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3 Berkeley, CA 94704
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6 Attorney for Plaintiff Center for Environmental Health

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ALAMEDA**

10
11 **CENTER FOR ENVIRONMENTAL HEALTH**
12 **a California non-profit corporation**

CASE NO.

PG08382114

13 **Plaintiff,**

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF
AND CIVIL PENALTIES**

14 **v.**

15 **EASTERN AMERICA TRIO PRODUCTS, INC.**

16 **and DOES I-X.**

17 **Defendants.**

18 _____ /
19
20 Plaintiff, Center for Environmental Health ("CEH") hereby alleges:

21 **I**

22 **INTRODUCTION**

23 1. CEH brings this action as a private attorney general on behalf of the People
24 of the State of California and in the public interest pursuant to Health Safety Code section 25249.7
25 (d). Based on the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety
26 Code Section 25249.5 et seq) also known as "Proposition 65," this complaint seeks injunctive and
27 declaratory relief and civil penalties based on Eastern America Trio Products, Inc.'s ("Eastern
28

1 America Trio Products”) failure to warn users of the company’s audio cord cable, modular
2 extension telephone cord and modular telephone coil cord that they are exposed to lead by the
3 handling of these products. Lead is a chemical known to the State of California to cause
4 developmental toxicity, male and female reproductive toxicity and cancer. Pursuant to Proposition
5 65, businesses with ten or more employees must provide persons with a “clear and reasonable
6 warning” prior to exposing them to chemicals listed by the State to cause reproductive toxicity and
7 cancer in excess of threshold levels.
8
9

10 II

11 PARTIES

12 2. Plaintiff CEH is a non-profit California corporation dedicated to environmental
13 protection and enhancement. One of CEH’s objectives is to prevent and reduce toxic hazards to
14 human health and the environment. Through CEH’s activities, numerous carcinogenic and
15 reproductive chemicals listed pursuant to Proposition 65 that have been present in consumer
16 products or emitted into the air have been eliminated.
17

18 3. Eastern America Trio Products is a corporation licensed to do business in the State of New
19 York. The company operates a facility in College Point, New York where the products complained
20 of in this Complaint are manufactured and/or distributed.
21

22 4. Defendants DOES I-X, are named herein under fictitious names, as their true names and
23 capacities are unknown to Plaintiff. CEH is informed and believes, and thereon alleges, that each of
24 said DOES is responsible, in some actionable manner, for the events and happenings hereinafter
25 referred to, either through said Defendant’s conduct, or through the conduct of its agents, servants
26 or employees, or in some other manner, causing the harms alleged by Plaintiff in this complaint.
27
28

1 When said true names and capacities of DOES are ascertained, CEH will seek leave to amend this
2 complaint to set forth the same.
3

4 **III**

5 **JURISDICTION AND VENUE**

6 5. This Court has jurisdiction pursuant to California Constitution Article VI, section 10.

7
8 6. CEH has performed any and all conditions precedent to the filing of a legal action
9 pursuant to Proposition 65 by serving by mail a Notice of Violation, dated October 1, 2007 to the
10 Attorney General of the State of California, the State's district attorney's and the appropriate city
11 attorney's throughout the State and by mailing the Notice of Violation on December 7, 2007 to
12 Defendant. A true and correct copy of this Notice is attached herein as Exhibit A. More than 60
13 days have passed since CEH mailed its Notice and no public enforcement entity has filed a
14 complaint in this case.
15

16 7. This Court is the proper venue for the action because the causes of action have arisen in
17 Alameda County. Furthermore, this Court is the proper venue under Code of Civil Procedure
18 section 395.5 and Health and Safety Code section 25249.7.
19

20 **IV**

21 **STATUTORY BACKGROUND**

22 **A. PROPOSITION 65**

23 8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
24 passed as "Proposition 65" by an overwhelming majority vote of the people in November of 1986.
25

26 9. The warning requirement of Proposition 65 is contained in Health and Safety Code
27 section 25249.6, which provides:

28 No person in the course of doing business shall knowingly and intentionally expose any
individual to a chemical known to the state to cause cancer or reproductive toxicity without first

1 giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

2
3 10. Implementing regulations for Proposition 65 provide that warnings are required for
4 consumer product exposures. A "consumer product exposure is an exposure which results from a
5 person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
6 consumer good, or any exposure that results from receiving a consumer service." 22 CCR section
7 12601 (b).

