

## **60-DAY NOTICE OF VIOLATION**

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

DATE: February 10, 2017

TO: Fry's Electronics, Inc.; and the public prosecutors listed on the service list accompanying the attached proof of service.

FROM: APS&EE, LLC

### **I. INTRODUCTION**

APS&EE is an organization based in the State of California with an interest in protecting the environment, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products. It is providing this Notice to the violators and the public agencies listed above pursuant to California Health & Safety Code §25249.6 et seq. ("Proposition 65"). Please direct all questions concerning this Notice to it through its designated person within the entity, its attorney: Lucas T. Novak, Esq., Law Offices of Lucas T. Novak, 8335 W Sunset Blvd., Suite 217, Los Angeles, CA 90069; Tel: (323) 337-9015; Email: lucas.nvk@gmail.com.

### **II. NATURE OF THE VIOLATION**

- A. Violators: Fry's Electronics, Inc., 600 E. Brokaw Road, San Jose, CA 95112.
- B. Time Period of Exposure: Violations have been occurring since at least February 10, 2014, and continue to occur to this day.
- C. Listed Chemical: Lead.
- D. Types of Harm: Birth defects and other reproductive harm.
- E. Types of Products: The specific type of products causing the violations is the "Rhino" brand of pliers and screwdrivers. A non-exclusive example of the pliers is Rhino AS-47, and the screwdrivers is AS-51, being sold by Violators throughout California. All products within the type covered by this Notice shall be hereinafter referred to as the "products."
- F. Routes of Exposure: Ingestion and dermal contact.
- G. Description of Exposure: The sales of these products in California dating as far back as February 10, 2014 are subject to this notice. As a result of the sales of these products, exposures to the listed chemical have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemical, resulting from contact with the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products. California consumers, including children, through the act of buying, acquiring or using the products, are exposed to the listed

chemical. By way of example but not limitation, exposures occur when California citizens use, display, clean, pack, unpack, arrange, store, or otherwise handle the products. These actions cause consumers to be exposed directly or indirectly through the routine touching of the parts or portions of the products containing readily available surface amounts of the listed chemical. Additionally, exposure can occur through the routine touching and ingesting of other materials that are contaminated with the listed chemical from the products as a result of these tasks. People likely to be exposed include both children and adults.

### III. PROPOSITION 65 INFORMATION

For the Violators' reference, attached is a copy of "Proposition 65: A Summary" which has been prepared by Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at (916) 445-6900.

### IV. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, the noticing party intends to file a Private Enforcer lawsuit against the alleged Violators unless such Violators enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the lead exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code §25249.7(b). If the alleged Violators are interested in resolving this dispute without resorting to expensive and time-consuming litigation, please feel free to contact counsel identified above. It should be noted that a Private Enforcer cannot: (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the Attorney General or any District or City Attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

## **CERTIFICATE OF MERIT**

Health and Safety Code Section 25249.7(d)

I, Lucas Novak, Esq. hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health and Safety Code §25249.6 by failing to provide clear and reasonable warnings;
2. I am the attorney for the noticing party;
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of this action;
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute;
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code §25249.7(h)(2) (i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons).



Dated: February 10, 2017

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Lucas Novak, Esq.

## PROOF OF SERVICE

I, Lucas Novak, Esq., declare under penalty of perjury:

I am an active member of the California State Bar, a citizen of the United States over the age of 18 years, and not a party to the within action; my business address is 8335 W Sunset Blvd., Suite 217, Los Angeles, CA 90069.

On February 10, 2017, I served the following documents:

**60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(d);**

**PROPOSITION 65: A SUMMARY (not sent to the public enforcement agencies);**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS (served only on the Attorney General)**

by placing a true copy thereof enclosed in a sealed envelope with postage for first class mail thereon fully prepaid in Los Angeles, California, in the United States mail addressed as follows, and to the public prosecutors listed in the attached service list:

|                                                                                                       |                                                                                                  |
|-------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| Fry's Electronics, Inc.<br>Attn: Current President or CEO<br>600 E. Brokaw Road<br>San Jose, CA 95112 | Fry's Electronics, Inc.<br>Attn: Kathryn Jean Kolder<br>600 E. Brokaw Road<br>San Jose, CA 95112 |
|-------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|

