

ENDORSED
FILED
ALAMEDA COUNTY

JUL 29 2015

CLERK OF THE SUPERIOR COURT
By Guo Bao Deputy

1 Laralei Paras, State Bar No. 203319
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
ANTHONY E. HELD, Ph.D., P.E.

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA
9 UNLIMITED CIVIL JURISDICTION

11 ANTHONY E. HELD, Ph.D., P.E.,

12 Plaintiff,

13 v.

14 SAS SAFETY CORPORATION, and
15 DOES 1-150, inclusive,

16 Defendants.

Case No. RG15761231

**FIRST AMENDED
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 Anthony E. Held, Ph.D.,
3 P.E., in the public interest of the citizens of the State of California to enforce the People’s right to be
4 informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in
5 consumer products such as hearing protection with vinyl/PVC ear cushions and vinyl/PVC aprons
6 sold in California.

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

11 3. Detectable levels of DEHP are commonly found in and on hearing protection with
12 vinyl/PVC ear cushions and vinyl/PVC aprons that defendants manufacture, sell, and distribute for
13 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 § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of doing
16 business shall knowingly and intentionally expose any individual to a chemical known to the state to
17 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
18 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 24,
22 2004. Cal. Code Regs., tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

23 6. DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

24 7. Significant levels of the LISTED CHEMICAL have been discovered in or on hearing
25 protection with vinyl/PVC ear cushions manufactured, imported, distributed, and/or sold by
26 defendants.

27 ///

28 ///

1 8. Examples of hearing protection with vinyl/PVC ear cushions containing the LISTED
2 CHEMICAL manufactured, imported, distributed and/or sold by defendants are *Foldable Earmuffs*,
3 *P/N 6110, UPC #7 81311 06110 1*.

4 9. All such hearing protection with vinyl/PVC ear cushions identified in paragraphs 7
5 and 8 above, shall hereinafter be collectively referred to as the “EAR CUSHION PRODUCTS.”

6 10. Significant levels of the LISTED CHEMICAL have been discovered in or on
7 vinyl/PVC aprons that are manufactured, imported, distributed, and/or sold by defendants.

8 11. Examples of vinyl/PVC aprons containing the LISTED CHEMICAL that are
9 manufactured, imported, distributed and/or sold by defendants are *SAS Safety PVC Aprons, PN*
10 *6821, UPC #7 81311 06821 6*.

11 12. All such vinyl/PVC aprons identified in paragraphs 10 and 11 above, shall hereinafter
12 be collectively referred to as the “APRON PRODUCTS.”

13 13. EAR CUSHION PRODUCTS and APRON PRODUCTS are referred to collectively
14 herein as the “PRODUCTS.”

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

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

23 16. Pursuant to Health and Safety Code § 25249.7(b), plaintiff also seeks civil penalties
24 against defendants for their violations of Proposition 65.

25 ///

26 ///

27 ///

28 ///

1 **PARTIES**

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

6 18. Defendant SAS SAFETY CORPORATION (“SAS”) is a person in the course of doing
7 business within the meaning of Health and Safety Code § 25249.11.

8 19. SAS manufactures, imports, sells and/or distributes the PRODUCTS for sale or use in
9 the State of California, or implies by its conduct that it manufactures, imports, sells and/or distributes
10 the PRODUCTS for sale or use in the State of California.

11 20. Defendants DOES 1-150 are each persons in the course of doing business within the
12 meaning of Health and Safety Code § 25249.11(b), who manufacture, distribute, sell, and/or offer
13 the PRODUCTS for sale in the State of California. At this time, the true names and capacities of
14 defendants DOES 1 through 150, inclusive, are unknown to plaintiffs, who, therefore, sue said
15 defendants by their fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff is informed
16 and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible
17 for the acts and occurrences alleged herein. When ascertained, their true names and capacities shall
18 be reflected in an amended complaint.

19 21. SAS and DOES 1 through 150 shall, where appropriate, collectively be referred to as
20 “DEFENDANTS.”

21 **VENUE AND JURISDICTION**

22 22. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
23 Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because
24 plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of wrongful
25 conduct occurred, and continue to occur, in Alameda County, and/or because DEFENDANTS
26 conducted, and continue to conduct, business in this county with respect to the PRODUCTS.

27 23. The California Superior Court has jurisdiction over this action pursuant to California
28 Constitution Article VI, section 10, which grants the Superior Court “original jurisdiction in all

1 causes except those given by statute to other trial courts.” The statute under which this action is
2 brought does not specify any other basis of subject matter jurisdiction.

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

9 **FIRST CAUSE OF ACTION**

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

11 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs
12 1 through 21, inclusive.

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

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

20 28. On or about June 4, 2014, plaintiff’s sixty-day notice of violation, together with the
21 requisite certificate of merit, was provided to SAS Safety Corporation and certain public enforcement
22 agencies stating that, as a result of DEFENDANTS’ sales of EAR CUSHION PRODUCTS
23 containing the LISTED CHEMICAL, purchasers and users in the State of California were being
24 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of EAR
25 CUSHION PRODUCTS, without the individual purchasers and users first having been provided
26 with a “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

27 29. On or about March 13, 2015, plaintiff’s supplemental sixty-day notice of violation,
28 together with the requisite certificate of merit, was provided to SAS Safety Corporation and certain

1 public enforcement agencies stating that, as a result of DEFENDANTS' sales of EAR CUSHION
2 PRODUCTS and APRON PRODUCTS containing the LISTED CHEMICAL, purchasers and users
3 in the State of California were being exposed to the LISTED CHEMICAL resulting from their
4 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
5 having been provided with a "clear and reasonable warning" regarding such toxic exposures, as
6 required by Proposition 65.

7 30. Plaintiff's 60-Day Notice of Violation dated June 4, 2014, to SAS, and plaintiff's
8 Supplemental 60-Day Notice of Violation dated March 13, 2015, to SAS shall, where appropriate,
9 collectively be referred to herein as the "Notices."

10 31. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
11 and/or offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6,
12 and DEFENDANTS' violations have continued to occur beyond their receipt of plaintiff's Notices.
13 As such, DEFENDANTS' violations are ongoing and continuous in nature, and will continue to
14 occur in the future.

15 32. After receiving plaintiff's Notices, the appropriate public enforcement agencies have
16 not commenced and diligently prosecuted a cause of action against DEFENDANTS under
17 Proposition 65.

18 33. The PRODUCTS manufactured, imported, sold, and/or distributed for sale or use in
19 California by DEFENDANTS contain the LISTED CHEMICAL such that they require a "clear and
20 reasonable" warning under Proposition 65.

21 34. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,
22 import, distribute, sell, and/or offer for sale or use in the State of California contain the LISTED
23 CHEMICAL.

24 35. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
25 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during their
26 reasonably foreseeable use.

27 ///

28 ///

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

4 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of the
5 PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact and/or
6 ingestion.

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

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

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

20 41. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
21 described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each
22 violation.

23 42. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
24 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

25 ///

26 ///

27 ///

28 ///

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

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;
2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;
3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
4. That the Court grant such other and further relief as may be just and proper.

Dated: July 28, 2015

Respectfully Submitted,

THE CHANLER GROUP

By: 

Karalei S. Paras
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.