

ENDORSED
FILED
ALAMEDA COUNTY

2015 FEB 18 PM 2:30

CLERK OF THE SUPERIOR COURT
M. SALCIDO, DEPUTY

1 Josh Voorhees, State Bar No. 241436
2 Troy C. Bailey, State Bar No. 277424
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 Anthony E. Held, Ph.D., P.E.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 **RG15758996**

15 ANTHONY E. HELD, PH.D., P.E.,

16 Plaintiff,

17 v.

18 SAM ASH MUSIC CORPORATION;
19 SAMSON TECHNOLOGIES CORP.;
20 TARGET CORPORATION; and DOES 1-150,
21 inclusive,

22 Defendants.

) Case No. _____

) **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 ANTHONY E.
3 HELD, PH.D., P.E. 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-
5 ethylhexyl)phthalate (“DEHP”), a toxic chemical found in, among other things, microphones
6 with vinyl/PVC cords 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 and on microphones with vinyl/PVC cords manufactured, distributed, and offered for sale or
10 use to consumers and other individuals throughout the State of California.

11 3. Detectable levels of DEHP are found in and on the microphones with vinyl/PVC
12 cords that defendants manufacture, distribute, and offer for sale to consumers and other
13 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
16 of doing business shall knowingly and intentionally expose any individual to a chemical known
17 to 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/or offer for sale without
25 health hazard warnings in California, microphones with vinyl/PVC cords containing DEHP.
26 Defendants also manufacture, distribute, import, sell, and/or offer for sale without health
27 hazard warnings in California the *Samson Q2U Recording Pak for Home Recording and Live*

1 *Sound, SAQ2U, Q2UIA3044, UPC #8 09164 00966 5*, containing DEHP. All such
2 microphones with vinyl/PVC cords containing DEHP are referred to collectively hereinafter as
3 "PRODUCTS."

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

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

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

15 **PARTIES**

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

20 11. Defendant SAM ASH MUSIC CORPORATION ("SAM ASH") is a person in
21 the course of doing business within the meaning of Health and Safety Code sections 25249.6
22 and 25249.11.

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

1 or association that is a citizen of the State of California, has sufficient minimum contacts in the
2 State of California, and/or otherwise purposefully avails itself of the California market.
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
4 California courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

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

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

9 29. In enacting Proposition 65, in the preamble to the Safe Drinking Water and
10 Toxic Enforcement Act of 1986, the People of California expressly declared their right "[t]o be
11 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
12 harm."

13 30. Proposition 65 states, "[n]o person in the course of doing business shall
14 knowingly and intentionally expose any individual to a chemical known to the state to cause
15 cancer or reproductive toxicity without first giving clear and reasonable warning to such
16 individual . . ." Health & Safety Code § 25249.6.

17 31. On September 12, 2014, plaintiff served a supplemental sixty-day notice of
18 violation, together with the requisite certificate of merit, on SAM ASH, SAMSON, TARGET
19 and certain public enforcement agencies alleging that, as a result of DEFENDANTS' sales of
20 the PRODUCTS, purchasers and users in the State of California were being exposed to DEHP
21 resulting from their reasonably foreseeable use of the PRODUCTS, without the individual
22 purchasers and users first having been provided with a "clear and reasonable warning"
23 regarding the harms associated with such exposures, as required by Proposition 65.

24 32. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
25 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS'
26 violations have continued beyond their receipt of plaintiff's supplemental sixty-day notice of
27

1 violation. DEFENDANTS' violations are ongoing and continuous in nature, and, as such, will
2 continue in the future.

3 33. After receiving plaintiff's supplemental sixty-day notice of violation, none of the
4 appropriate public enforcement agencies have commenced and diligently prosecuted a cause of
5 action against DEFENDANTS under Proposition 65.

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

11 35. DEFENDANTS knew or should have known that the PRODUCTS they
12 manufactured, imported, distributed, sold, and offered for sale or use in California contained
13 DEHP.

14 36. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
15 to DEHP through dermal contact, ingestion and/or inhalation during reasonably foreseeable
16 uses of the PRODUCTS.

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

20 38. DEFENDANTS had knowledge that the normal and reasonably foreseeable use
21 of the PRODUCTS exposed individuals to DEHP through dermal contact, ingestion and/or
22 inhalation.

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

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

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

4. That the Court grant plaintiff his 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: February 18, 2015

Respectfully Submitted,
THE CHANLER GROUP

By: 

Troy C. Bailey
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.