Additionally, on this date, I uploaded the documents listed above to the California Attorney General via its website:

Office of the California Attorney General  
Proposition 65 Enforcement Reporting  
ATTN: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612-0550  
<http://oag.ca.gov/prop65>

Also on this date, I transmitted via electronic mail the documents listed above to the electronic mail addresses as follows:

|                                                                                                                       |                                                                                                                                    |                                                                                                                                                  |
|-----------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| District Attorney of Contra Costa County<br>900 Ward Street<br>Martinez, CA 94553<br>sgrassini@contracostada.org      | District Attorney of Monterey County<br>PO Box 1131<br>Salinas, CA 93902<br>Prop65DA@co.monterey.ca.us                             | District Attorney of Napa County<br>931 Parkway Mall<br>Napa, CA 94559<br>CEPD@countyofnapa.org                                                  |
| District Attorney of Riverside County<br>3072 Orange Street<br>Riverside, CA 92501<br>Prop65@rivcoda.org              | District Attorney of Santa Clara County<br>70 W Hedding St<br>San Jose, CA 95110<br>epu@da.sccgov.org                              | District Attorney of Sonoma County<br>600 Administration Dr<br>Sonoma, CA 95403<br>jbarnes@sonoma-county.org                                     |
| District Attorney of Tulare County<br>221 S Mooney Blvd<br>Visalia, CA 95370<br>Prop65@co.tulare.ca.us                | District Attorney of Ventura County<br>800 S Victoria Ave<br>Ventura, CA 93009<br>daspecialops@ventura.org                         | District Attorney of Stanislaus County<br>832 12th Street, Ste 300<br>Modesto, CA 95354<br>Prop65@standa.org                                     |
| District Attorney of Yolo County<br>301 Second St.<br>Woodland, CA 95695<br>cfepd@yolocounty.org                      | District Attorney of Lassen County<br>220 S. Lassen Street<br>Susanville, CA 96130<br>mlatimer@co.lassen.ca.us                     | District Attorney of Sacramento County<br>901 G Street<br>Sacramento, CA 95814<br>Prop65@sacda.org                                               |
| District Attorney of San Francisco County<br>732 Brannan Street<br>San Francisco, CA 94103<br>gregory.alker@sfgov.org | District Attorney of San Joaquin County<br>222 E. Weber Avenue, Rm 202<br>Stockton, CA 95202<br>DAConsumer.Environmental@sjcda.org | District Attorney of San Luis Obispo County<br>County Government Center Annex<br>4th Floor<br>San Luis Obispo, CA 93408<br>edobroth@co.slo.ca.us |

The electronic transmissions were reported as sent and without error.

Executed on February 10, 2017, at Los Angeles, California.




