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Attorneys for Plaintiff,  
Consumer Protection Group, LLC

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

CONSUMER PROTECTION GROUP, LLC,  
in the public interest,

Plaintiff,

v.

SHAXON INDUSTRIES, INC., a California  
Corporation and FRY'S ELECTRONICS,  
INC., a California Corporation.

Defendants.

CASE NO. 19STCV30306

**PLAINTIFF CONSUMER  
PROTECTION GROUP, LLC'S  
COMPLAINT FOR PENALTY AND  
INJUNCTION**

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code*, §  
25249.5, *et seq.*)

UNLIMITED CIVIL  
(Demand exceeds \$25,000)

Plaintiff CONSUMER PROTECTION GROUP, LLC alleges a cause of action against  
Defendants SHAXON INDUSTRIES, INC. and FRY'S ELECTRONICS, INC.  
("DEFENDANT or collectively DEFENDANTS").

**THE PARTIES**

1. Plaintiff, CONSUMER PROTECTION GROUP LLC ("Plaintiff" or "CPG"), is  
an organization qualified to do business in the State of California. CPG is a person within the



1 in California, have sufficient minimum contacts with California, or otherwise intentionally avail  
2 themselves of the markets within California through their manufacture, distribution, promotion,  
3 marketing, or sale of their products within California to render the exercise of jurisdiction by  
4 the California courts permissible under traditional notions of fair play and substantial justice.

5 9. Venue is proper in the County of Los Angeles because one or more of the  
6 instances of wrongful conduct occurred, and continues to occur, in the County of Los Angeles  
7 and/or because Defendants conducted, and continues to conduct, business in the County of Los  
8 Angeles with respect to the consumer product that is the subject of this action.

9 **BACKGROUND AND PRELIMINARY FACTS**

10 10. In 1986, California voters approved an initiative to address growing concerns  
11 about exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
12 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp., Proposed  
13 Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking Water and Toxic  
14 Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5, *et seq.*  
15 (“Proposition 65”), helps to protect California’s drinking water sources from contamination, to  
16 allow consumers to make informed choices about the products they buy, and to enable persons  
17 to protect themselves from toxic chemicals as they see fit.

18 11. Proposition 65 requires the Governor of California to publish a list of chemicals  
19 known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*  
20 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
21 chemicals and chemical families. Proposition 65 imposes warning requirements and other  
22 controls that apply to Proposition 65-listed chemicals.

23 12. All businesses with ten (10) or more employees that operate or sell products in  
24 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)  
25 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
26 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and reasonable”  
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1 warnings before exposing a person, knowingly and intentionally, to a Proposition 65-listed  
2 chemical (*Health & Safety Code* § 25249.6).

3 13. Proposition 65 provides that any person "violating or threatening to violate" the  
4 statute may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
5 25249.7. "Threaten to violate" means "to create a condition in which there is a substantial  
6 probability that a violation will occur." *Health & Safety Code* § 25249.11(e). Defendants are  
7 also liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil  
8 action. *Health & Safety Code* § 25249.7(b).

9 14. On January 1, 1988, the Governor of California added Di(2-ethylhexyl)  
10 phthalate ("DEHP") to the list of chemicals known to the state to cause cancer. Thereafter, on  
11 October 24, 2003, the Governor of California added DEHP to the list of chemicals known to  
12 the state to cause developmental toxicity and male reproductive toxicity.

13 15. On December 20, 2013, the Governor of California added Diisononyl Phthalate  
14 ("DINP") to the list of chemicals known to the state to cause cancer.

15 16. Plaintiff identified certain practices of manufacturers and distributors of  
16 products bearing DINP and DEHP, exposing, knowingly, and intentionally, persons in  
17 California to said Proposition 65-listed chemical without first providing clear and reasonable  
18 warnings to the exposed persons prior to the time of exposure. Plaintiff later learned that  
19 Defendants have engaged in such practice.

20 **SATISFACTION OF PRIOR NOTICE**

21 17. On or about November 12, 2018 and on or about November 26, 2018 Plaintiff  
22 gave notices of alleged violations of Health and Safety Code section 25249.6, concerning  
23 consumer product exposures, subject to a private action to Shaxon Industries, Inc., Fry's  
24 Electronics, Inc., and to the California Attorney General, County District Attorneys, and City  
25 Attorneys for each County containing a population of at least 750,000 people in whose  
26 jurisdiction the violations allegedly occurred, concerning copper wire solid core ("WIRE")  
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1 containing DINP and Shaxon network cables tester ("TESTER") containing DEHP, collectively  
2 referred to as ("NOTICED PRODUCTS").

