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FILED

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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: R. Smith, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF MARIN

10 UNLIMITED CIVIL JURISDICTION

11
12 LAURENCE VINOUCUR,

13 Plaintiff,

14 v.

15 SDI TECHNOLOGIES, INC., and DOES 1-
16 150, inclusive,

17 Defendants.

Case No. CV1502446

**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 in the public interest of the citizens of the State of California to enforce the People’s
4 right to be informed about exposures to di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical
5 that is found in vinyl/PVC earbud pouches products sold in California.

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

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

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

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

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without
24 warning in California, vinyl/PVC earbud pouches containing the LISTED CHEMICAL,
25 including, but not limited to, the *New Balance 2-in-1 Sport Earbuds with Removable Earbuds*
26 *Carrying Pouch, NB439B, UPC 0 47532 89444 8*. All such vinyl/PVC earbud pouches
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1 containing the LISTED CHEMICAL are referred to collectively hereinafter as the
2 “PRODUCTS.”

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 are violations of Proposition 65,
6 and subject defendants to enjoinder of such conduct, as well as civil penalties for each
7 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 LAURENCE VINOUCUR 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 SDI Technologies, Inc. (“SDI”) is a person in the course of doing
20 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

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

1 DEFENDANTS conducted, and continue to conduct, business in Marin with respect to the
2 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 March 13, 2015, plaintiff’s sixty-day notice of violation, together with the
26 requisite certificate of merit, was provided to SDI and the requisite 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 are 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, unless enjoined, 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 use of the PRODUCTS has caused, and
23 continues 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 use
26 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact
27 and/or ingestion.

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1 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601
2 *et seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;


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

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

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6 Dated: July 1, 2015

Respectfully Submitted,
THE CHANLER GROUP

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By: 
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Attorneys for Plaintiff
LAURENCE VINOUCUR