8
9 11. Whenever a clear and reasonable warning is required under Health & Safety Code section
10 25249.6, the "method employed to transmit the warning must be reasonably calculated considering
11 the alternative methods available under the circumstances, to make the warning message available
12 prior to exposure." The warning requirement may be satisfied by a warning that appears on a
13 product's label or other labeling, shelf labeling, signs, a system of signs, public advertising
14 identifying the system and toll-free information services, or any other, system, that provides clear
15 and reasonable warnings. 22 CCR section 12601 (b) (1) (A)- (C).

16
17 12. Proposition 65 establishes a procedure by which the State is to develop a list of
18 chemicals "known to the State to cause cancer or reproductive toxicity." Eastern America Trio
19 Products had a duty to provide clear and reasonable warning to those persons exposed to lead 12-
20 months after the chemical was published on the State list. Lead was listed as a chemical known to
21 cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987.
22 Lead and lead compounds were also listed pursuant to Proposition 65 as carcinogens on October 1,
23 1992.

24
25 13. Proposition 65 may be enforced by any person in the public interest who provides notice
26 sixty days before filing suit to both the violator and designated law enforcement officials. The
27 failure of law enforcement officials to file a timely complaint enables a citizen suit to be filed
28

1 pursuant to Health and Safety Code section 25249.7 (c).

2
3 14. Proposition 65 provides for injunctive relief and a civil fine of up to \$2,500 per day for
4 each violation. Health and Safety Code section 25249.7(a) (b). Each individual exposure without
5 warning is a separate violation.

6
7 V

8 **STATEMENT OF FACTS**

9 15. Defendant Eastern America Trio Products manufactures and/or distributes from its New
10 York facility products that are sold in California and that are exposing people to lead. These
11 products include: (1) Trisonic audio cord cable (TS-1206N); (2) Trisonic modular extension
12 telephone cord (TS-815); and (3) Trisonic modular telephone coil cord (TS-607).

13 16. Lead has many known health effects. Lead has been shown to cross the placenta in
14 pregnant women and adversely affect the developing fetus. Fetuses and children under the age of
15 six are those at greatest risk of the health effects associated with lead exposure. Children are most
16 vulnerable because they absorb lead more easily than adults and their brain and central nervous
17 system is developing rapidly. Lead is a powerful neurotoxin that intereferes with the development
18 of these systems as well as the kidney and blood-forming organs. Even low levels of lead exposure
19 can result in IQ deficits, learning disabilities, behavioral problems, stunted or slowed growth and
20 impaired hearing. Symptoms of long-term exposure to lower lead levels may cause appetite loss,
21 abdominal pain, constipation, fatigue, sleeplessness, irritability and headache. Short-term
22 exposure to high levels of lead can cause vomiting, diarrhea, convulsion, coma or even death.

23 Today, there is a widespread recognition that there is no such thing as a "safe" level of lead
24 exposure.
25
26
27
28

1 17. Defendant Eastern America Trio Products has knowingly and intentionally exposed
2 numerous persons to lead, without providing a Proposition 65 warning. The company has at all
3 times relevant hereto been aware that its audio cord cable, modular extension telephone cord and
4 modular telephone coil cord products contain lead and that exposures occur due to dermal exposure
5 and hand to mouth ingestion of the chemical. Eastern America Trio Products markets its products
6 with knowledge that exposures to lead will occur.
7

8
9 **FIRST CAUSE OF ACTION**

10 **(Violation of section 25249.6 of the Health and Safety Code, Failure to Provide Clear
and Reasonable Warning under Proposition 65)**

11 18. CEH refers to paragraphs 1-17, inclusive, and incorporates them herein by this reference.
12

13 19. Eastern America Trio Products operates a business, which employs ten or more persons.

