

1 Christopher Tuttle, State Bar No. 264545  
2 THE CHANLER GROUP  
2560 Ninth Street  
3 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
4 Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff  
6 MARK MOORBERG

EMPOWERED  
FILED

2015 JUN -5 P 1:36

County of Santa Clara Superior Court

Sharon Ullesleit

Ullesleit

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SANTA CLARA  
10 UNLIMITED CIVIL JURISDICTION

11 **115CV275231**

12 MARK MOORBERG,

13 Plaintiff,

14 v.

15 ASUS COMPUTER INTERNATIONAL; and  
DOES 1-150, inclusive,

16 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 MARK  
3 MOORBERG in the public interest of the citizens of the State of California to enforce the  
4 People’s right to be informed about exposures to di(2-ethylhexyl)phthalate (“DEHP”), a toxic  
5 chemical that is found in and on headsets with vinyl/PVC components that are sold in  
6 California.

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

11 3. Detectable levels of DEHP are commonly found in and on headsets with  
12 vinyl/PVC components that defendants import, manufacture, distribute, ship, sell and/or offer  
13 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. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a  
20 chemical that is known to cause birth defects or 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  
25 warning in California, headsets with vinyl/PVC components containing DEHP, including, but  
26 not limited to, the *Orion Gaming Headset, Part No.: 90-YAHI8110-UA00 (UPC No. 8 86227*  
27 *20202 7)*. All such headsets with vinyl/PVC components containing DEHP are referred to  
28

1 collectively hereinafter as the “PRODUCTS.” DEHP is referred to hereinafter as the “LISTED  
2 CHEMICAL.”

3 7. Defendants’ failure to warn consumers, and other individuals in California of the  
4 harms associated with exposures to the LISTED CHEMICAL in conjunction with defendants’  
5 sales of the PRODUCTS containing the LISTED CHEMICAL constitute violations of  
6 Proposition 65, and subject defendants to enjoinder of such conduct, as well as civil penalties  
7 for each violation. Health & Safety Code § 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 the LISTED CHEMICAL. 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, and each of them, for each violation of Proposition 65.

14 **PARTIES**

15 10. Plaintiff MARK MOORBERG is a citizen of the State of California who is  
16 dedicated to protecting the health of California citizens through the elimination or reduction of  
17 harmful exposures to toxic chemicals from consumer products. He brings this action in the  
18 public interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant ASUS COMPUTER INTERNATIONAL (“ASUS”) is a person in the  
20 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
21 25249.11.

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

25 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
26 person in the course of doing business within the meaning of Health and Safety Code sections  
27 25249.6 and 25249.11.



1 DEFENDANTS conducted, and continue to conduct, business in Santa Clara County with  
2 respect to the PRODUCTS.

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

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

13 **FIRST CAUSE OF ACTION**

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

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

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

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

25 27. On August 28, 2014, plaintiff’s sixty-day notice of violation, together with the  
26 requisite certificate of merit, was provided to ASUS and certain public enforcement agencies  
27 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED  
28

1 CHEMICAL, consumers, and other individuals in the State of California were being exposed to  
2 the LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS,  
3 without the individual purchasers and users first having received a “clear and reasonable  
4 warning” regarding such toxic exposures, as required by Proposition 65.

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

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

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

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

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

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

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

28



1 offering the PRODUCTS for sale or use in California without first providing a “clear and  
2 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601  
3 *et seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

4 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

5 4. That the Court grant such other and further relief as may be just and proper.

6 Dated: December 23, 2014

7 Respectfully Submitted,  
8 THE CHANLER GROUP

9  
10 By:  \_\_\_\_\_

11 Christopher Tuttle, Esq.  
12 Attorneys for Plaintiff  
13 MARK MOORBERG  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28