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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION

11
12 MARK MOORBERG,

13 Plaintiff,

14 v.

15 TURTLE BEACH CORPORATION;
16 VOYETRA TURTLE BEACH, INC.; and
DOES 1-150, inclusive,

17 Defendants.

Case No. _____

115CV288441

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

ENDORSED

2015 NOV 24 P 2:27

Small Business
S. ACKARD
Judge

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff MARK
3 MOORBERG (“Plaintiff”) in the public interest of the citizens of the State of California to
4 enforce the People’s right to be informed of the health hazards caused by exposures to di(2-
5 ethylhexyl)phthalate (“DEHP”), a toxic chemical found in and on headsets with vinyl/PVC
6 components sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
9 section 6300 et seq., who purchase, use or handle defendants’ products, about the risks of
10 exposure to DEHP present in and on the headsets with vinyl/PVC components manufactured,
11 distributed, and offered for sale or use throughout the State of California. Individuals not
12 covered by California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who
13 purchase, use or handle defendants’ products, are referred to hereinafter as “consumers.”

14 3. Detectable levels of DEHP are found in and on the headsets with vinyl/PVC
15 components that defendants manufacture, distribute, and offer for sale to consumers throughout
16 the State of California.

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

22 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
23 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became
24 subject to the “clear and reasonable warning” requirements of the act one year later on October
25 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
26 25249.10(b).

1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
2 State of California.

3 13. Defendant VOYETRA TURTLE BEACH, INC. (“VOYETRA”) is a person in the
4 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
5 25249.11.

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

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

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

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

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

25 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
26 the course of doing business within the meaning of Health and Safety Code sections 25249.6
27 and 25249.11.

1 market. DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
2 California courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

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

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

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

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

15 29. On July 13, 2015, Plaintiff served a sixty-day notice of violation, together with
16 the accompanying certificate of merit, on TURTLE BEACH, VOYETRA, California Attorney
17 General’s Office, and the requisite public enforcement agencies alleging that, as a result of
18 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being
19 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without
20 the consumers first receiving a “clear and reasonable warning” regarding the harms associated
21 with exposures to DEHP, as required by Proposition 65.

22 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
23 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
24 violations have continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As
25 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined
26 will continue in the future.

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

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

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

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

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

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

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

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

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

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

7 41. As a consequence of the above-described acts, Health and Safety Code
8 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
9 DEFENDANTS

10 **PRAYER FOR RELIEF**

11 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

12 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
13 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for
14 each violation;

15 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
16 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
17 offering the PRODUCTS for sale or use in California without first providing a “clear and
18 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
19 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

20 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
21 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
22 currently in the chain of commerce in California without a “clear and reasonable warning” as
23 defined by California Code of Regulations title 27, section 25601 *et seq.*;

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

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

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1 Dated: November 24, 2015

2 Respectfully submitted,
3 THE CHANLER GROUP

4 By: 
5 Clifford Chanler
6 Attorneys for Plaintiff
7 MARK MOORBERG

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