14 20. By committing the acts alleged above, Eastern America Trio Products has, in the course
15 of doing business, knowingly and intentionally exposed individuals to a chemical known to the
16 State of California to cause reproductive toxicity and cancer without first giving clear and
17 reasonable warning to such individuals, within the meaning of Health and Safety Code section
18 25249.6.
19

20 21. Said violations render Eastern America Trio Products liable for civil fines up to \$2,500
21 (two thousand, five hundred dollars) per day, for each such violation.

22 22. Eastern America Trio Products' continued violation of the law will irreparably harm
23 CEH and the public interest in whose behalf Plaintiff brings this action, for which there is no
24 adequate remedy at law.
25

26 **SECOND CAUSE OF ACTION**

27 **(Declaratory Relief)**

28 23. CEH refers to paragraphs 1-22, inclusive, and incorporates them herein by this reference.

1 24. There exists an actual controversy relating to the legal rights and duties of the parties,
2 within the meaning of Code of Civil Procedure section 1060, between Plaintiff and Eastern America
3 Trio Products concerning:
4

5 a) whether Eastern America Trio Products has exposed individuals to a chemical known to
6 the State of California to cause reproductive toxicity and cancer without providing clear and
7 reasonable warning.
8

9 VI

10 JURY DEMAND

11 30. CEH demands a jury trial.
12

13 VII

14 PRAYER

15 WHEREFORE, CEH prays for relief against Eastern America Trio Products as follows:

16 1. On the First Cause of Action, for civil penalties for each and every violation according to
17 proof;
18

19 2. On the First Cause of Action, and pursuant to Health and Safety Code section 25249.7 (a), for
20 such temporary restraining orders, preliminary and permanent injunctive orders, or other orders,
21 prohibiting Eastern America Trio Products from exposing persons to lead without providing clear
22 and reasonable warnings;
23

24 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil
25 Procedure section 1060 declaring:

26 a. that Eastern America Trio Products has exposed individuals to a chemical known to the
27 State of California to cause reproductive toxicity and cancer without providing clear and reasonable
28 warning; and

1 4. On all Causes of Action, for reasonable attorneys' fees pursuant to section 1021.5 of the Code
2 of Civil Procedure or the substantial benefit theory;

3 5. For costs of suit herein; and

4 6. For such other relief as the Court may deem just and proper.
5

6 Dated: April 11, 2008

7 By

8 

9 Michael Freund
10 Attorney for Center for Environmental Health
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MICHAEL FREUND
ATTORNEY AT LAW
1915 ADDISON STREET
BERKELEY, CALIFORNIA 94704-1101

TEL 510/540-1992
FAX 510/540-5543
EMAIL FREUND1@AOL.COM

October 1, 2007

Re: Notice of Violation Against Eastern America Trio Products, Inc. for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

I represent the Center for Environmental Health, a non-profit California corporation whose primary mission is to prevent and reduce toxic hazards to human health and the environment. This letter constitutes notification that Eastern America Trio Products, Inc. located at 12828 25th Ave., College Point, New York 11356-2709 has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, this company has manufactured and distributed various products which have exposed and continue to expose numerous individuals within California to lead. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead and lead compounds were also listed pursuant to Proposition 65 as carcinogens on October 1, 1992. The time period of these violations commenced one year after the listed dates above. The route of exposure has been primarily through dermal contact with the products and/or by dermal contact with and ingestion by hand to mouth contact, of these chemicals.

The cords of the following products are exposing people to lead: (1) Trisonic audio cord cable (TS-1206N); (2) Trisonic modular extension telephone cord (TS-815); and (3) Trisonic modular telephone coil cord (TS-607).

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Eastern America Trio Products, Inc. is in violation of Proposition 65 because it failed to provide a warning to persons touching the cable/cords of the above products that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to these chemicals, without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A).

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, the Center for Environmental Health gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to the Center for Environmental Health

EXHIBIT A

from information now available to us. The Center for Environmental Health is continuing its investigation that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Freund', written in a cursive style.

