

1 Brian Johnson, State Bar No. 235965  
2 Kimberly Gates, State Bar No. 282369  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118  
9 E-mail: brian@chanler.com  
10 E-mail: kimberly@chanler.com

11 Attorneys for Plaintiff  
12 ANTHONY E. HELD, PH.D., P.E.

ENDORSED  
FILED  
San Francisco County Superior Court

MAR 08 2018

CLERK OF THE COURT  
BY KALENE APOLONIO  
Deputy Clerk

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

12 ANTHONY E. HELD, PH.D., P.E.

13 Plaintiff,

14 v.

15 TNT SALES GOLDEN INC.; TNT SALES  
16 CO.; and DOES 1-150, inclusive,

17 Defendants.  
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Case No. **CGC-18-564890**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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1 *Celltronix Ear Bud Stereo Headphones with Microphone, Item #L 06-CE-2000B, UPC #6 84917*  
2 *60073 9*, referred to, hereinafter, as the "PRODUCTS".

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

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

#### 14 **PARTIES**

15 10. Plaintiff ANTHONY E. HELD, PH.D., P.E. is a citizen of the State of California  
16 who is dedicated to protecting the health of California citizens through the elimination or  
17 reduction of toxic exposures from consumer products; and he brings this action in the public  
18 interest pursuant to Health and Safety Code § 25249.7(d).

19 11. Defendant TNT SALES GOLDEN INC. ("TNT SALES GOLDEN") is a person  
20 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
21 25249.11.

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

26 13. Defendant TNT SALES CO. ("TNT SALES") is a person in the course of doing  
27 business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.  
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1           14.     TNT SALES manufactures, imports, distributes, sells, and/or offers the  
2 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 State  
4 of California.

5           15.     Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a  
6 person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6  
7 and 25249.11.

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

12           17.     Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person  
13 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
14 25249.11.

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

20           19.     Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in  
21 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
22 25249.11.

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

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

3 22. TNT SALES GOLDEN, TNT SALES, MANUFACTURER DEFENDANTS,  
4 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where  
5 appropriate, be referred to collectively as the "DEFENDANTS."

6 **VENUE AND JURISDICTION**

7 23. Venue is proper in the Superior Court for the County of San Francisco pursuant to  
8 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent  
9 jurisdiction, because Plaintiff seeks civil penalties against DEFENDANTS, because one or more  
10 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because  
11 DEFENDANTS conducted, and continue to conduct, business in San Francisco with respect to  
12 the PRODUCTS.

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

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

23 **FIRST CAUSE OF ACTION**

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

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

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

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

9           29.     On December 13, 2017, Plaintiff served a sixty-day notice of violation, together  
10 with the accompanying certificate of merit, on TNT SALES GOLDEN, TNT SALES, the  
11 California Attorney General’s Office, and the requisite public enforcement agencies alleging  
12 that, as a result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of  
13 California are being exposed to DEHP resulting from their reasonably foreseeable use of the  
14 PRODUCTS, without the consumers first receiving a “clear and reasonable warning” regarding  
15 the harms associated with exposures to DEHP, as required by Proposition 65.

16           30.     DEFENDANTS manufacture, import, sell and distribute the PRODUCTS for sale  
17 or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have  
18 continued beyond their receipt of plaintiff’s sixty-day notice of violation. As such,  
19 DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined will  
20 continue in the future.

21           31.     After receiving plaintiff’s sixty-day notice of violation, no public enforcement  
22 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS  
23 under Proposition 65 to enforce the alleged violations that are the subject of Plaintiff’s notice of  
24 violation.

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

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

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

7 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
8 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code  
9 of Regulations, § 25602(b).

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

12 37. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable  
13 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the  
14 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to  
15 consumers in California.

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

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

24 40. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-  
25 described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of  
26 \$2,500 per day for each violation.

1           41.     As a consequence of the above-described acts, Health and Safety Code  
2 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
3 DEFENDANTS

4                                   **PRAYER FOR RELIEF**

5           Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

- 6                   1.     That the Court, pursuant to Health and Safety Code § 25249.7(b), assess  
7                         civil penalties against DEFENDANTS, and each of them, in the amount of  
8                         \$2,500 per day for each violation;
- 9                   2.     That the Court, pursuant to Health and Safety Code § 25249.7(a),  
10                         preliminarily and permanently enjoin DEFENDANTS from  
11                         manufacturing, distributing, or offering the PRODUCTS for sale or use in  
12                         California without first providing a "clear and reasonable warning" in  
13                         accordance with title 27 of the California Code of Regulations, section  
14                         25601 *et seq.*, regarding the harms associated with exposures to DEHP;
- 15                   3.     That the Court, pursuant to Health and Safety Code § 25249.7(a), issue  
16                         preliminary and permanent injunctions mandating that DEFENDANTS  
17                         recall all PRODUCTS currently in the chain of commerce in California  
18                         without a "clear and reasonable warning" as defined by California Code of  
19                         Regulations title 27, § 25601 *et seq.*;
- 20                   4.     That the Court grant Plaintiff his reasonable attorneys' fees and costs of  
21                         suit; and
- 22                   5.     That the Court grant such other and further relief as may be just and  
23                         proper.

24     Dated: March 8, 2018

Respectfully submitted,  
THE CHANLER GROUP

26                   By: K. gates  
27                         Kimberly Gates  
28                         Attorneys for Plaintiff  
                           ANTHONY E. HELD, PH.D., P.E.