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JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MARIN

11 UNLIMITED CIVIL JURISDICTION

13 PETER ENGLANDER,

14 Plaintiff,

15 v.

16 VICMARR AUDIO INC.; FRY'S
17 ELECTRONICS, INC.; and DOES 1 – 150,
18 inclusive,

19 Defendants.

Case No. CW 1703888

**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 PETER
3 ENGLANDER in the public interest of the citizens of the State of California to enforce the
4 People’s right to be informed of the health hazards caused by exposures to di(2-ethylhexyl)
5 phthalate (“DEHP”), a toxic chemical found in and on the vinyl/PVC cables sold by Defendants
6 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 vinyl/PVC cables manufactured, distributed, and
11 offered for sale or use throughout the State of California. Individuals not covered by
12 California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase,
13 use or handle Defendants’ products, are referred to hereinafter as “consumers.”

14 3. Detectable levels of DEHP are found in and on the vinyl/PVC cables that
15 Defendants manufacture, distribute, and offer for sale to consumers throughout the State of
16 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. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
23 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became
24 subject to the “clear and reasonable warning” requirements of the act one year later on October
25 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
26 25249.10(b).

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 Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
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1 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
2 alleges, 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. VICMARR, 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 Marin pursuant to Code
9 of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent
10 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more
11 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because
12 DEFENDANTS conducted, and continue to conduct, business in Marin with respect to the
13 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 May 31, 2017, Plaintiff served a sixty-day notice of violation, together with
10 the accompanying certificate of merit, on VICMARR, FRY’S, the California Attorney
11 General’s 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 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.

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