Michael Freund

cc: Michael Green, CEH

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

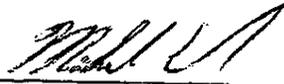
I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
 2. I am the attorney for the noticing party Center for Environmental Health ("CEH")
 3. CEH is a non-profit California corporation whose primary mission is to prevent and reduce toxic hazards to human health and the environment.
 4. The Notice of Violation alleges that the party identified has exposed persons in California to lead from three listed products. Please refer to the Notice of Violation for additional details regarding the alleged violations.
 5. I have consulted with a scientist with 17 years of experience in chemical exposure issues. The consultant has the appropriate experience and expertise regarding the exposure issues in this case. The consultant has reviewed facts, studies or other data regarding the exposure to the listed chemical that is the subject of this action. These facts, studies or other data overwhelmingly demonstrate that the party identified in the Notice exposes persons to lead through dermal contact and hand to mouth ingestion.
 6. Based on my consultation with an experienced consultant in this field and especially the results of testing the products listed, it is clear that there is sufficient evidence that human exposures exist from exposure to the products from the noticed party.
- Furthermore, as a result of the above, I have concluded that there is a reasonable and

meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

7. The copy of this Certificate of Merit served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 25249.7 (h) (2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies or other data reviewed by those persons.

Dated: September 26, 2007


Michael Freund
Attorney for Center for Environmental
Health

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On October 1, 2007 I served the within:

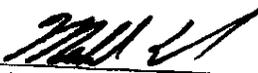
Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act; Certificate of Merit; and The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) A Summary (only sent to Eastern America Trio Products, Inc.)

on the parties in said action, by facsimile and placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California and/or by hand delivery to said parties addressed as follows:

See Attached Service List.

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on October 1, 2007 at Berkeley, California.


Michael Freund

SERVICE LIST

District Attorney of Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	District Attorney of Imperial County 939 W. Main Street El Centro, CA 92243	District Attorney of Modoc County PO Box 1171 Alturas, CA 96101-4020
District Attorney of Colusa County 547 Market Street Colusa, CA 95932	District Attorney of Lassen County 220 S. Lassen St., Ste 8 Susanville, CA 96130	District Attorney of Placer County 11562 "B" Avenue Auburn, CA 95603
District Attorney of Contra Costa County 725 Court Street, Room 402 Martinez, CA 94553	District Attorney of Inyo County P.O. Drawer D Independence, CA 93526	District Attorney of San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004
District Attorney of Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney of Los Angeles County 210 W. Temple Street, Room 345 Los Angeles, CA 90012	District Attorney of Plumas County 520 Main Street, Room 404 Quincy, CA 95971
District Attorney of Del Norte County 450 H Street, Ste 171 Crescent City, CA 95531	District Attorney of Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney of San Diego County 330 West Broadway, Suite 1320 San Diego, CA 92101
District Attorney of Amador County 708 Court Street, #202 Jackson, CA 95642	District Attorney of Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney of Riverside County 4075 Main Street, 1st Floor Riverside, CA 92501
District Attorney of Butte County 25 County Center Drive Oroville, CA 95965	District Attorney of Marin County 3501 Civic Center Dr., Room 130 San Rafael, CA 94903	District Attorney of San Francisco County 850 Bryant Street, Rm 325 San Francisco, CA 94103
District Attorney of El Dorado County 515 Main Street Placerville, CA 95667	District Attorney of Mono County P.O. Box 617 Bridgeport, CA 93517	District Attorney of Sacramento County 901 "G" Street Sacramento, CA 95814
District Attorney of Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney of Mariposa County P.O. Box 730 Mariposa, CA 95338	District Attorney of San Joaquin County P.O. Box 990 Stockton, CA 95201
District Attorney of Fresno County 2220 Tulare Street, #1000 Fresno, CA 93721	District Attorney of Monterey County PO Box 1131 Salinas, CA 93902	District Attorney of San Luis Obispo County 1050 Monterey St, Room 450 San Luis Obispo, CA 93408
District Attorney of Glenn County P.O. Box 430 Willows, CA 95988	District Attorney of Mendocino County P.O. Box 1000 Ukiah, CA 95482	District Attorney of San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023
District Attorney of Kings County 1400 West Lacey Hanford, CA 93230	District Attorney of Napa County 931 Parkway Mall Napa, CA 94559	District Attorney of San Mateo County 400 County Ctr, 3 rd Fl Redwood City, CA 94063
District Attorney of Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney of Merced County 2222 "M" Street Merced, CA 95340	
District Attorney of Humboldt County 825 5th Street Eureka, CA 95501	District Attorney of Nevada County 201 Church St., Suite 8 Nevada City, CA 95959	
	District Attorney of Orange County 401 Civic Ctr Drive West Santa Ana, CA 92702	