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Lucas Novak, Esq

**SERVICE LIST**

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|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| District Attorney of Alameda County<br>1225 Fallon Street, Rm 900<br>Oakland, CA 94612                              | District Attorney of Alpine County<br>270 Laramie St., P.O. Box 248<br>Markleeville, CA 96120               | District Attorney of Amador County<br>708 Court Street, Suite 202<br>Jackson, CA 95642                                    |
| District Attorney of Butte County<br>Administration Building<br>25 County Center Drive<br>Oroville, CA 95965        | District Attorney of Calaveras County<br>891 Mountain Ranch Road<br>San Andreas, CA 95249                   | District Attorney of Colusa County<br>547 Market Street, Ste 102<br>Colusa, CA 95932                                      |
| District Attorney of Del Norte County<br>450 H Street, Ste 171<br>Crescent City, CA 95531                           | District Attorney of El Dorado County<br>515 Main Street<br>Placerville, CA 95667                           | District Attorney of Fresno County<br>2220 Tulare Street, Ste 1000<br>Fresno, CA 93721                                    |
| District Attorney of Glenn County<br>P.O. Box 430<br>Willows, CA 95988                                              | District Attorney of Humboldt County<br>825 5 <sup>th</sup> Street<br>Eureka, CA 95501                      | District Attorney of Imperial County<br>940 W. Main Street, Ste 102<br>El Centro, CA 92243                                |
| District Attorney of Inyo County<br>P.O. Drawer D<br>Independence, CA 93526                                         | District Attorney of Kern County<br>1215 Truxtun Avenue<br>Bakersfield, CA 93301                            | District Attorney of Kings County<br>1400 West Lacey Blvd.<br>Hanford, CA 93230                                           |
| District Attorney of Lake County<br>255 N. Forbes Street<br>Lakeport, CA 95453                                      | District Attorney of Los Angeles County<br>210 W. Temple Street, Ste 18000<br>Los Angeles, CA 90012-3210    | District Attorney of Madera County<br>209 West Yosemite Avenue<br>Madera, CA 93637                                        |
| District Attorney of Marin County<br>3501 Civic Center Drive, Rm. 130<br>San Rafael, CA 94903                       | District Attorney of Mariposa County<br>5101 Jones St., P.O. Box 730<br>Mariposa, CA 95338                  | District Attorney of Mendocino County<br>P.O. Box 1000<br>Ukiah, CA 95482                                                 |
| District Attorney of Merced County<br>2222 "M" Street<br>Merced, CA 95340                                           | District Attorney of Modoc County<br>204 S. Court Street, Rm. 202<br>Alturas, CA 96101-4020                 | District Attorney of Mono County<br>P.O. Box 617<br>Bridgeport, CA 93517                                                  |
| District Attorney of Nevada County<br>201 Commercial Street<br>Nevada City, CA 95959                                | District Attorney of Orange County<br>401 Civic Center Drive West<br>Santa Ana, CA 92701                    | District Attorney of Placer County<br>10810 Justice Center Drive, Ste 240<br>Roseville, CA 95678                          |
| District Attorney of Plumas County<br>520 Main Street, Rm. 404<br>Quincy, CA 95971                                  | District Attorney of San Benito County<br>419 Fourth Street, 2 <sup>nd</sup> Floor<br>Hollister, CA 95023   | District Attorney of San Bernardino County<br>316 N. Mountain View Avenue<br>San Bernardino, CA 92415                     |
| District Attorney of San Diego County<br>330 West Broadway<br>San Diego, CA 92101                                   | District Attorney of San Mateo County<br>400 County Center, 3 <sup>rd</sup> Floor<br>Redwood City, CA 94063 | San Francisco City Attorney's Office<br>City Hall, Room 234<br>1 Dr. Carlton B. Goodlett Place<br>San Francisco, CA 94102 |
| District Attorney of Santa Barbara County<br>1112 Santa Barbara Street<br>Santa Barbara, CA 93101                   | District Attorney of Santa Cruz County<br>701 Ocean Street, Rm. 200<br>Santa Cruz, CA 95060                 | District Attorney of Shasta County<br>1355 West Street<br>Redding, CA 96001                                               |
| District Attorney of Sierra County Courthouse<br>100 Courthouse Sq., 2 <sup>nd</sup> Floor<br>Downieville, CA 95936 | District Attorney of Siskiyou County<br>P.O. Box 986<br>Yreka, CA 96097                                     | District Attorney of Solano County<br>675 Texas Street, Ste 4500<br>Fairfield, CA 94533                                   |
| District Attorney of Sutter County<br>446 Second Street<br>Yuba City, CA 95991                                      | District Attorney of Tuolumne County<br>423 N. Washington Street<br>Sonora, CA 95370                        | District Attorney of Tehama County<br>P.O. Box 519<br>Red Bluff, CA 96080                                                 |
| District Attorney of Trinity County<br>P.O. Box 310<br>Weaverville, CA 96093                                        | District Attorney of Yuba County<br>215 Fifth Street<br>Marysville, CA 95901                                | Los Angeles City Attorney's Office<br>800 City Hall East<br>200 N. Main Street<br>Los Angeles, CA 90012                   |
| Sacramento City Attorney's Office<br>915 I Street, 4th Floor<br>Sacramento, CA 95814                                | San Jose City Attorney's Office<br>200 East Santa Clara Street<br>San Jose, CA 95113                        | San Diego City Attorney's Office<br>1200 Third Avenue, Ste 1620<br>San Diego, CA 92101                                    |