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ENDORSED
FILED
Superior Court of California
County of San Francisco

OCT 23 2014

CLERK OF THE COURT
BY: MARY A. MORAN
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION

14 WHITNEY R. LEEMAN, PH.D.,

15 Plaintiff,

16 v.

17 NEWEGG INC.; MAGNELL ASSOCIATE,
18 INC.; ROSEWILL INC.; and DOES 1-150,
19 inclusive,

20 Defendants.

Case No.

CGC - 14 - 542330

**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 WHITNEY R.
3 LEEMAN, PH.D. 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-ethylhexyl)
5 phthalate (“DEHP”), a toxic chemical found in the vinyl/PVC cords and other components of
6 headsets 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 the vinyl/PVC components and/or cords of headsets manufactured, distributed, sold, and offered
10 for sale or use to consumers and other individuals throughout the State of California.

11 3. Detectable levels of DEHP are found in and on the vinyl/PVC cords and other
12 components of headsets that defendants manufacture, distribute, and offer for sale to consumers
13 and other 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 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).

24 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
25 hazard warnings in California, headsets with vinyl/PVC cords and other components containing
26 DEHP, including, but not limited to, the *Rosewill USB Headset, Model No. RHM-6308, UPC #8*
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1 98745 03915 3. All such headsets with vinyl/PVC cords and/or other components containing
2 DEHP are referred to collectively hereinafter as “PRODUCTS.”

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

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

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

14 **PARTIES**

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

19 11. Defendant NEWEGG INC. (“NEWEGG”) is a person in the course of doing
20 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

21 12. NEWEGG manufactures, imports, distributes, sells, and/or offers the PRODUCTS
22 for sale or use in California, or implies by its conduct that it manufactures, imports, distributes,
23 sells, and/or offers the PRODUCTS for sale or use in California.

24 13. Defendant MAGNELL ASSOCIATE, INC. (“MAGNELL”) is a person in the
25 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
26 25249.11.

1 14. MAGNELL manufactures, imports, distributes, sells, and/or offers the
2 PRODUCTS for sale or use in California, or implies by its conduct that it manufactures, imports,
3 distributes, sells, and/or offers the PRODUCTS for sale or use in California.

4 15. Defendant ROSEWILL INC. (“ROSEWILL”) is a person in the course of doing
5 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

9 17. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
10 person in the course of doing business within the meaning of Health and Safety Code sections
11 25249.6 and 25249.11.

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

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

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

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

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

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

6 24. NEWEGG, MAGNELL, ROSEWILL, MANUFACTURER DEFENDANTS,
7 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
8 collectively be referred to as “DEFENDANTS.”

9 VENUE AND JURISDICTION

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

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

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

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

3 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 27, inclusive.

5 29. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
6 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 30. 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 31. On July 30, 2014, plaintiff served a sixty-day notice of violation and
14 accompanying certificate of merit on NEWEGG, MAGNELL, ROSEWILL, and the requisite
15 public enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the
16 PRODUCTS, purchasers and users in California are being exposed to DEHP resulting from
17 their reasonably foreseeable use of the PRODUCTS, without those individual purchasers and
18 users first having received a “clear and reasonable warning” regarding the harms associated
19 with such exposures, as required by Proposition 65.

20 32. 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 in
24 the future.

25 33. After receiving plaintiff’s sixty-day notice of violation, no public enforcement
26 agency has commenced and is diligently prosecuting a cause of action against DEFENDANTS
27 to enforce the alleged violations that are the subject of plaintiff’s 60-day notice of violation.
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1 34. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
2 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
3 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
4 consumers and other individuals in California are not exempt from the “clear and reasonable”
5 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

6 35. DEFENDANTS knew or should have known that the PRODUCTS they
7 manufacture, import, distribute, sell, and offer for sale or use in California contain DEHP.

8 36. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
9 to DEHP through dermal contact, ingestion and/or inhalation during reasonably foreseeable use.

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

13 38. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
14 the PRODUCTS exposes individuals to DEHP through dermal contact, ingestion and/or
15 inhalation.

16 39. DEFENDANTS intended that exposures to DEHP from the reasonably
17 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
18 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or
19 use to consumers and other individuals in California.

20 40. DEFENDANTS failed to provide a “clear and reasonable warning” to those
21 consumers and other individuals in California who were or who would become exposed to
22 DEHP through dermal contact, ingestion and/or inhalation resulting from their use of the
23 PRODUCTS.

24 41. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
25 directly by California voters, individuals exposed to DEHP through dermal contact, ingestion
26 and/or inhalation as a result of their use of the PRODUCTS that DEFENDANTS sold without a
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1 “clear and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable
2 harm for which they have no plain, speedy, or adequate remedy at law.

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

6 43. As a consequence of the above-described acts, Health and Safety Code
7 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

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

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

14 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
16 offering the PRODUCTS for sale or use in California without first providing a “clear and
17 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
18 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

19 3. That the Court, pursuant to Health and Safety Code section 25249.7(a), issue
20 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
21 currently in the chain of commerce in California without a “clear and reasonable warning” as
22 defined by California Code of Regulations title 27, section 25601 *et seq.*;

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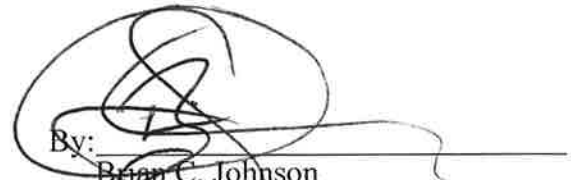
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5. That the Court grant such other and further relief as may be just and proper.

Dated: October 21, 2014

Respectfully Submitted,
THE CHANLER GROUP



By: Brian C. Johnson
Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D.