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**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
07/19/2016
Clerk of the Court
BY: NOELIA RIVERA
Deputy Clerk

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

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

NEWEGG INC.; MAGNELL ASSOCIATE,
INC.; ROSEWILL INC.; AMAZON.COM,
INC.; WAL-MART STORES, INC.; and DOES
1-150, inclusive,

Defendants.

Case No. CGC-14-542330

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Health and 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 certain vinyl/PVC components of audio headsets
6 and backpacks sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn California citizens and individuals not covered by California’s Occupational Safety Health
9 Act, Labor Code section 6300 et seq., about the risks of exposure to DEHP present in the
10 vinyl/PVC components of audio headsets and backpacks manufactured, distributed, sold, and
11 offered for sale or use to consumers and other individuals throughout the State of California.

12 3. Detectable levels of DEHP are found in and on the vinyl/PVC components of
13 certain audio headsets and backpacks that defendants manufacture, import, distribute, and offer
14 for sale to consumers and other individuals throughout the State of California.

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

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

24 6. Defendants NEWEGG INC. (“NEWEGG”), MAGNELL ASSOCIATE, INC.
25 (“MAGNELL”), ROSEWILL INC. (“ROSEWILL”), manufacture, import, distribute, sell, and
26 offer for sale without health hazard warnings in California, audio headsets with vinyl/PVC
27 cords and other components containing DEHP, including, but not limited to, the *Rosewill USB*
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1 *Headset, Model No. RHM-6308, UPC #8 98745 03915 3, and the Rosewill Multimedia Stereo*
2 *Headset, RH-001, UPC#8 98745 00949 1.*

3 7. Defendants NEWEGG, MAGNELL, ROSEWILL INC., and AMAZON.COM,
4 INC. ("AMAZON"), manufacture, import, distribute, sell, and offer for sale without health
5 hazard warnings in California, audio headsets with vinyl/PVC cords and other components
6 containing DEHP, including, but not limited to, the *Rosewill Ergonomic Designed Headset,*
7 *RHM-556, UPC#8 98745 01696 3.*

8 8. Defendants NEWEGG, MAGNELL, ROSEWILL INC., and WAL-MART
9 STORES, INC. ("WAL-MART"), manufacture, distribute, import, sell, and offer for sale
10 without health hazard warnings in California, backpacks with vinyl/PVC components
11 containing DEHP, including, but not limited to, the vinyl handle of the *Rosewill 15.6" Notebook*
12 *Backpack/Computer Bag, RMBP-11001, UPC #8 98745 04517 8.*

13 9. All audio headsets with vinyl/PVC cords or other components containing DEHP,
14 and all backpacks with vinyl/PVC handles or other components containing DEHP sold or
15 offered for sale by each defendant, respectively, as described in Paragraphs 6 through 8, are
16 referred to hereinafter as the "PRODUCTS."

17 10. Defendants' failure to warn consumers and other individuals in California of the
18 health hazards associated with exposures to DEHP in conjunction with defendants' sales of the
19 PRODUCTS are violations of Proposition 65 and subject defendants, and each of them, to
20 enjoinder of such conduct as well as the payment of civil penalties for each respective
21 violation. Health and Safety Code § 25249.7(a) and (b)(1).

22 11. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
23 permanent injunctive relief to compel defendants to provide purchasers and users of the
24 PRODUCTS with a clear and reasonable health hazards warning regarding the risks associated
25 with exposures to DEHP. Health and Safety Code § 25249.7(a).

26 12. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also asks that
27 civil penalties be assessed against defendants for their violations of Proposition 65.

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1 **PARTIES**

2 13. Plaintiff WHITNEY R. LEEMAN, PH.D. is a citizen of the State of California
3 who is dedicated to protecting the health of California citizens by reducing or eliminating toxic
4 exposures from consumer products. She brings this action in the public interest pursuant to
5 Health and Safety Code section 25249.7(d).

6 14. Defendant NEWEGG is a person in the course of doing business within the
7 meaning of Health and Safety Code sections 25249.6 and 25249.11.

8 15. NEWEGG manufactures, imports, distributes, sells, and offers the PRODUCTS for
9 sale or use in California, or implies by its conduct that it manufactures, imports, distributes, sells,
10 and/or offers PRODUCTS for sale or use in California.

11 16. Defendant MAGNELL is a person in the course of doing business within the
12 meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

16 18. Defendant ROSEWILL is a person in the course of doing business within the
17 meaning of Health and Safety Code sections 25249.6 and 25249.11.

18 19. ROSEWILL manufactures, imports, distributes, sells, and offers the PRODUCTS
19 for sale or use in California, or implies by its conduct that it manufactures, imports, distributes,
20 sells, and/or offers PRODUCTS for sale or use in California.

21 20. Defendant AMAZON is a person in the course of doing business within the
22 meaning of Health and Safety Code sections 25249.6 and 25249.11.