District Attorney of Sierra County
Courthouse, P.O. Box 457
Downieville, CA 95936

District Attorney of Santa Barbara
County
1105 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney of Siskiyou County
P.O. Box 986
Yreka, CA 96097

District Attorney of Solano County
600 Union Avenue
Fairfield, CA 94533

District Attorney of Santa Clara
County
70 West Hedding Street
San Jose, CA 95110

District Attorney of Santa Cruz
County
701 Ocean Street, Room 200
Santa Cruz, CA 95061

District Attorney of Sonoma County
600 Administration Drive, Room
212J
Santa Rosa, CA 95403

District Attorney of Shasta County
1525 Court Street, Third Floor
Redding, CA 96001-1632

District Attorney of Stanislaus
County
800 11th Street, Room 200
Modesto, CA 95354

District Attorney of Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney of Ventura County
800 South Victoria Ave
Ventura, CA 93009

District Attorney of Tehama County
P.O. Box 519
Red Bluff, CA 96080

District Attorney of Yolo County
301 Second Street
Woodland, CA 95695

District Attorney of Trinity County
P.O. Box 310
Weaverville, CA 96093

District Attorney of Yuba County
215 Fifth Street
Marysville, CA 95901

District Attorney of Tulare County
221 S. Mooney Ave, Room 224
Visalia, CA 93291

District Attorney of Tuolumne County
2 South Green
Sonora, CA 95370

San Jose City Attorney's Office
151 West Mission Street
San Jose, CA 95110

Los Angeles City Attorney's Office
Room 1800, City Hall East
200 N. Main Street
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 3rd Avenue, Suite 1620
San Diego, CA 92101

San Francisco City Attorney's Office
City Hall, Room 234
San Francisco, CA 94102

California Attorney General's Office
Attention: Proposition 65 Coordinator
1515 Clay Street, Suite 2000
P.O. Box 7550
Oakland, CA 94612

Michael Harap
Chief Executive Officer
Eastern America Trio Products, Inc.
12828 25th Ave.
College Point, N.Y. 11356-2709

CERTIFICATE OF SERVICE

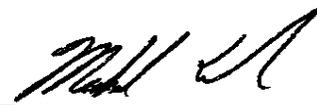
I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On December 7, 2007 I served the within:

Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act; Certificate of Merit; and The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) A Summary (only sent to Eastern America Trio Products, Inc.) on the parties in said action, by facsimile and placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California and/or by hand delivery to said parties addressed as follows:

Michael Harap
Eastern America Trio Products, Inc.
PO Box 527018
Flushing, NY 11352

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on December 7, 2007 at Berkeley, California.



Michael Freund

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On June 30, 2008 I served the within:

Complaint for Injunctive and Declaratory Relief and Civil Penalties (Center for Environmental Health v. Eastern America Trio Products, Inc., Alameda County Case No. RG08382114)

on the parties in said action, by facsimile and placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California and/or by hand delivery to said parties addressed as follows:

Bob Thomas
Office of the Attorney General
1515 Clay Street, Suite 2000
PO Box 7550
Oakland, CA 94612

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on June 30, 2008 at Berkeley, California.



Michael Freund