Ш		
	Daniel N. Greenbaum, Esq. (SBN 268104) LAW OFFICE OF DANIEL N. GREENBAUM The Hathaway Building	CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles
	7120 Hayvenhurst Ave., Suite 320 Van Nuys CA 91406	JUN 0 9 2017
	Telephone: (818) 809-2199	Sharri R. wayner, Engruinge Utilicar/Clo
	Facsimile: (424) 243-7689 Email: dgreenbaum@greenbaumlawfirm.com	By: <u>Moses Soto</u> , Bepu
	Attorney for Shefa LMV, INC.	MAG OLD OF
		HE STATE OF CALIFORNIA
		LOS ANGELES
	SHEFA LMV, INC.,	Unlimited Jurisdiction
	Plaintiff,	
	VS.	BC 6 6 4 5 2 6
	FRY'S ELECTRONICS, INC.; and DOES 1 through 100, Inclusive,)) COMPLAINT FOR CIVIL PENALTY AND) INJUNCTIVE RELIEF
	Defendants.)
	Defendants.) (Health & Safety Code § 25249.5 et seq.)
) TOXIC TORT/ENVIRONMENTAL
		By Fax

1 2 3

4

5

6

Plaintiff, Shefa LMV, INC., hereby alleges:

I. PRELIMINARY STATEMENT

1. This complaint seeks to remedy the failure of Defendants to warn persons of exposure to Diisononyl Phthalate ("DINP") a chemical known to the State of California to cause cancer.

2. Moreover, this complaint seeks to remedy the failure of Defendants to warn persons of exposure to Di[2-Ethylhexyl] Phthalate ("DEHP"), a chemical known to the State of California to cause cancer and/or reproductive harm.

3. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6 ("Proposition 65") businesses must provide persons with a "clear and reasonable warning" before exposing individuals to chemicals known to the State of California to cause cancer or reproductive harm.

II. PARTIES

4. Plaintiff is a non-profit public benefit corporation formed pursuant to the laws of the State of California, made up of California citizens, represented by and through its counsel of record, the Law Office of Daniel N. Greenbaum.

5. Health & Safety Code § 25249.7(d) provides that actions to enforce Proposition 65 may be brought by "any person in the public interest."

18 6. Defendant FRY'S ELECTRONICS, INC. ("FRY'S") is a business entity with ten or 19 more employees that sells, or has, at times relevant to this complaint, authorized the manufacture. distribution, or sale of the plastic computer cables, power cables, and USB adaptors, including but not limited to the products listed in the chart below (hereinafter the "PRODUCTS"), which contain 22 DEHP or DINP for sale within the State of California without first giving clear and reasonable 23 warning.

PRODUCTS **Product Type Product Name / Identifier** Phthalate 3" USB 2.0 A to Micro-B White Computer cable DEHP UPC: 715860025024 6' PS/2 Extension Cable; Computer cable DEHP UPC: 715860004166 COMPLAINT FOR CIVIL PENALTY AND INJUNCTIVE RELIEF

11

12

13

14

15

16

17

20

21

24

25

26

27

28

Computer cable	SATA—136EO Serial Cable; UPC: UPC0837281102976	DINP
Computer cable	USB 2.0 Male to Male Cable, 10 ft.; UPC: 833250003404	DINP
Computer Cable	PTC Premium Gold S-Video Cable; UPC: 638544645106	DINP
Power Cable	4 Pin to 8 Pin Power Adaptor; UPC: 854190002579	DINP
Computer Cable	Shaxon High Speed HDMI Cable; UPC: 813020013093	DINP
USB Adaptor	USB Barrel Jack Adapter, Part # LS- 00011; UPC: 899262000022	DINP

7. The identities of DOES 1 through 100 are unknown to Plaintiff at this time; however,
Plaintiff suspects they are business entities with at least ten or more employees that have sold,
authorized the distribution, or sale of plastic computer cables, power cables, and USB adaptors,
including but not limited to the PRODUCTS, which contain DEHP and/or DINP for sale within the
State of California without first giving clear and reasonable warning.