3 18. Before sending the notice of alleged violations, Plaintiff investigated the  
4 consumer products involved, the likelihood that such products would cause users to suffer  
5 significant exposures to DINP, DEHP, and the corporate structure of the Defendants.

6 19. Plaintiff's notices of alleged violations included a Certificate of Merit executed  
7 by the attorney for the noticing party, CPG. The Certificate of Merit stated that the attorney for  
8 Plaintiff who executed the certificate had consulted with at least one person with relevant and  
9 appropriate expertise who reviewed data regarding the exposures to DINP and DEHP, the  
10 subject Proposition 65-listed chemicals of this action. Based on that information, the attorney  
11 for Plaintiff who executed the Certificate of Merit believed there was a reasonable and  
12 meritorious case for this private action. The attorney for Plaintiff attached to the Certificate of  
13 Merit served on the Attorney General the confidential factual information sufficient to establish  
14 the basis of the Certificate of Merit.

15 20. Plaintiff's notices of alleged violations also included a Certificate of Service and  
16 a document titled "The Safe Drinking Water & Toxic Enforcement Act of 1986 (Proposition  
17 65) A Summary." *Health & Safety Code* § 25249.7(d).

18 21. Plaintiff is commencing this action more than sixty (60) days from the dates that  
19 Plaintiff gave notices of the alleged violations to Defendants and the public prosecutors  
20 referenced in Paragraphs 16.

21 22. Plaintiff is informed, believes, and thereon alleges that neither the Attorney  
22 General, nor any applicable district attorney or city attorney has commenced and is diligently  
23 prosecuting an action against the Defendants.

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1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER PROTECTION GROUP, LLC against SHAXON INDUSTRIES,  
3 INC. and FRY'S ELECTRONICS, INC., for Violations of Proposition 65, The Safe Drinking  
4 Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

5 **COPPER WIRE SOLID CORE**

6 23. Plaintiff repeats and incorporates by reference paragraphs 1 through 20 of this  
7 complaint as though fully set forth herein. The Defendant is, and at all times mentioned herein  
8 was a manufacturer of the WIRE.

9 24. Plaintiff is informed, believes, and thereon alleges that the WIRE contains  
10 DINP.

11 25. Defendants knew or should have known that DINP has been identified by the  
12 State of California as a chemical known to cause Cancer and therefore was subject to  
13 Proposition 65 warning requirements. Defendants were also informed of the presence of DINP  
14 in the WIRE within Plaintiff's notice of alleged violations further discussed above at  
15 Paragraph 17.

16 26. Plaintiff's allegations regarding the WIRE concerns "[c]onsumer products  
17 exposure[s]," which "is an exposure that results from a person's acquisition, purchase, storage,  
18 consumption, or other reasonably foreseeable use of a consumer good, or any exposure that  
19 results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b). The WIRE is  
20 a consumer product, and, as mentioned herein, exposures to DINP took place as a result of such  
21 normal and foreseeable consumption and use.

22 27. Plaintiff is informed, believes, and thereon alleges that between November 12,  
23 2015 and the present, Defendants knowingly and intentionally exposed California consumers  
24 and users of the WIRE, which Defendants manufactured, distributed, or sold as mentioned  
25 above, to DINP, without first providing any type of clear and reasonable warning of such to the  
26 exposed persons before the time of exposure. Defendants distributed and sold the WIRE in  
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1 California. Defendants knew and intended that California consumers will use and consume the  
2 WIRE, thereby exposing them to DINP. Defendants thereby violated Proposition 65.

3 28. The principal routes of exposure with regard to the WIRE are and were through  
4 dermal contact and ingestion. Persons sustain exposures by handling or otherwise using the  
5 WIRE with bare skin, without wearing gloves, or by touching bare skin or mucous membranes  
6 with the WIRE after handling the WIRE as well as through direct and indirect hand to mouth  
7 contact, hand to food to mouth, direct contact to food then to mouth, hand to mucous membrane,  
8 or breathing in particulate matter dispersed from the WIRE.

9 29. Plaintiff is informed, believes, and thereon alleges that Defendants violations of  
10 Proposition 65 as to the WIRE have been ongoing and continuous to the date of the signing of  
11 this complaint, as Defendants engaged and continue to engage in conduct which violates Health  
12 and Safety Code section 25249.6, including the manufacture, distribution, promotion, and sale  
13 of the WIRE, so that a separate and distinct violation of Proposition 65 occurred each and every  
14 time a person was exposed to DINP by the WIRE as mentioned herein.

