails itself of the California market.
21 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
22 California courts consistent with traditional notions of fair play and substantial justice.

23 FIRST CAUSE OF ACTION

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

25 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
26 Paragraphs 1 through 24, inclusive.

27 26. The citizens of the State of California have expressly stated in the Safe Drinking
28 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*

1 that they must be informed “about exposures to chemicals that cause cancer, birth defects and
2 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

3 27. Proposition 65 states, “[n]o person in the course of doing business shall
4 knowingly and intentionally expose any individual to a chemical known to the state to cause
5 cancer or reproductive toxicity without first giving clear and reasonable warning to such
6 individual....” (*Ibid.*)

7 28. On or about March 4, 2013, a sixty-day notice of violation, together with the
8 requisite certificate of merit, was provided to YAMAHA and various public enforcement
9 agencies stating that, as a result of the DEFENDANTS’ sales of benches with vinyl/PVC seats
10 purchasers and users in the State of California were being exposed to the LISTED CHEMICAL
11 resulting from the reasonably foreseeable use of the benches with vinyl/PVC seats, without the
12 individual purchasers and users first having been provided with a “clear and reasonable
13 warning” regarding such toxic exposures.

14 29. On or about September 12, 2014, a supplemental sixty-day notice of violation,
15 together with the requisite certificate of merit, was provided to YAMAHA and various public
16 enforcement agencies stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS
17 purchasers and users in the State of California were being exposed to the LISTED CHEMICAL
18 resulting from the reasonably foreseeable use of the PRODUCTS, without the individual
19 purchasers and users first having been provided with a “clear and reasonable warning”
20 regarding such toxic exposures

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

28 31. After receipt of the claims asserted in the sixty-day notice of violation and the

1 supplemental sixty-day notice, the appropriate public enforcement agencies have failed to
2 commence and diligently prosecute a cause of action against DEFENDANTS under Proposition
3 65.

4 32. The PRODUCTS manufactured, imported, distributed, sold, and/or offered for
5 sale or use in California by DEFENDANTS contained the LISTED CHEMICAL in an amount
6 above the allowable State limits.

7 33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
8 imported, distributed, sold, and/or offered for sale or use in California contained the LISTED
9 CHEMICAL.

10 34. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
11 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
12 the reasonably foreseeable use of the PRODUCTS.

13 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
14 continues to cause, consumer and workplace exposures to the LISTED CHEMICAL, as such
15 exposure is defined by Title 27 CCR § 25602(b).

16 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
17 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
18 and/or ingestion.

19 37. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
20 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
21 accidental participation in the manufacture, importation, distribution, sale, and/or offering of the
22 PRODUCTS for sale or use to individuals in the State of California.

23 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
24 consumers and/or other individuals in the State of California who were, or who could become
25 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
26 reasonably foreseeable use of the PRODUCTS.

27 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold
2 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
3 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

7 41. As a consequence of the above-described acts, California Health & Safety Code
8 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
9 DEFENDANTS.

10 **PRAYER FOR RELIEF**

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

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

14 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, importing,
16 distributing, selling, and/or offering the PRODUCTS for sale or use in California, without
17 providing “clear and reasonable warnings” as defined by California Code of Regulations title
18 27, § 25601 et. seq., as to the harms associated with exposure to the LISTED CHEMICAL;


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

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

21 Dated: February 9, 2015

Respectfully Submitted,

22 THE CHANLER GROUP

23
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25 By: 
26 Stephen E. Cohen
27 Attorneys for Plaintiff
28 LAURENCE VINOCUR