

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 10 2015

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

RG 15777391

12 LAURENCE VINO CUR,

13 Plaintiff,

14 v.

15 HARMAN INTERNATIONAL INDUSTRIES,  
16 INCORPORATED; and DOES 1-150,  
inclusive,

17 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 LAURENCE  
3 VINOCUR (“Plaintiff” or “Vinocur”) in the public interest of the citizens of the State of California  
4 to enforce the People’s right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”),  
5 a toxic chemical found in vinyl/PVC headphone pouches sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn  
7 California citizens about the risk of exposure to DEHP present in and on the vinyl/PVC headphone  
8 pouches manufactured, distributed, and offered for sale or use to consumers throughout the State of  
9 California.

10 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC headphone  
11 pouches that defendants manufacture, distribute, and offer for sale to consumers throughout the  
12 State of California.

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

18 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed  
19 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became  
20 subject to the “clear and reasonable warning” requirements of the act one year later on October 24,  
21 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).  
22 DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, import, sell, and/or offer for sale vinyl/PVC  
24 headphone pouches containing DEHP as follows:

25 a. Defendants manufacture, distribute, import, sell, and/or offer for sale  
26 vinyl/PVC headphone pouches containing DEHP without a warning, including, but not  
27 limited to, the *JBL by Harman Tim McGraw In-Ear Headphones (Carrying Pouch)*,  
28 *TMG21B, FK0009,-024488, UPC # 0 50036 31389 6*.



1           16. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person in  
2 the course of doing business within the meaning of Health and Safety Code § 25249.11.

3           17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
4 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in  
5 the State of California.

6           18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in the  
7 course of doing business within the meaning of Health and Safety Code § 25249.11.

8           19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the State  
9 of California.

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

15           21. HARMAN, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,  
16 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as  
17 “DEFENDANTS.”

### 18   **VENUE AND JURISDICTION**

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

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

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1 notice of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature, and  
2 will continue to occur in the future.

3 30. After receiving plaintiff's sixty-day notice of violation, the appropriate public  
4 enforcement agencies have failed to commence and diligently prosecute a cause of action against  
5 DEFENDANTS under Proposition 65.

6 31. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or  
7 use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require a  
8 "clear and reasonable" warning under Proposition 65.

9 32. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,  
10 import, distribute, sell, and offer for sale or use in California contain the LISTED CHEMICAL.

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

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

17 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of  
18 the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact and/or  
19 ingestion.

20 36. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the  
21 reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental  
22 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for  
23 sale or use to individuals in the State of California.

24 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
25 consumers and other individuals in the State of California who were or who would become exposed  
26 to the LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably  
27 foreseeable uses of the PRODUCTS.

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

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

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

11 **PRAYER FOR RELIEF**

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

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

22 Dated: July 9, 2015

Respectfully Submitted,

23 THE CHANLER GROUP  
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25 By: \_\_\_\_\_

Jonathan A. Bornstein  
26 Attorneys for Plaintiff  
27 LAURENCE VINOCUR  
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