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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT  
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Deputy

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

11 HECTOR VELARDE,

12 Plaintiff,

13 vs.

14 SHENZHEN DNS INDUSTRIES CO.,  
15 LTD.,

16 Defendant.

CASE NO.: *RLG*

17854435

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

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

BY FAX

16 Plaintiff Hector Velarde ("Plaintiff"), by and through his attorneys, alleges the following  
17 cause of action in the public interest of the citizens of the State of California.

18 **BACKGROUND OF THE CASE**

19 1. Plaintiff brings this representative action on behalf of all California citizens to  
20 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified  
21 at the Health and Safety Code § 25249.5 *et seq* ("Proposition 65"), which reads, in relevant part,  
22 "[n]o person in the course of doing business shall knowingly and intentionally expose any  
23 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
24 giving clear and reasonable warning to such individual ..." Health & Safety Code § 25249.6.

25 2. This complaint is a representative action brought by Plaintiff in the public interest  
26 of the citizens of the State of California to enforce the People's right to be informed of the health  
27 hazards caused by exposures to Diisononyl phthalate ("DINP"), a toxic chemical found in  
28

1 charging cables, sold, and/or distributed by defendant Shenzhen DNS Industries Co., Ltd.  
2 (“Shenzhen” or “Defendant”) in California.

3 3. DINP is a harmful chemical, known to cause cancer. DINP has been listed on the  
4 Proposition 65 list of chemicals since December 20, 2013 and it has come under the purview of  
5 Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety  
6 Code §§ 25249.8 & 25249.10(b).

7 4. Proposition 65 requires all businesses with ten (10) or more employees that  
8 operate within California or sell products therein to comply with Proposition 65 regulations.  
9 Included in such regulations is the requirement that businesses must label any product containing  
10 a Proposition 65-listed chemical with a “clear and reasonable” warning before knowingly or  
11 intentionally exposing any person to it.

12 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
13 to be imposed upon defendants in a civil action for violations of Proposition 65. *Health & Safety*  
14 *Code* § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin  
15 the actions of a defendant which “violate or threaten to violate” the statute. *Health & Safety*  
16 *Code* § 25249.7.

17 6. Plaintiff alleges that Defendant distributes, manufactures, produces, imports, sells,  
18 and/or offers for sale, without the required warning, charging cables in California containing  
19 DINP. These products include, but are not limited to, the CE TECH Charging Cables, UPC No.  
20 887429000299, SKU No. 1000001705, Model No. SMDP50NH0016 (the “Product”).

21 7. Defendant’s failure to warn consumers, and other individuals in California of the  
22 health hazards associated with exposure to DINP in conjunction with the sale, manufacture,  
23 and/or distribution of the Product is a violation of Proposition 65 and subjects Defendant to the  
24 enjoinder and civil penalties described herein.

25 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition  
26 65 in accordance with Health and Safety Code § 25249.7(b).

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
28 Defendant to provide purchasers or users of the Product with the required warnings related to the

1 dangers and health hazards associated with exposure to DINP pursuant to Health and Safety  
2 Code § 25249.7(a).

3 **PARTIES**

4 10. Plaintiff is a citizen of the State of California acting in the interest of the general  
5 public to promote awareness of exposures to toxic chemicals in products sold in California and  
6 to improve human health by reducing hazardous substances contained in such items. He brings  
7 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

8 11. Defendant Shenzhen effectively manufactures, imports, distributes, sells, and/or  
9 offers the Product for sale or use in California, or it implies by its conduct that it manufactures,  
10 imports, distributes, sells, and/or offers the Product for sale or use in the State of California.

11 12. Shenzhen can be served at c/o Steve Yudin, The Woolworth Building, 233  
12 Broadway, Suite 2200, New York, NY 10279.

13 13. Upon information and belief, at all relevant times hereto, defendant Shenzhen was  
14 a person in the course of doing business within the meaning of Health & Safety Code sections  
15 25249.6 and 25249.11.

