

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 13 2016

CLERK OF SUPERIOR COURT  
By Maria Carrera  
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

RG 16823135

11 ANTHONY FERREIRO,  
12 Plaintiff,  
13 vs.  
14 BATTENFELD TECHNOLOGIES,  
15 INC.,  
16 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

**(Violation of Health & Safety Code §25249.5  
et seq.)**

17 Plaintiff Anthony Ferreiro, by and through his attorneys, alleges the following cause of  
18 action in the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

20 1. Plaintiff Anthony Ferreiro ("Plaintiff" or "Ferreiro"), brings this representative  
21 action on behalf of all California citizens to enforce relevant portions of Safe Drinking Water  
22 and Toxic Enforcement Act of 1986, codified at the Health and Safety Code § 25249.5 *et seq*  
23 ("Proposition 65"), which reads, in relevant part, "[n]o person in the course of doing business  
24 shall knowingly and intentionally expose any individual to a chemical known to the state to  
25 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
26 individual ...". Health & Safety Code § 25249.6.

27 2. This complaint is a representative action brought by Plaintiff in the public interest  
28 of the citizens of the State of California to enforce the People's right to be informed of the health  
hazards caused by exposure to Di(2-ethylhexyl) phthalate ("DEHP"), A toxic chemical found in

BY FAX

1 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety  
2 Code § 25249.7(a).

3 **PARTIES**

4 10. Plaintiff is a citizen of the State of California acting in the interest of the general  
5 public to promote awareness of exposures to toxic chemicals in products sold in California and  
6 to improve human health by reducing hazardous substances contained in such items. He brings  
7 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

8 11. Defendant Battenfeld is the industry leading manufacturer of shooting, reloading,  
9 gunsmithing and gun cleaning supplies. Through its business, Battenfeld effectively  
10 manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of  
11 California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or  
12 offers the Product for sale or use in the State of California.

13 12. Defendant Battenfeld maintains a registered agent for service of process at c/o  
14 CSC-Lawyers Incorporating Service Company, 221 Bolivar Street, Jefferson City, MO 65101.

15 13. Defendant Battenfeld is a “person” in the course of doing business within the  
16 meaning of Health & Safety Code sections 25249.6 and 25249.11.

17 **VENUE AND JURISDICTION**

18 14. Venue is proper in the County of Alameda because one or more of the instances  
19 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant  
20 conducted, and continues to conduct, business in the County of Alameda with respect to the  
21 Product.

22 15. This Court has jurisdiction over this action pursuant to California Constitution  
23 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
24 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the  
25 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,  
26 this Court has jurisdiction over this lawsuit.

27 16. This Court has jurisdiction over Defendant because it is either is a citizen of the  
28 State of California, has sufficient minimum contacts with the State of California, is registered

1 with the California Secretary of State as foreign corporations authorized to do business in the  
2 State of California, and/or has otherwise purposefully availed itself of the California market.  
3 Such purposeful availment has rendered the exercise of jurisdiction by California courts  
4 consistent and permissible with traditional notions of fair play and substantial justice.

5 **SATISFACTION OF NOTICE REQUIREMENTS**

6 17. On October 16, 2015, Plaintiff gave notice of alleged violation of Health and  
7 Safety Code § 25249.6 to Defendant concerning the exposure of California citizens to DEHP  
8 contained in the Product without proper warning, subject to a private action to Defendant and to  
9 the California Attorney General's office and the offices of the County District attorneys and City  
10 Attorneys for each city with a population greater than 750,000 persons wherein the herein  
11 violations allegedly occurred.

12 18. The notice complied with all procedural requirements of Proposition 65 including  
13 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at  
14 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
15 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a  
16 private action.

17 19. After receiving Plaintiff's notice, and to Plaintiff's best information and belief,  
18 none of the noticed appropriate public enforcement agencies have commenced and diligently  
19 prosecuted a cause of action against Defendant under Proposition 65 to enforce the alleged  
20 violations which are the subject of Plaintiff's notice of violation.

21 20. Plaintiff is commencing this action more than sixty (60) days from the date of his  
22 notice to Defendant, as required by law.

23 **FIRST CAUSE OF ACTION**

24 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

25 21. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 20 of  
26 this complaint as though fully set forth herein.

27 22. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,  
28 and/or retailer of the Product.

1           23.     The Product contains DEHP, a hazardous chemical found on the Proposition 65  
2 list of a chemical known to be hazardous to human health.

3           24.     The Product does not comply with the Proposition 65 warning requirements.

4           25.     Plaintiff, based on his best information and belief, avers that at all relevant times  
5 herein, and at least since September 25, 2015, continuing until the present, that Defendant has  
6 continued to knowingly and intentionally expose California users and consumers of the Product  
7 to DEHP without providing required warnings under Proposition 65.

8           26.     The exposures that are the subject of this notice result from the purchase,  
9 acquisition, handling and recommended use of the product. Consequently, the primary route of  
10 exposure to these chemicals is through direct skin exposure. The head strap cover of these  
11 earmuffs is likely to be in constant contact with the top of the user's scalp and/or hair normal use  
12 and direct skin exposure is likely to occur. Direct skin exposure through direct contact with the  
13 head strap cover and the user's hands is possible during application, removal, and manipulation  
14 of the earmuffs. Should the wearer's skin perspire underneath the head strap cover, aqueous  
15 DEHP skin permeation rates have been reported to be faster than neat DEHP permeation.  
16 Although the association between HMWP phthalates such as DEHP and atopic dermatitis has  
17 never been elucidated, as a multitude of chemicals are present in headphones that come into  
18 contact with human skin, DEHP in headphones and hearing protection aids has been reported to  
19 induce contact dermatitis. The head strap cover can be expected to emit gas-phase DEHP into  
20 the air over the lifetime of the product. This gas-phase DEHP can potentially be inhaled as the  
21 product is used in the vicinity of user's facial area. Finally, while mouthing of the product does  
22 not seem likely, some amount of exposure through ingestion can occur by handling the product  
23 with subsequent touching of the users hand to mouth.

24           27.     Plaintiff, based on his best information and belief, avers that such exposures will  
25 continue every day until clear and reasonable warnings are provided to Product purchasers and  
26 users or until this known toxic chemical is removed from the Product.

27           28.     Defendant has knowledge that the normal and reasonably foreseeable use of the  
28 Product exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur

1 by their deliberate, non-accidental participation in the manufacture, importation, distribution,  
2 sale and offering of the Product to consumers in California

3 29. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
4 Complaint.

5 30. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above  
6 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

7 31. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
8 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

9  
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff demands judgment against Defendant and requests the  
12 following relief:

- 13 A. That the court assess civil penalties against Defendant in the amount of  
14 \$2,500 per day for each violation in accordance with Health and Safety  
15 Code § 25249.7(b);  
16 B. That the court preliminarily and permanently enjoin Defendant mandating  
17 Proposition 65 compliant warnings on the Product;  
18 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.  
19 D. That the court grant any further relief as may be just and proper.  
20

21 Dated: July 13, 2016

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