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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION
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12 WHITNEY R. LEEMAN, PH.D.,

13 Plaintiff,

14 v.

15 ALLSOP, INC.; and DOES 1-150, inclusive,

16 Defendants.
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Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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NATURE OF THE ACTION

1. This Complaint is a representative action brought by WHTINEY R. LEEMAN, PH.D. ("Plaintiff") in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazards caused by exposures to di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical found in and on the earphone components sold by defendants in California.

2. By this Complaint, Plaintiff seeks to remedy defendants' continuing failure to warn individuals not covered by California's Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase, use or handle defendants' products, about the risks of exposure to DEHP present in and on the earphone components that are manufactured, distributed, and offered for sale or use throughout the State of California. Individuals not covered by California's Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase, use or handle defendants' products, are referred to hereinafter as "consumers."

3. Detectable levels of DEHP are found in and on the earphone components that defendants manufacture, distribute, and offer for sale to consumers throughout the State of California.

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

5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became subject to the "clear and reasonable warning" requirements of the act one year later on October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

6. Defendants manufacture, distribute, import, sell, and offer for sale without health hazard warnings in California, earphone components that contain DEHP including, but not limited to, the *Gaiam Flatwire Earbuds*, *PRPL FLTWR EARBUDS*, *UPC #0 35286 30763 5*. All such earphones with components containing DEHP are referred to collectively hereinafter as "PRODUCTS."

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

8. For defendants' violations of Proposition 65, Plaintiff seeks preliminary and permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with the required warning regarding the health hazards associated with exposures to DEHP. Health & Safety Code § 25249.7(a).

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

PARTIES

10. Plaintiff WHITNEY R. LEEMAN, PH.D. is a citizen of the State of California who is dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposures from consumer products; and she brings this action in the public interest pursuant to Health and Safety Code section 25249.7(d).

11. Defendant ALLSOP, INC. ("ALLSOP") is a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a

1 person in the course of doing business within the meaning of Health and Safety Code sections
2 25249.6 and 25249.11.

3 14. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
4 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
5 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
6 sale or use in California.

7 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
8 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
9 and 25249.11.

10 16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
11 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
12 retailers for sale or use in the State of California, or each implies by its conduct that it
13 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
14 individuals, businesses, or retailers for sale or use in the State of California.

15 17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in
16 the course of doing business within the meaning of Health and Safety Code sections 25249.6
17 and 25249.11.

18 18. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
19 individuals in the State of California.

20 19. At this time, the true names of defendants DOES 1 through 150, inclusive, are
21 unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
22 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
23 allege, that each of the fictitiously named defendants is responsible for the acts and occurrences
24 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

25 20. ALLSOP, MANUFACTURER DEFENDANTS, DISTRIBUTOR
26 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be
27 referred to collectively as the "DEFENDANTS."
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1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual” Health & Safety Code § 25249.6.

3 27. On December 1, 2015, Plaintiff served a sixty-day notice of violation, together
4 with the accompanying certificate of merit, on ALLSOP, California Attorney General’s Office,
5 and the requisite public enforcement agencies alleging that, as a result of DEFENDANTS’ sales
6 of the PRODUCTS, consumers in the State of California are being exposed to DEHP resulting
7 from their reasonably foreseeable use of the PRODUCTS, without the consumers first receiving
8 a “clear and reasonable warning” regarding the harms associated with exposures to DEHP, as
9 required by Proposition 65.

10 28. DEFENDANTS have manufactured, imported, distributed, sold, and offered the
11 PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
12 DEFENDANTS’ violations have continued beyond their receipt of Plaintiff’s sixty-day notice
13 of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature and,
14 unless enjoined will continue in the future.

15 29. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement
16 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
17 under Proposition 65 to enforce the alleged violations that are the subject of Plaintiff’s notice of
18 violation.

19 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
20 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
21 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
22 consumers in California are not exempt from the “clear and reasonable” warning requirements
23 of Proposition 65, yet DEFENDANTS provide no clear & reasonable warning.

24 31. DEFENDANTS knew or should have known that the PRODUCTS they
25 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.

26 32. DEHP is present in or on the PRODUCTS in such a way as to expose consumers
27 through dermal contact and/or ingestion during reasonably foreseeable use.
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1 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
2 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code
3 of Regulations, section 25602(b).

4 34. DEFENDANTS know that the normal and reasonably foreseeable use of the
5 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

6 35. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable
7 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
8 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
9 consumers in California.

10 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
11 consumers in California who have been, or who will be, exposed to DEHP through dermal
12 contact and/or ingestion resulting from their use of the PRODUCTS.

13 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
14 directly by California voters, consumers exposed to DEHP through dermal contact and/or
15 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear
16 and reasonable" health hazard warning, have suffered, and continue to suffer, irreparable harm
17 for which they have no plain, speedy, or adequate remedy at law.

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

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

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