16 **VENUE AND JURISDICTION**

17 14. Venue is proper in the County of Alameda, because one or more of the instances  
18 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant  
19 conducted, and continues to conduct, business in the County of Alameda with respect to the  
20 Product.

21 15. This Court has jurisdiction over this action pursuant to California Constitution  
22 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
23 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the  
24 enforcement of violations of Proposition 65 in any Court of competent jurisdiction, therefore,  
25 this Court has jurisdiction over this lawsuit.

26 16. This Court has jurisdiction over Defendant as Defendant either is a citizen of the  
27 State of California, has sufficient minimum contacts with the State of California, is registered  
28 with the California Secretary of State as foreign corporations authorized to do business in the

1 State of California, and/or have otherwise purposefully availed themselves of the California  
2 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts  
3 consistent and permissible with traditional notions of fair play and substantial justice.

4 **SATISFACTION OF NOTICE REQUIREMENTS**

5 17. On January 4, 2017, Plaintiff gave notice of alleged violation of Health and Safety  
6 Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens to  
7 DINP contained in the Product without proper warning, subject to a private action to Defendant  
8 and to the California Attorney General's office and the offices of the County District attorneys  
9 and City Attorneys for each city with a population greater than 750,000 persons wherein the  
10 herein violations allegedly occurred.

11 18. The Notice complied with all procedural requirements of Proposition 65 including  
12 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at  
13 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
14 DINP exposure, and that counsel believed there was meritorious and reasonable cause for a  
15 private action.

16 19. After receiving the Notice, and to Plaintiff's best information and belief, none of  
17 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted  
18 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which  
19 are the subject of Plaintiff's notice of violation.

20 20. Plaintiff is commencing this action more than sixty (60) days from the date of his  
21 amended notice to Defendant, as required by law.

22 **FIRST CAUSE OF ACTION**

23 **(By Plaintiff against all Defendant for the Violation of Proposition 65)**

24 21. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 20 of  
25 this complaint as though fully set forth herein.

26 22. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,  
27 and/or retailer of the Product.

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1           23.     The Product contains DINP, a hazardous chemical found on the Proposition 65  
2 list of a chemical known to be hazardous to human health.

3           24.     The Product does not comply with the Proposition 65 warning requirements.

4           25.     Plaintiff, based on his best information and belief, avers that at all relevant times  
5 hereto, and at least since June 28, 2015 continuing until the present, that Defendant has  
6 continued to knowingly and intentionally expose California users and consumers of the Product  
7 to DINP without providing required warnings under Proposition 65.

8           26.     The exposures that are the subject of this Complaint result from the purchase,  
9 acquisition, handling and recommended use of the Product. Consequently, the primary route of  
10 exposure to these chemicals is through dermal absorption through direct skin contact with the  
11 cord during routine use when the cord is manipulated with bare hands. The product can be  
12 expected to emit gas-phase DINP into the air over the lifetime of the product. This gas-phase  
13 DINP can potentially be inhaled or can be absorbed to dust that can be resuspended and  
14 potentially ingested. Finally, while mouthing of the product does not seem likely, some amount  
15 of exposure through ingestion can occur by touching the product with subsequent touching of the  
16 users hand to mouth.

17           27.     Plaintiff, based on his best information and belief, avers that such exposures will  
18 continue every day until clear and reasonable warnings are provided to Product purchasers and  
19 users or until this known toxic chemical is removed from the product.

20           28.     Defendant has knowledge that the normal and reasonably foreseeable use of the  
21 Product exposes individuals to DINP, and Defendant intends that exposures to DINP will occur  
22 by their deliberate, non-accidental participation in the manufacture, importation, distribution,  
23 sale and offering of the Product to consumers in California

24           29.     Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
25 Complaint without success.

26           30.     Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above  
27 described acts, Defendant are liable for a maximum civil penalty of \$2,500 per day per violation.

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