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ENDORSED FILED
SAN MATEO COUNTY

AUG 05 2016

Clerk of the Superior Court
By JORDAN MAXWELL
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO
UNLIMITED CIVIL JURISDICTION

16 CIV 00791

LAURENCE VINO CUR,

Plaintiff,

v.

FLIR SYSTEMS, INC.; EXTECH
INSTRUMENTS CORPORATION; and
DOES 1-150, inclusive,

Defendants.

Case No. _____
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

By Fax

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff LAURENCE
3 VINOCUR in the public interest of the citizens of the State of California to enforce the People’s
4 right to be informed of the health hazards caused by exposures to the following toxic chemical
5 di(2-ethylhexyl)phthalate (“DEHP”) found in and on multimeters with vinyl/PVC components
6 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 multimeters with vinyl/PVC components sold by
11 defendants in California. Individuals not covered by California’s Occupational Safety Health
12 Act, Labor Code section 6300 et seq., who purchase, use or handle defendants’ products, are
13 referred to hereinafter as “consumers.”

14 3. Detectable levels of DEHP are found in and on multimeters with vinyl/PVC
15 components 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. On October 24, 2003, California identified and listed DEHP pursuant to
23 Proposition 65, as a chemical known to cause birth defects or other reproductive harm. DEHP
24 became subject to the “clear and reasonable warning” requirements of the act one year later on
25 October 24, 2004. Cal. Code Regs. tit. 27 § 27001(c); Health & Safety Code §§ 25249.8 &
26 25249.10(b).

1 13. Defendant EXTECH INSTRUMENTS CORPORATION (“EXTECH”) is a
2 person in the course of doing business within the meaning of Health and Safety Code sections
3 25249.6 and 25249.11.

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

7 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
8 person in the course of doing business within the meaning of Health and Safety Code sections
9 25249.6 and 25249.11.

10 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
11 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
12 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
13 California.

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

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

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

23 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
24 State of California.

25 21. At this time, the true names of defendants DOES 1 through 150, inclusive, are
26 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
27 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
28

1 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
2 alleged herein. When ascertained, their true names shall be reflected in an amended Complaint.

3 22. FLIR, EXTECH, MANUFACTURER DEFENDANTS, DISTRIBUTOR
4 DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively referred to as
5 “DEFENDANTS.”

6 **VENUE AND JURISDICTION**

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

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

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

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 declare 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 April 27, 2016, plaintiff served a sixty-day notice of violation, together with
10 the accompanying certificate of merit on FLIR, EXTECH, the California Attorney General’s
11 Office, and the requisite public enforcement agencies alleging that, as a result of
12 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being
13 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without
14 the consumers first receiving a “clear and reasonable warning” regarding the harms associated
15 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 its receipt of plaintiff’s sixty-day notice of violation. As such,
19 DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined will
20 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,
26 and/or 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. DEFENDANTS’ violations of
3 Proposition 65, resulting from their failure to provide warnings to consumers exposed to DEHP
4 and TDCPP from the PRODUCTS have continued since as far back as April 27, 2013.

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

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

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

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

14 37. DEFENDANTS intend that consumers and other individuals in California will be
15 exposed to DEHP from the reasonably foreseeable use of the PRODUCTS by their deliberate,
16 non-accidental participation in the manufacture, importation, distribution, sale, and offering of
17 the PRODUCTS for sale or use to consumers in California.

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

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