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ENDORSED
FILED
ALAMEDA COUNTY

MAR 04 2014

CLERK OF THE SUPERIOR COURT

By PSnode Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., P.E.,

Plaintiff,

v.

SAM ASH MUSIC CORPORATION;
SAMSON TECHNOLOGIES CORP.; and
DOES 1-150, inclusive,

Defendants.

) Case No. PC 14 - 716073

) **COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

) (Health & Safety Code § 25249.5 *et seq.*)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E.
3 HELD, PH.D., P.E. in the public interest of the citizens of the State of California to enforce the
4 People’s right to be informed of the health hazards caused by exposures to di(2-
5 ethylhexyl)phthalate (“DEHP”), a toxic chemical found in, among other things, benches with
6 vinyl/PVC upholstery sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn California citizens and other individuals about the risks of exposure to DEHP present in
9 and on benches with vinyl/PVC upholstery manufactured, distributed, and offered for sale or
10 use to consumers and other individuals throughout the State of California.

11 3. Detectable levels of DEHP are found in and on the benches with vinyl/PVC
12 upholstery that defendants manufacture, distribute, and offer for sale to consumers and other
13 individuals throughout the State of California.

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

19 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
20 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
21 subject to the “clear and reasonable warning” requirements of the act one year later on October
22 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
23 25249.10(b).

24 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without
25 health hazard warnings in California, benches with vinyl/PVC upholstery containing DEHP.
26 Defendants also manufacture, distribute, import, sell, and/or offer for sale without health
27 hazard warnings in California the *Benjamin Adams Wood Piano Bench, Art. No.: 108-*

1 *1BK/B108-1, GWPB100XX, PB13C0024, UPC #8 09164 01116 3*, containing DEHP. All such
2 benches with vinyl/PVC upholstery containing DEHP are referred to collectively hereinafter as
3 “PRODUCTS.”

4 7. Defendants’ failure to warn consumers and other individuals in the State of
5 California of the health hazards associated with exposures to DEHP in conjunction with
6 defendants’ sale of the PRODUCTS are violations of Proposition 65, and subject defendants,
7 and each of them, to enjoinder of such conduct as well as civil penalties for each violation.
8 Health & Safety Code § 25249.7(a) & (b)(1).

9 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
10 permanent injunctive relief to compel defendants to provide purchasers or users of the
11 PRODUCTS with the required warning regarding the health hazards associated with exposures
12 to DEHP. Health & Safety Code § 25249.7(a).

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

15 **PARTIES**

16 10. Plaintiff ANTHONY E. HELD, PH.D., P.E. is a citizen of the State of California
17 who is dedicated to protecting the health of California citizens through the elimination or
18 reduction of toxic exposures from consumer products; and he brings this action in the public
19 interest pursuant to Health and Safety Code section 25249.7(d).

20 11. Defendant SAM ASH MUSIC CORPORATION (“SAM ASH”) is a person in
21 the course of doing business within the meaning of Health and Safety Code sections 25249.6
22 and 25249.11.

23 12. SAM ASH manufactures, imports, distributes, sells, and/or offers the
24 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
25 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
26 State of California.

1 13. Defendant SAMSON TECHNOLOGIES CORP. ("SAMSON") is a person in the
2 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
3 25249.11.

4 14. SAMSON manufactures, imports, distributes, sells, and/or offers the
5 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
6 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
7 State of California.

8 15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
9 person in the course of doing business within the meaning of Health and Safety Code sections
10 25249.6 and 25249.11.

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

15 17. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a
16 person in the course of doing business within the meaning of Health and Safety Code sections
17 25249.6 and 25249.11.

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

21 19. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in
22 the course of doing business within the meaning of Health and Safety Code sections 25249.6
23 and 25249.11.

24 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
25 State of California.

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

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

5 22. SAM ASH, SAMSON, MANUFACTURER DEFENDANTS, DISTRIBUTOR
6 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
7 referred to as "DEFENDANTS."

8 **VENUE AND JURISDICTION**

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

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

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

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

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

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

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

13 29. On October 18, 2013, plaintiff served a sixty-day notice of violation, together
14 with the requisite certificate of merit, on SAM ASH, SAMSON and certain public enforcement
15 agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS, purchasers and
16 users in the State of California were being exposed to DEHP resulting from their reasonably
17 foreseeable use of the PRODUCTS, without the individual purchasers and users first having
18 been provided with a “clear and reasonable warning” regarding the harms associated with such
19 exposures, as required by Proposition 65.

20 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
21 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
22 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.
23 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue
24 in the future.

25 31. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate
26 public enforcement agencies have commenced and diligently prosecuted a cause of action
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1 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
2 subject of plaintiff's notice of violation.

3 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
4 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
5 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured
6 by consumers and other individuals in California are not exempt from the "clear and
7 reasonable" warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

8 33. DEFENDANTS knew or should have known that the PRODUCTS they
9 manufactured, imported, distributed, sold, and offered for sale or use in California contained
10 DEHP.

11 34. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
12 to DEHP through dermal contact, ingestion and/or inhalation during reasonably foreseeable
13 uses of the PRODUCTS.

14 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
15 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code
16 of Regulations, section 25602(b).

17 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use
18 of the PRODUCTS exposed individuals to DEHP through dermal contact, ingestion and/or
19 inhalation.

20 37. DEFENDANTS intended that exposures to DEHP from the reasonably
21 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental
22 participation in the manufacture, importation, distribution, sale, and offering of the
23 PRODUCTS for sale or use to consumers and other individuals in California.


24 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those
25 consumers and other individuals in California who were or who would become exposed to
26 DEHP through dermal contact, ingestion and/or inhalation resulting from their use of the
27 PRODUCTS.

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

Dated: March 4, 2014

Respectfully Submitted,
THE CHANLER GROUP

By: 

Troy C. Bailey
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.