

ENDORSED  
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ALAMEDA COUNTY

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

**RG14746125**

13 DR. WHITNEY R. LEEMAN,

14 Plaintiff,

15 v.

16 AMERICAN D.J. SUPPLY, INC.; and DOES  
17 1-150, inclusive,

18 Defendants.

Case No. \_\_\_\_\_

**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 DR. WHITNEY R.  
3 LEEMAN, in the public interest of the citizens of the State of California to enforce the People’s  
4 right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical  
5 found in headphones with vinyl/PVC ear cushions and vinyl/PVC headphone bags sold in  
6 California.

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

11 3. Detectable levels of DEHP are commonly found in and on the headphones with  
12 vinyl/PVC ear cushions and vinyl/PVC headphone bags that defendants manufacture, distribute,  
13 and offer for sale to consumers 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 of  
16 doing business shall knowingly and intentionally expose any individual to a chemical known to  
17 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). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

24 6. Defendants manufacture, distribute, import, sell, and/or offer for sale headphone  
25 with vinyl/PVC ear cushions and vinyl/PVC headphone bags containing DEHP as follows:

26 a. Defendants manufacture, distribute, import, sell, and/or offer for sale head  
27 phones with vinyl/PVC ear cushions containing DEHP without a warning, including, but  
28

1 not limited to, the *American Audio High Powered Headphones, HP550, UPC# 6 40282*  
2 *02412 9*;

3 b. Defendants manufacture, distribute, import, sell, and/or offer for sale  
4 vinyl/PVC headphone bags containing DEHP without a warning, including, but not  
5 limited to, the *American Audio High Powered Headphones, HP550, UPC# 6 40282*  
6 *02412 9*.

7 7. All such headphones with vinyl/PVC ear cushions and vinyl/PVC headphone bags  
8 containing DEHP, described above in paragraphs 6(a) and 6(b), shall hereinafter be referred to  
9 as the "PRODUCTS."

10 8. Defendants' failure to warn consumers and other individuals in the State of  
11 California about their exposure to the LISTED CHEMICAL in conjunction with defendants'  
12 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder  
13 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)  
14 & (b)(1).

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

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

21 **PARTIES**

22 11. Plaintiff DR. WHITNEY R. LEEMAN is a citizen of the State of California who  
23 is dedicated to protecting the health of California citizens through the elimination or reduction  
24 of toxic exposures from consumer products; and she brings this action in the public interest  
25 pursuant to Health and Safety Code section 25249.7(d).

26 12. Defendant AMERICAN D.J. SUPPLY, INC. ("AMERICAN D.J.") is a person in  
27 the course of doing business within the meaning of Health and Safety Code section 25249.11.  
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1           13.    AMERICAN D.J. manufactures, imports, distributes, sells, and/or offers the  
2 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
3 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
4 State of California.

5           14.    Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each  
6 persons in the course of doing business within the meaning of Health and Safety Code section  
7 25249.11.

8           15.    MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
9 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
10 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
11 California.

12           16.    Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
13 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

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

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

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

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

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1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
2 harm.”

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 . . . .” Health & Safety Code § 25249.6.

7 28. On July 30, 2014, plaintiff’s sixty-day notice of violation, together with the  
8 requisite certificate of merit, was provided to AMERICAN D.J. and certain public enforcement  
9 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the  
10 LISTED CHEMICAL, purchasers and users in the State of California were being exposed to the  
11 LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS,  
12 without the individual purchasers and users first having been provided with a “clear and  
13 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

14 29. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
15 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
16 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
17 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and  
18 continuous in nature, and will continue to occur in the future.

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

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

25 32. DEFENDANTS knew or should have known that the PRODUCTS they  
26 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
27 CHEMICAL.

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

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

7           35.    DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
8 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact  
9 and/or ingestion.

10          36.    DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
11 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-  
12 accidental participation in the manufacture, importation, distribution, sale, and offering of the  
13 PRODUCTS for sale or use to individuals in the State of California.

14          37.    DEFENDANTS failed to provide a “clear and reasonable warning” to those  
15 consumers and other individuals in the State of California who were or who would become  
16 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
17 reasonably foreseeable uses of the PRODUCTS.

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

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

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