8. Defendants (hereinafter and collectively known as the "Defendants") named in
paragraphs 5 and 6 have, at all times relevant hereto, authorized the manufacture, distribution, or sale
of plastic computer cables, power cables, and USB adaptors, including but not limited to the
PRODUCTS, which contain DEHP and/or DINP within the State of California without first giving
clear and reasonable warning.

III. JURISDICTION AND VENUE

20 9. This Court has jurisdiction pursuant to California Constitution Article VI, section 10,
21 because this case is a cause not given by statute to other trial courts.

10. This Court has jurisdiction over Defendants, because they are business entities that do
sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail
themselves of the California market, through the sale, marketing, and use of its products in
California, to render the exercise of jurisdiction over it by the California courts consistent with
traditional notions of fair play and substantial justice.

1					
	11. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles				
2	County because Defendant's products are sold and consumed in this county.				
3	IV. STATUTORY BACKGROUND				
4	A. Proposition 65				
5	12. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute				
6	passed as "Proposition 65" by a vote of the people in November of 1986.				
7	13. The warning requirement of Proposition 65 is contained in Health & Safety Code §				
8	25249.6, which provides:				
9	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				
10	reproductive toxicity without first giving clear and reasonable warning to				
11	such individual, except as provided in Section 25249.10.				
12	14. An exposure to a chemical in a consumer product is one "which results from a				
13	person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a				
14	consumer good, or any exposure that results from receiving a consumer service." (27 CCR 25602(b))				
15	15. Proposition 65 establishes a procedure by which the State develops a list of chemicals				
16	"known to the State to cause cancer or reproductive toxicity." (Health & Safety Code § 25249.8.)				
17	16. No warning need be given concerning a listed chemical until twelve (12) months after				
18	the chemical first appears on the list. (Health & Safety Code § 25249.10(b).)				
19	17. Any person "violating or threatening to violate" the statute may be enjoined in any				
20	court of competent jurisdiction. (Health & Safety Code, § 25249.7.)				
21	18. To "threaten to violate" is defined to mean "to create a condition in which there is a				
22	substantial probability that a violation will occur." (Health & Safety Code § 25249.11(e).)				
23	19. In addition, violators are liable for civil penalties of up to \$2,500 per day for each				
24	violation, which are recoverable in a civil action. (Health & Safety Code § 25249.7 (b).)				
25	20. Actions to enforce the law "may be brought by the Attorney General in the name of				
26	the People of the State of California [or] by any district attorney [or] by any City Attorney of a City				
27	having a population in excess of 750,000" (Health & Safety Code § 25249.7(c).)				
28	A				
	COMPLAINT FOR CIVIL PENALTY AND INJUNCTIVE RELIEF				

Π

1	21.	Private parties are given authority to enforce Proposition 65 "in the public interest,"		
2	but only if the	ne private party first provides written notice of a violation to the alleged violator, the		
3	Attorney General, and every District Attorney in whose jurisdiction the alleged violation occurs.			
4	22.	If no public prosecutors commence enforcement within sixty (60) days, then the		
5	private party may sue. (Health & Safety Code § 25249.7(d).)			
6	23.	No such governmental action has been pursued against Defendants.		
7		V. FACTS		
8	24.	Di[2-Ethylhexyl] Phthalate ("DEHP") was placed on the Governor's list of chemicals		
9	known to the	State to cause cancer on January 1, 1988. (27 CCR 27001(b))		
10	25.	Di[2-Ethylhexyl] Phthalate ("DEHP") was placed on the Governor's list of chemicals		
11	known to the	State to cause reproductive toxicity on October 24, 2003. (27 CCR 27001(b))		
12	26.	Diisononyl Phthalate ("DINP") was placed in the Governor's list of chemicals known		
13	to the State of California to cause cancer on December 20, 2013. (27 CCR 27001(b))			
14	27.	DEHP and DINP are hereinafter referred to as the "LISTED CHEMICALS".		
15	28.	Defendants are the manufacturer and marketer of the PRODUCTS for use by		
16	individuals in the home and in other occupational endeavors.			
17	29.	The PRODUCTS are sold through various retailers located in California for use by		
18	citizens of the	e State of California.		
19	30.	Individuals who purchase, handle, or use the PRODUCTS are exposed to the LISTED		
20	CHEMICAL	S chiefly through:		
21		a. contact between the item and the skin;		
22		b. transfer of the LISTED CHEMICALS from the skin to the mouth, both by		
23	transf	er of the LISTED CHEMICALS directly from the hand to mouth and by transfer of the		
24	LISTI	ED CHEMICALS from the skin to objects that are put in the mouth, such as food, and		
25		c. through absorption of the LISTED CHEMICALS through the skin.		
26	31.	Such individuals are thereby exposed to the LISTED CHEMICALS present on or in		
27	the PRODUCTS in the course of the intended and reasonably foreseeable use of the PRODUCTS.			
28		5		
		COMPLAINT FOR CIVIL PENALTY AND INJUNCTIVE RELIEF		

