

1 Christopher M. Martin, State Bar No. 186021
2 HIRST & CHANLER LLP
3 566 W. Adams, Suite 450
4 Chicago, IL 60521
5 Telephone: (312) 376-1801
6 Facsimile: (312) 376-1804

7 Attorneys for Plaintiff
8 JAMIE TE'O

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

12 **RG08365820**

13 JAMIE TE'O,

14 Plaintiff,

15 v.

16 CREATIVE LABS, INC.; and DOES 1 through
17 150, inclusive,

18 Defendants.

19 Case No. _____

20 **COMPLAINT FOR CIVIL PENALTIES
21 AND INJUNCTIVE RELIEF**

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

23 **BY FAX**

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff JAMIE TE'O, in the
3 public interest of the citizens of the State of California, to enforce the People's right to be informed
4 of the presence of lead (a toxic chemical) found in certain sound cards manufactured and sold by
5 defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to warn
7 California citizens about their exposure to lead present in or on certain sound cards that defendants
8 manufacture, distribute and/or offer for sale to consumers throughout the State of California.

9 3. High levels of lead are commonly found in the solder in and on sound cards that
10 defendants manufacture, distribute and/or offer for sale to consumers throughout the State of
11 California.

12 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code §25249.6 *et seq.* (Proposition 65), "No person in the course of
14 doing business shall knowingly and intentionally expose any individual to a chemical known to the
15 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
16 such individual..." (*Cal. Health & Safety Code §25249.6.*)

17 5. On February 27, 1987, California identified and listed lead as a chemical known to
18 cause birth defects and other reproductive harm. Lead became subject to the warning requirement
19 one year later and was therefore subject to the "clear and reasonable warning" requirements of
20 Proposition 65, beginning on February 27, 1988. (*22 CCR §12000(c); Cal. Health & Safety Code*
21 *§25249.8.*) Lead shall hereinafter be referred to as the "LISTED CHEMICAL."

22 6. Defendants manufacture and sell sound cards with solder containing lead including,
23 but not limited to, *Creative Labs Sound Blaster Live! Sound Card, Model No. CT4780*, which
24 contain excessive levels of the LISTED CHEMICAL. All such sound cards containing the
25 LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

26 7. Defendants' failure to warn consumers; sole proprietors, employees, and other
27 persons engaged in the small business field of computer service and repair whom the Occupational
28

1 Safety Health Act (OSH ACT) does not cover; and/or other individuals in the State of California
2 about their exposure to the LISTED CHEMICAL in conjunction with defendants' sale of the
3 PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such
4 conduct as well as civil penalties for each such violation.

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

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

11 **PARTIES**

12 10. Plaintiff JAMIE TE'O is a citizen of the County of Alameda in the State of
13 California who is dedicated to protecting the health of California citizens through the elimination
14 or reduction of toxic exposures from consumer products, and brings this action in the public
15 interest pursuant to California Health & Safety Code §25249.7.

16 11. Defendant CREATIVE LABS, INC., (CREATIVE LABS) is a person doing
17 business within the meaning of California Health & Safety Code §25249.11.

18 12. CREATIVE LABS manufactures, distributes and/or offers the PRODUCTS for sale
19 or use in the State of California or implies by its conduct that it manufactures, distributes and/or
20 offers the PRODUCTS for sale or use in the State of California.

21 13. Defendants DOES 1-50 (MANUFACTURER DEFENDANTS) are each persons
22 doing business within the meaning of California Health & Safety Code §25249.11.

23 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,
24 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
25 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,
26 one or more of the PRODUCTS for sale or use in the State of California.

27 15. Defendants DOES 51-100 (DISTRIBUTOR DEFENDANTS) are each persons
28

1 doing business within the meaning of California Health & Safety Code §25249.11.

2 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
3 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
4 the State of California.

5 17. Defendants DOES 101-150 (RETAIL DEFENDANTS) are each persons doing
6 business within the meaning of California Health & Safety Code §25249.11.

7 18. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
8 of California.

9 19. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
10 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code
11 of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of
12 the fictitiously named defendants is responsible for the acts and occurrences herein alleged. When
13 ascertained, their true names shall be reflected in an amended complaint.