15 30. Plaintiff is informed, believes, and thereon alleges that each violation of  
16 Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that  
17 the violations alleged herein will continue to occur into the future.

18 31. Based on the allegations herein, Defendant is liable for civil penalties of up to  
19 \$2,500.00 per day per individual exposure to DINP from the WIRE pursuant to Health and  
20 Safety Code section 25249.7(b).

21 32. In the absence of equitable relief, the general public will continue to be  
22 involuntarily exposed to DINP that is contained in the WIRE, creating a substantial risk of  
23 irreparable harm. Thus, by committing the acts alleged herein, Defendants have caused  
24 irreparable harm for which there is no plain, speedy, or adequate remedy at law.

25 33. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein  
26 prior to filing this Complaint.

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**SECOND CAUSE OF ACTION**

(By CONSUMER PROTECTION GROUP, LLC against SHAXON INDUSTRIES, INC. and FRY'S ELECTRONICS, INC., for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

**SHAXON NETWORK CABLES TESTER**

34. Plaintiff repeats and incorporates by reference paragraphs 1 through 20 of this complaint as though fully set forth herein. The Defendant is, and at all times mentioned herein was a manufacturer of the TESTER.

35. Plaintiff is informed, believes, and thereon alleges that the TESTER contains DEHP.

36. Defendants knew or should have known that DEHP has been identified by the State of California as a chemical known to cause cancer and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of DEHP in the TESTER within Plaintiff's notice of alleged violations further discussed above at Paragraph 17.

37. Plaintiff's allegations regarding the TESTER concerns "[c]onsumer products exposure[s]," which "is an exposure that results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*. The TESTER is a consumer product, and, as mentioned herein, exposures to DEHP took place as a result of such normal and foreseeable consumption and use.

38. Plaintiff is informed, believes, and thereon alleges that between November 26, 2015 and the present, Defendants knowingly and intentionally exposed California consumers and users of the TESTER, which Defendants manufactured, distributed, or sold as mentioned above, to DEHP, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants distributed and sold the TESTER



1 in California. Defendants knew and intended that California consumers will use TESTER,  
2 thereby exposing them to DEHP. Defendants thereby violated Proposition 65.

3 39. The principal routes of exposure with regard to the TESTER are and were  
4 through dermal contact and ingestion. Persons sustain exposures by handling or otherwise  
5 using the TESTER with bare skin, without wearing gloves, or by touching bare skin or mucous  
6 membranes with the TESTER after handling the TESTER as well as through direct and indirect  
7 hand to mouth contact, hand to food to mouth, direct contact to food then to mouth, hand to  
8 mucous membrane, or breathing in particulate matter dispersed from the TESTER.

9 40. Plaintiff is informed, believes, and thereon alleges that Defendants violations of  
10 Proposition 65 as to the TESTER have been ongoing and continuous to the date of the signing  
11 of this complaint, as Defendants engaged and continue to engage in conduct which violates  
12 Health and Safety Code section 25249.6, including the manufacture, distribution, promotion,  
13 and sale of the TESTER, so that a separate and distinct violation of Proposition 65 occurred  
14 each and every time a person was exposed to DEHP by the TESTER as mentioned herein.

15 41. Plaintiff is informed, believes, and thereon alleges that each violation of  
16 Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that  
17 the violations alleged herein will continue to occur into the future.

18 42. Based on the allegations herein, Defendant is liable for civil penalties of up to  
19 \$2,500.00 per day per individual exposure to DEHP from the TESTER pursuant to Health and  
20 Safety Code section 25249.7(b).

21 43. In the absence of equitable relief, the general public will continue to be  
22 involuntarily exposed to DEHP that is contained in the TESTER, creating a substantial risk of  
23 irreparable harm. Thus, by committing the acts alleged herein, Defendants have caused  
24 irreparable harm for which there is no plain, speedy, or adequate remedy at law.

25 44. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein  
26 prior to filing this Complaint.

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**PRAYER FOR RELIEF**

Plaintiff demands against the Defendants as follows:

1. A permanent injunction mandating Proposition 65-compliant warnings for any further sales of the NOTICED PRODUCTS;
2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
3. Costs of suit;
4. Reasonable attorney fees and costs; and
5. Any further relief that the court may deem just and equitable.

Dated: August 26, 2019

**BLACKSTONE LAW, APC**

By:   
Michael Nicholas Jones  
Attorneys for Plaintiff,  
Consumer Protection Group, LLC