32. At all times material to this complaint, Defendants knew the PRODUCTS contain the LISTED CHEMICALS and that an individual's skin may contact the LISTED CHEMICALS through the intended and reasonably foreseeable use of the PRODUCTS.

1

2

3

4

5

6

7

8

9

17

18

19

20

21

22

23

33. At all times material to this complaint, Defendants knew individuals within the State of California handle the PRODUCTS, which contain the LISTED CHEMICALS.

34 At all times material to this complaint, Defendants knew the PRODUCTS were sold throughout the State of California, and Defendants profited from such sales.

35. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized the sale of the PRODUCTS, thereby exposing consumers to the LISTED CHEMICALS.

10 36. At all times material to this complaint, Defendants have knowingly and intentionally 11 exposed individuals within the State of California to the LISTED CHEMICALS.

12 37. The exposure is "knowing and intentional" because it is the result of the Defendants' 13 deliberate act of authorizing the sale of the PRODUCTS known to contain the LISTED 14 CHEMICALS, in a manner whereby these PRODUCTS were, and would inevitably be, sold to 15 consumers within the state of California, and with the knowledge that the intended use of this 16 PRODUCTS would result in exposures to the LISTED CHEMICALS by individuals within the State of California.

38. Defendants have failed to provide clear and reasonable warnings that the use of the PRODUCTS in question in California results in exposure to a chemical known to the State of California to cause cancer in the case of DINP, and to cause cancer, birth defects, and/or other reproductive harm in the case of DEHP

Defendants failed to provide any such warning(s) to those individuals who use their 39 PRODUCTS.

24 **VI. FIRST CAUSE OF ACTION** 25 (Against All Defendants for Violation of Proposition 65) 26 40. Paragraphs 1 through 39 are re-alleged as if fully set forth herein. 27 28 6 COMPLAINT FOR CIVIL PENALTY AND INJUNCTIVE RELIEF

1				
1	41. By committing the acts alleged above, Defendants have, in the course of doing			
2	business, knowingly and intentionally exposed individuals in California to chemicals known to the			
3	State of California to cause cancer in the case of DINP, and cancer and/or birth defects, and other			
4	reproductive harm in the case of DEHP, without first giving clear and reasonable warning to such			
5	individuals, within the meaning of Health & Safety Code § 25249.6.			
6	42. Said violations render Defendants liable to Plaintiffs for civil penalties not to exceed			
7	\$2,500 per day for each violation, as well as other remedies.			
8				
9	PRAYER FOR RELIEF			
10	WHEREFORE, Plaintiffs pray that the Court:			
11	1. Pursuant to the First Causes of Action, grant civil penalties according to proof;			
12	2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders,			
13				
14				
15	products without providing clear and reasonable warnings, as Plaintiffs shall specify in further			
16				
17	3. Award Plaintiffs their costs of suit;			
18	 4. Grant such other and further relief as the court deems just and proper. 			
19	4. Orant such other and further fener as the court deems just and proper.			
20	Respectfully submitted,			
21				
22	DATED: June 7, 2017			
23	LAW OFFICE OF DANIEL N. GREENBAUM			
24				
25	Jun On			
26	By: DANIEL N. GREENBAUM			
27	Attorneys for Plaintiff Shefa LMV, INC.			
28				
	7 COMPLAINT FOR CIVIL PENALTY AND INJUNCTIVE RELIEF			