14 20. CREATIVE LABS, MANUFACTURER DEFENDANTS, DISTRIBUTOR
15 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to
16 hereinafter as "DEFENDANTS."

17 VENUE AND JURISDICTION

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

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

27 23. The California Superior Court has jurisdiction over DEFENDANTS based on
28

1 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
2 association that either are citizens of the State of California, have sufficient minimum contacts in
3 the State of California, or otherwise purposefully avail themselves of the California market.
4 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
5 courts consistent with traditional notions of fair play and substantial justice.

6
7 **FIRST CAUSE OF ACTION**

8 **(Violation of Proposition 65)**

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

11 25. The citizens of the State of California have expressly stated in the Safe Drinking
12 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.5, *et seq.*
13 (Proposition 65) that they must be informed "about exposures to chemicals that cause cancer, birth
14 defects and other reproductive harm." (*Cal. Health & Safety Code §25249.6.*)

15 26. Proposition 65 states, "No person in the course of doing business shall knowingly
16 and intentionally expose any individual to a chemical known to the state to cause cancer or
17 reproductive toxicity without first giving clear and reasonable warning to such individual...." (*Id.*)

18 27. On October 19, 2007, a sixty-day notice of violation, together with the requisite
19 certificate of merit, was provided to CREATIVE LABS and various public enforcement agencies
20 stating that as a result of CREATIVE LAB's sale of PRODUCTS, purchasers and users in the State
21 of California were being exposed to the LISTED CHEMICAL resulting from the reasonably
22 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been
23 provided with a "clear and reasonable warning" regarding such toxic exposures.

24 28. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
25 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and
26 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
27 violation of California Health & Safety Code §25249.6 has continued to occur beyond CREATIVE
28

1 LABS's receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and believes
2 that such violations will continue to occur into the future.

3 29. After receipt of the claims asserted in the sixty-day notice of violation, the
4 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause
5 of action against CREATIVE LABS under Proposition 65.

6 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
7 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
8 limits.

9 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
10 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
11 CHEMICAL.

12 32. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as to
13 expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or
14 inhalation during the reasonably foreseeable use of the PRODUCTS.

15 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
16 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
17 by 22 CCR §12601(b).

18 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
19 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact,
20 ingestion, and/or inhalation.

21 35. DEFENDANTS, and each of them, intended that such exposures to the LISTED
22 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their
23 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or use
24 of PRODUCTS to individuals in the State of California.

25 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
26 consumers; sole proprietors, employees, and other persons engaged in the small business field of
27 computer service and repair whom the Occupational Safety Health Act (OSH ACT) does not
28

1 cover; and/or other individuals in the State of California who were or who could become exposed
2 to the LISTED CHEMICAL through dermal contact, ingestion, and/or inhalation during the
3 reasonably foreseeable use of the PRODUCTS.

4 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
5 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
6 contact, ingestion, and/or inhalation resulting from the reasonably foreseeable use of the
7 PRODUCTS, sold by DEFENDANTS without "clear and reasonable warning," have suffered, and
8 continue to suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy
9 at law.

10 38. As a consequence of the above-described acts, DEFENDANTS, and each of them,
11 are liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California
12 Health & Safety Code §25249.7(b).

13 39. As a consequence of the above-described acts, California Health & Safety Code
14 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against
15 DEFENDANTS.

16 40. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
17 set forth hereinafter.

18 **PRAYER FOR RELIEF**

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

20 1. That the Court, pursuant to California Health & Safety Code §25249.7(b), assess
21 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each
22 violation alleged herein;

23 2. That the Court, pursuant to California Health & Safety Code §25249.7(a),
24 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
25 distributing or offering the PRODUCTS for sale or use in California, without providing "clear and
26 reasonable warnings" as defined by 22 CCR §12601, as to the harms associated with exposures to
27 the LISTED CHEMICAL;
28

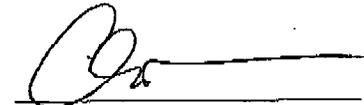
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: January 14, 2008

Respectfully Submitted,

HIRST & CHANLER LLP



Christopher M. Martin
Attorneys for Plaintiff
JAMIE TE'O