

1 Clifford A. Chanler, State Bar No. 135534
2 Brian C. Johnson, State Bar No. 235965
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118
9 E-mail: cliff@chanler.com
10 E-mail: brian@chanler.com

11 Attorneys for Plaintiff
12 WHITNEY R. LEEMAN, PH.D.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SANTA CLARA
15 UNLIMITED CIVIL JURISDICTION

16 WHITNEY R. LEEMAN, PH.D.,

17 Plaintiff,

18 v.

19 A & D ENGINEERING, INC.; and DOES 1 –
20 150, inclusive,

21 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff WHITNEY R.
3 LEEMAN, PH.D. in the public interest of the citizens of the State of California to enforce the
4 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 the vinyl/PVC tubing of
6 stethoscopes 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 vinyl/PVC tubing of stethoscopes 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 vinyl/PVC tubing of
15 stethoscopes 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 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 Plaintiffs, who, therefore, sue said defendants by their fictitious names pursuant to
22 Code of Civil Procedure section 474. Plaintiffs are informed and believe, 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. A & D, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
26 and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred to collectively
27 as the “DEFENDANTS.”
28

1 **VENUE AND JURISDICTION**

2 21. Venue is proper in the Superior Court for the County of Santa Clara, pursuant to
3 Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of
4 competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because
5 one or more instances of wrongful conduct occurred, and continue to occur, in this county,
6 and/or because DEFENDANTS conducted, and continue to conduct, business in Santa Clara
7 County with respect to the PRODUCTS.

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

12 23. The California Superior Court has jurisdiction over DEFENDANTS based on
13 plaintiff’s information and good faith belief that DEFENDANTS are each a person, firm,
14 corporation or association that is a citizen of the State of California, has sufficient minimum
15 contacts in the State of California, and/or otherwise purposefully avails itself of the California
16 market. DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
17 California courts consistent with traditional notions of fair play and substantial justice.

18 **FIRST CAUSE OF ACTION**

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

20 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
21 Paragraphs 1 through 23, inclusive.

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

26 26. Proposition 65 states, “[n]o person in the course of doing business shall
27 knowingly and intentionally expose any individual to a chemical known to the state to cause
28

1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual” Health & Safety Code § 25249.6.

3 27. On September 15, 2015, plaintiff served a sixty-day notice of violation, together
4 with the accompanying certificate of merit, on DECOR, the California Attorney General’s
5 Office, and the requisite public enforcement agencies alleging that, as a result of
6 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being
7 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without
8 the consumers first receiving a “clear and reasonable warning” regarding the harms associated
9 with exposures to DEHP, as required by Proposition 65.

10 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
11 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
12 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation. As
13 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined
14 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 warning. DEFENDANTS’ violations of
24 Proposition 65, resulting from their failure to provide warnings to consumers exposed to DEHP
25 from the PRODUCTS have continued since as far back as September 15, 2012.

26 31. DEFENDANTS knew or should have known that the PRODUCTS they
27 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.
28

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

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

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

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

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

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

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

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

1 **PRAYER FOR RELIEF**

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

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

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
8 offering the PRODUCTS for sale or use in California without first providing a “clear and
9 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
10 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

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

15 4. That the Court grant plaintiff her reasonable attorneys’ fees and costs of suit; and

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

17
18 Dated: July 11, 2016

Respectfully submitted,

19 THE CHANDLER GROUP

20
21 By: 

Brian C. Johnson
Attorneys for Plaintiff

WHITNEY R. LEEMAN, PH.D.