

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

Josh Voorhees, State Bar No. 241436  
Christopher Tuttle, State Bar No. 264545  
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  
PAUL WOZNIAK

ENDORSED  
FILED

DEC -3 2014

Deputy Clerk  
County of Santa Clara, California

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA  
UNLIMITED CIVIL JURISDICTION

PAUL WOZNIAK  
Plaintiff,  
v.  
99 CENTS ONLY STORES LLC; and DOES  
1-150, inclusive,  
Defendants.

Case No. 114CV273791  
**FIRST AMENDED 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 PAUL WOZNIAK  
3 in the public interest of the citizens of the State of California to enforce the People’s right to be  
4 informed about exposures to DEHP, a toxic chemical that is found in and on earphones with  
5 vinyl/PVC cords that are sold in California.

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

10 3. Detectable levels of DEHP are commonly found in and on earphones with  
11 vinyl/PVC cords that defendants import, manufacture, distribute ship, sell and/or offer for sale  
12 to consumers throughout the State of California.

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

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

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without  
24 warning in California, earphones with vinyl/PVC cords containing the LISTED CHEMICAL,  
25 including, but not limited to, the *Ennotek Handsfree w/Microphone, ENNOBUD030, (UPC No.*  
26 *8 55954 00482 2)*. All such earphones with vinyl/PVC cords containing the LISTED  
27 CHEMICAL are referred to collectively hereinafter as the “PRODUCTS.”





1 wrongful conduct occurred, and continue to occur, in this county, and/or because  
2 DEFENDANTS conducted, and continue to conduct, business in Santa Clara county with  
3 respect to the PRODUCTS.

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

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

14 **FIRST CAUSE OF ACTION**

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

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

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

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

26 27. On March 26, 2014, plaintiff’s sixty-day notice of violation, together with the  
27 requisite certificate of merit, was provided to 99 CENTS ONLY STORES and certain public  
28

1 enforcement agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS  
2 containing the LISTED CHEMICAL, consumers and other individuals in the State of California  
3 were being exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use  
4 of the PRODUCTS, without the individual purchasers and users first having received a "clear  
5 and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

6 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
7 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
8 25249.6, and DEFENDANTS' violations have continued to occur beyond their receipt of  
9 plaintiff's sixty-day notice of violation. As such, DEFENDANTS' violations are ongoing and  
10 continuous in nature, and will continue to occur in the future.

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

14 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
15 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the  
16 reasonably foreseeable uses of these products result in exposures that require a "clear and  
17 reasonable" warning under Proposition 65.

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

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

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

26  
27  
28

1           34. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses  
2 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact  
3 and/or ingestion.

4           35. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the  
5 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental  
6 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or  
7 use to individuals in the State of California.

8           36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
9 workers, consumers and other individuals in California not covered by California’s  
10 Occupational Safety Health Act, Labor Code section 6300 et seq. who have been, or will be,  
11 exposed to the LISTED CHEMICAL.

12           37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
13 directly by California voters, workers, consumers, and other individuals exposed to the LISTED  
14 CHEMICAL through dermal contact and/or ingestion, resulting from the reasonably foreseeable  
15 uses of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,”  
16 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or  
17 adequate remedy at law.

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

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

24  
25  
26  
27  
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

**PRAYER FOR RELIEF**

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

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

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: December 3, 2014

Respectfully Submitted,  
THE CHANLER GROUP

By:   
\_\_\_\_\_  
Christopher Tuttle, Esq.  
Attorneys for Plaintiff  
PAUL WOZNIAK