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7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 LAURENCE VINOCUR,

13 Plaintiff.

14 v.

15 YAMAHA CORPORATION OF AMERICA;
16 and DOES 1-150, inclusive,

17 Defendants.
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ENDORSED
FILED
ALAMEDA COUNTY
FEB 09 2015
CLERK OF THE SUPERIOR COURT
By _____ Deputy

Case No. **RG 15 757 875**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code. § 25249.6 *et seq.*)

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6. Defendants manufacture, import, distribute, sell and/or offer for sale in California products containing the LISTED CHEMICAL as follows:

a. Benches with vinyl/PVC seats including, but not limited to, the *Keyboard Bench, PKBB1 MM* (#0 86792 30466 3);

b. Headphones with vinyl/PVC components including, but not limited to, the *Yamaha RH2C Stereo Headphones*, UPC #0 86792 28558 0

c. Bags with vinyl/PVC shoulders strap pads including, but not limited to, *Yamaha's Backpack Style Gigbag for Npseries, YBNP76, UPC #0 86792 32056 4*; and

d. Vinyl/PVC musical instrument cases including but not limited to, *Yamaha APX Vinyl Hardshell Guitar Case, HC-AG2, UPC #0 86792 31821 9*.

7. All such products containing the LISTED CHEMICAL described in Paragraphs 6(a) through 6(d) above, shall hereinafter be collectively referred to as “PRODUCTS.”

8. Defendants' failure to warn consumers and/or other individuals in the State of California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et seq.*, about their exposure to the LISTED CHEMICAL and its potential to cause birth defects and other reproductive harm in conjunction with defendants' manufacture, importation, distribution, sale, and/or offering for sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such violation.

9. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive and permanent injunctive relief to compel defendants to provide purchasers or users of the PRODUCTS with the required warning regarding the health hazards of the LISTED CHEMICAL. (Cal. Health & Safety Code § 25249.7(a).)

10. Plaintiff also seeks civil penalties against defendants for their violations of Proposition 65, as provided by California Health & Safety Code § 25249.7(b).

PARTIES

11. 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

1 toxic exposures from consumer products; he brings this action in the public interest pursuant to
2 California Health & Safety Code § 25249.7(d).

3 12. Defendant YAMAHA CORPORATION OF AMERICA (“YAMAHA”) is a
4 person in the course of doing business within the meaning of California Health & Safety Code §
5 25249.11.

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

9 14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
10 persons in the course of doing business within the meaning of California Health & Safety Code
11 § 25249.11.

12 15. MANUFACTURER DEFENDANTS engage in the process of researching,
13 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
14 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
15 manufacturing, one or more of the PRODUCTS offered for sale or use in the State of California.

16 16. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
17 in the course of doing business within the meaning of California Health & Safety Code §
18 25249.11.

19 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
20 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
21 in the State of California.

22 18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
23 the course of doing business within the meaning of California Health & Safety Code §
24 25249.11.

25 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
26 State of California.

27 20. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
28 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to

1 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
2 each of the fictitiously named defendants is responsible for the acts and occurrences alleged
3 herein. When ascertained, their true names shall be reflected in an amended complaint.

4 21. YAMAHA, MANUFACTURER DEFENDANTS, DISTRIBUTOR
5 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
6 referred to as “DEFENDANTS.”

7 **VENUE AND JURISDICTION**

8 22. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
9 Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, because
10 one or more instances of wrongful conduct occurred, and continue to occur, in the County of
11 Alameda, and/or because DEFENDANTS conducted, and continue to conduct, business in this
12 County with respect to the PRODUCTS.

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

17 24. The California Superior Court has jurisdiction over DEFENDANTS based on
18 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation,
19 or association that is a citizen of the State of California, has sufficient minimum contacts in the
20 State of California, or otherwise purposefully avails itself of the California market.
21 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 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
26 Paragraphs 1 through 24, inclusive.

27 26. The citizens of the State of California have expressly stated in the Safe Drinking
28 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*

1 that they must be informed “about exposures to chemicals that cause cancer, birth defects and
2 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

3 27. Proposition 65 states, “[n]o person in the course of doing business shall
4 knowingly and intentionally expose any individual to a chemical known to the state to cause
5 cancer or reproductive toxicity without first giving clear and reasonable warning to such
6 individual....” (*Ibid.*)

7 28. On or about March 4, 2013, a sixty-day notice of violation, together with the
8 requisite certificate of merit, was provided to YAMAHA and various public enforcement
9 agencies stating that, as a result of the DEFENDANTS’ sales of benches with vinyl/PVC seats
10 purchasers and users in the State of California were being exposed to the LISTED CHEMICAL
11 resulting from the reasonably foreseeable use of the benches with vinyl/PVC seats, without the
12 individual purchasers and users first having been provided with a “clear and reasonable
13 warning” regarding such toxic exposures.

14 29. On or about September 12, 2014, a supplemental sixty-day notice of violation,
15 together with the requisite certificate of merit, was provided to YAMAHA and various public
16 enforcement agencies stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS
17 purchasers and users in the State of California were being exposed to the LISTED CHEMICAL
18 resulting from the reasonably foreseeable use of the PRODUCTS, without the individual
19 purchasers and users first having been provided with a “clear and reasonable warning”
20 regarding such toxic exposures

21 30. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
22 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety
23 Code § 25249.6, and DEFENDANTS’ manufacture, importation, distribution, sales, and/or
24 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §
25 25249.6 has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day notice
26 of violation and plaintiff’s supplemental sixty-day notice. As such, DEFENDANTS’ violations
27 are ongoing and continuous in nature, and will continue to occur in the future.

28 31. After receipt of the claims asserted in the sixty-day notice of violation and the

1 supplemental sixty-day notice, the appropriate public enforcement agencies have failed to
2 commence and diligently prosecute a cause of action against DEFENDANTS under Proposition
3 65.

4 32. The PRODUCTS manufactured, imported, distributed, sold, and/or offered for
5 sale or use in California by DEFENDANTS contained the LISTED CHEMICAL in an amount
6 above the allowable State limits.

7 33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
8 imported, distributed, sold, and/or offered for sale or use in California contained the LISTED
9 CHEMICAL.

10 34. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
11 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
12 the reasonably foreseeable use of the PRODUCTS.

13 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
14 continues to cause, consumer and workplace exposures to the LISTED CHEMICAL, as such
15 exposure is defined by Title 27 CCR § 25602(b).

16 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
17 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
18 and/or ingestion.

19 37. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
20 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
21 accidental participation in the manufacture, importation, distribution, sale, and/or offering of the
22 PRODUCTS for sale or use to individuals in the State of California.

23 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
24 consumers and/or other individuals in the State of California who were, or who could become
25 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
26 reasonably foreseeable use of the PRODUCTS.

27 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold
2 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
3 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

4 40. As a consequence of the above-described acts, DEFENDANTS are liable for a
5 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
6 Safety Code § 25249.7(b).

7 41. As a consequence of the above-described acts, California Health & Safety Code
8 § 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 California Health & Safety Code § 25249.7(b), assess
13 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

14 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, importing,
16 distributing, selling, and/or offering the PRODUCTS for sale or use in California, without
17 providing “clear and reasonable warnings” as defined by California Code of Regulations title
18 27, § 25601 et. seq., as to the harms associated with exposure to the LISTED CHEMICAL;

19 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

20 4. That the Court grant such other and further relief as may be just and proper.

21 Dated: February 9, 2015

Respectfully Submitted,

22 THE CHANLER GROUP

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24 By: 

25 Stephen E. Cohen
26 Attorneys for Plaintiff
27 LAURENCE VINOCUR
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