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12 LAURENCE VINOCUR

FILED
San Francisco County Superior Court

NOV 08 2017

CLERK OF THE COURT
BY: *Chalene Johnson*
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION

12
13 LAURENCE VINOCUR,

14 Plaintiff,

15 v.

16 MARKETING RESULTS LTD.; SEARS
17 HOLDING CORPORATION; and DOES 1 –
18 150, inclusive,

19 Defendants.

Case No.

CDC-17-562369

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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6. Defendants manufacture, distribute, import, sell, and offer for sale without health hazard warnings in California, headphones with vinyl/PVC components that contain DEHP including, but not limited to, *Kodax Max Headphones, Item #12630K, UPC #8 47561 02630 4*. All such headphones with vinyl/PVC 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 LAURENCE VINOCUR. 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 he brings this action in the public interest pursuant to Health and Safety Code section 25249.7(d).

11. Defendant MARKETING RESULTS LTD. (“MARKETING RESULTS”) is a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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1 12. MARKETING RESULTS manufactures, imports, distributes, sells, and/or offers
2 the PRODUCTS for sale or use in the State of California, or implies by its conduct that it
3 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
4 State of California.

5 13. Defendant SEARS HOLDING CORPORATION, ("SEARS") is a person in the
6 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
7 25249.11.

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

11 15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
12 person in the course of doing business within the meaning of Health and Safety Code sections
13 25249.6 and 25249.11.

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

18 17. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
19 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
20 and 25249.11.

21 18. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
22 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
23 retailers for sale or use in the State of California, or each implies by its conduct that it
24 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
25 individuals, businesses, or retailers for sale or use in the State of California.

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

4 20. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
5 individuals in the State of California.

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

11 22. MARKETING RESULTS, SEARS, MANUFACTURER DEFENDANTS,
12 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where
13 appropriate, be referred to collectively as the "DEFENDANTS."

14 **VENUE AND JURISDICTION**

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

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

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

7 **FIRST CAUSE OF ACTION**

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

9 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
10 Paragraphs 1 through 25, inclusive.

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

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

19 29. On June 29, 2017, Plaintiff served a ~~sixty-day~~ notice of violation, together with
20 the accompanying certificate of merit, on MARKETING RESULTS, the California Attorney
21 General's Office, and the requisite public enforcement agencies alleging that, as a result of
22 DEFENDANTS' sales of the PRODUCTS, consumers in the State of California are being
23 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without
24 the consumers first receiving a "clear and reasonable warning" regarding the harms associated
25 with exposures to DEHP, as required by Proposition 65.

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1 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
2 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS'
3 violations have continued beyond their receipt of Plaintiff's sixty-day notice of violation. As
4 such, DEFENDANTS' violations are ongoing and continuous in nature and, unless enjoined
5 will continue in the future.

6 31. After receiving Plaintiff's sixty-day notice of violation, no public enforcement
7 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
8 under Proposition 65 to enforce the alleged violations that are the subject of Plaintiff's notice of
9 violation.

10 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
11 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
12 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
13 consumers in California are not exempt from the "clear and reasonable" warning requirements
14 of Proposition 65, yet DEFENDANTS provide no warning.

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

17 34. DEHP is present in or on the PRODUCTS in such a way as to expose consumers
18 through dermal contact and/or ingestion during reasonably foreseeable use.

19 35. ~~The normal and reasonably foreseeable use of the PRODUCTS has caused, and~~
20 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code
21 of Regulations, section 25602(b).

22 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
23 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

24 37. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable
25 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
26 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
27 consumers in California.
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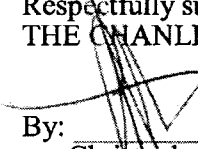
1 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
2 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
3 currently in the chain of commerce in California without a "clear and reasonable warning" as
4 defined by California Code of Regulations title 27, section 25601 et seq.;

5 4. That the Court grant Plaintiff his reasonable attorneys' fees and costs of suit; and

6 5. That the Court grant such other and further relief as may be just and proper.
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8 Dated: November 7, 2017

Respectfully submitted,
THE CHANLER GROUP

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10 By: 

Christopher Tuttle
Attorneys for Plaintiff
LAURENCE VINOCUR
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