23 21. AMAZON purchases for sale, imports, distributes, sells, and offers certain of the
24 PRODUCTS for sale or use in California, or implies by its conduct that it purchases for sale,
25 imports, distributes, sells, and offers certain PRODUCTS for sale or use in California.

26 22. Defendant WAL-MART is a person in the course of doing business within the
27 meaning of Health and Safety Code sections 25249.6 and 25249.11.

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1 23. WAL-MART purchases for sale, imports, distributes, sells, and offers certain
2 PRODUCTS for sale or use in California, or implies by its conduct that it purchases for sale,
3 imports, distributes, sells, and offers certain PRODUCTS for sale or use in California.

4 24. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
5 person in the course of doing business within the meaning of Health and Safety Code sections
6 25249.6 and 25249.11.

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

11 26. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
12 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
13 and 25249.11.

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

17 28. 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 sections 25249.6
19 and 25249.11.

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

22 30. At this time, the true names of defendants DOES 1 through 150, inclusive, are
23 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
24 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
25 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
26 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 37. 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 and Safety Code § 25249.6.

7 38. On July 30, 2014, plaintiff served a sixty-day notice of violation and
8 accompanying certificate of merit on NEWEGG, MAGNELL, ROSEWILL, the California
9 Attorney General, and all other requisite public enforcement agencies alleging that, as a result
10 of DEFENDANTS’ sales of audio headsets with vinyl components containing DEHP such as
11 the *Rosewill USB Headset, Model No. RHM-6308, UPC #8-98745 03915 3*, DEFENDANTS
12 exposed purchasers and users of these products to DEHP during reasonably foreseeable use, and
13 DEFENDANTS did so without providing the individual purchasers and users with a “clear and
14 reasonable warning” regarding the harms associated with such exposures, as required by
15 Proposition 65.

16 39. On March 23, 2016, plaintiff served a supplemental sixty-day notice of violation
17 and accompanying certificate of merit on NEWEGG, MAGNELL, ROSEWILL, AMAZON,
18 WAL-MART, the California Attorney General, and all other requisite public enforcement
19 agencies alleging that, as a result of DEFENDANTS’ respective sales of the PRODUCTS,
20 DEFENDANTS exposed purchasers and users in California to DEHP as a result of such
21 purchasers and users reasonably foreseeable use of the PRODUCTS, and DEFENDANTS did
22 so without those individuals with a “clear and reasonable warning” regarding the harms
23 associated with such exposures, as required by Proposition 65.

24 40. DEFENDANTS manufacture, import, purchase for sale, distribute, sell, and offer
25 certain PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
26 DEFENDANTS’ violations have continued beyond their receipt of plaintiff’s sixty-day notices
27 of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature, and,
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1 unless enjoined, will continue in the future.

2 41. After receiving plaintiff's sixty-day notice of violation, no public enforcement
3 agency has commenced and is diligently prosecuting an action against DEFENDANTS to
4 enforce the alleged violations that are the subject of either of plaintiff's 60-day notices of
5 violation.

6 42. The PRODUCTS that DEFENDANTS manufacture, import, purchase for sale,
7 distribute, sell, and offer for sale or use in California cause expose consumers and other
8 individuals to DEHP during their reasonably foreseeable uses of the PRODUCTS. Such
9 exposures caused by DEFENDANTS and endured by consumers and other individuals in
10 California are not exempt from the "clear and reasonable" warning requirements of Proposition
11 65, yet DEFENDANTS provide no warning.

12 43. DEFENDANTS know or should know that the PRODUCTS they manufacture,
13 import, purchase for sale, distribute, sell, and offer for sale in California contain DEHP.

14 44. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
15 to DEHP through dermal contact and ingestion during reasonably foreseeable use.

16 45. The normal and reasonably foreseeable uses of the PRODUCTS has caused, and
17 continues to cause, consumer exposures to DEHP, as such exposures are defined by title 27 of
18 the California Code of Regulations. section 25602(b).

19 46. DEFENDANTS know that the normal and reasonably foreseeable use of the
20 PRODUCTS exposes individuals to DEHP through dermal contact, and ingestion.

21 47. DEFENDANTS intentionally expose consumers and other individuals to DEHP
22 during such individuals' reasonably foreseeable uses of the PRODUCTS, and DEFENDANTS
23 do so by their deliberate, non-accidental participation in the manufacture, importation,
24 distribution, sale, and offering of the PRODUCTS for sale or use by consumers and other
25 individuals in California.

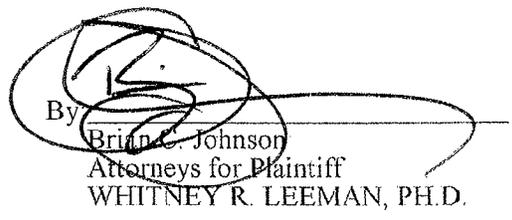
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currently in the chain of commerce in California without a "clear and reasonable warning" as defined by California Code of Regulations title 27, section 25601 et seq;

- 4. That the Court grant plaintiff her 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: July 18, 2016

Respectfully Submitted,
THE CHANLER GROUP

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