

ENDORSED  
FILED  
San Francisco County Superior Court

AUG 25 2015

CLERK OF THE COURT

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11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SAN FRANCISCO  
14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 SHAGHAL LTD; FRY'S ELECTRONICS,  
19 INC. and DOES 1 - 150, inclusive,

20 Defendants.

Case No. CGC-15-547580

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 JOHN MOORE in  
3 the public interest of the citizens of the State of California to enforce the People’s right to be  
4 informed of the health hazards caused by exposures to di(2-ethylhexyl)phthalate (“DEHP”), a  
5 toxic chemical found in the vinyl/PVC cords or headphones sold by defendants in California.

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

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

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

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

26 6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
27 hazard warnings in California, headphones with vinyl/PVC cords that contain DEHP including,  
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1 but not limited to, the cord components of the headphones offered in connection with the  
2 “Ematic E6 Jr. MP3 Player, Model No. EM654VID, UPC No. 8 17707 01127 3.” All such  
3 headphones with vinyl/PVC cords containing DEHP are referred to collectively hereinafter as  
4 “PRODUCTS.”

5 7. Defendants’ failure to warn consumers in the State of California of the health  
6 hazards associated with exposures to DEHP in conjunction with defendants’ sales of the  
7 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to  
8 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code  
9 § 25249.7(a) & (b)(1).

10 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and  
11 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with  
12 the required warning regarding the health hazards associated with exposures to DEHP. Health  
13 & Safety Code § 25249.7(a).

14 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil  
15 penalties against defendants for their violations of Proposition 65.

16 **PARTIES**

17 10. Plaintiff JOHN MOORE is a citizen of the State of California who is dedicated to  
18 protecting the health of California citizens through the elimination or reduction of toxic  
19 exposures from consumer products; and he brings this action in the public interest pursuant to  
20 Health and Safety Code section 25249.7(d).

21 11. Defendant SHAGHAL LTD (“SHAGHAL”) is a person in the course of doing  
22 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

23 12. SHAGHAL manufactures, imports, distributes, sells, and/or offers the  
24 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
25 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
26 State of California.

1           13. Defendant FRY’S ELECTRONICS, INC. (“FRY’S”) is a person in the course of  
2 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

3           14. FRY’S manufactures, imports, distributes, sells, and/or offers the PRODUCTS for  
4 sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
5 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

6           15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
7 person in the course of doing business within the meaning of Health and Safety Code sections  
8 25249.6 and 25249.11.

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

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

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

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

24           20. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to  
25 individuals in the State of California.

26           21. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
27 unknown to Plaintiffs, who, therefore, sue said defendants by their fictitious names pursuant to  
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1 Code of Civil Procedure section 474. Plaintiffs are informed and believe, and on that basis  
2 allege, that each of the fictitiously named defendants is responsible for the acts and occurrences  
3 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

4 22. SHAGHAL, FRY'S, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
5 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be  
6 referred to collectively as the "DEFENDANTS."

7 **VENUE AND JURISDICTION**

8 23. Venue is proper in the Superior Court for the County of San Francisco, pursuant  
9 to Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of  
10 competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because  
11 one or more instances of wrongful conduct occurred, and continue to occur, in this county,  
12 and/or because DEFENDANTS conducted, and continue to conduct, business in San Francisco  
13 with respect to the PRODUCTS.

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

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

24 **FIRST CAUSE OF ACTION**

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

26 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
27 Paragraphs 1 through 25, inclusive.  
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1           27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
2 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be  
3 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
4 harm.”

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

9           29. On February 27, 2015, plaintiff served a sixty-day notice of violation, together  
10 with the accompanying certificate of merit, on NEW ENTERPRISE, WAPC, the California  
11 Attorney General’s Office, and the requisite public enforcement agencies alleging that, as a  
12 result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are  
13 being exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS,  
14 without the consumers first receiving a “clear and reasonable warning” regarding the harms  
15 associated with exposures to DEHP, as required by Proposition 65.

16           30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
17 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’  
18 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation. As  
19 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined  
20 will continue in the future.

21           31. After receiving plaintiff’s sixty-day notice of violation, no public enforcement  
22 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS  
23 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of  
24 violation.

25           32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
26 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
27 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
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1 consumers in California are not exempt from the “clear and reasonable” warning requirements  
2 of Proposition 65, yet DEFENDANTS provide no warning.

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

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

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

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

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

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

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

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

