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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

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Attorney for Plaintiff
Frank M. Weyer

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FRANK M. WEYER,

Plaintiff,

v.

THE PEP BOYS – MANNY, MOE
& JACK, MAKE WAVES
INSTRUMENT CORP., and DOES
1-10

Defendants.

Civil Action No.

CV12-10693-DDP(RZx)

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff FRANK M. WEYER and on information and belief
alleges as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement under 35 U.S.C. §§ 271 et. seq.
and 28 U.S.C. §§ 1331 and 1338(a).

2. The acts of patent infringement alleged herein occurred within this
judicial district. Therefore, venue is proper pursuant to 28 U.S.C. §§ 1391(b), (c), and
1400(b).

PARTIES

3. Plaintiff Frank M. Weyer is an individual with a place of business in Los Angeles, California.

4. Defendant THE PEP BOYS – MANNY, MOE & JACK ("Pep Boys") is a Pennsylvania corporation with a place of business at 3111 W. Allegheny Ave., Philadelphia, Pennsylvania 19132.

5. Defendant MAKE WAVES INSTRUMENT CORP. ("Make Waves") is a New York corporation with a place of business in Williamsville, New York 14221.

6. The identities of DOES 1-10 are currently unknown to Plaintiff. Plaintiff will amend the Complaint to assert their true names and capacities when ascertained.

7. Defendants, and each of them, are, and at all times herein were, the alter-ego, principal, agent, employee, employer, joint venturer, and/or otherwise affiliated with or of one another so as to be liable in such capacity for the acts alleged herein.

FIRST CAUSE OF ACTION
PATENT INFRINGEMENT

8. Plaintiff incorporates by reference paragraphs 1 – 7 as though fully set forth herein.

9. Plaintiff is the owner of U.S. Patent No. 5,975,728 issued on Nov. 2, 1999 for "Method and Apparatus for Providing User Selectable Multi-Color Automobile Instrument Panel Illumination" ("the '728 patent").

10. The '728 Patent is valid and in full force and effect.

11. The '728 Patent is directed to a instrument illumination system that allows the user to select the color of a dashboard instrument's illumination.

12. Plaintiff has successfully enforced the '728 patent against several defendants.

1 13. Plaintiff sued Ford Motor Company ("Ford") for infringing the '728
2 patent in the action entitled Frank M. Weyer v. Ford Motor Company, Civil Action
3 No. CV 04-08630 CBM (SHX) in the United States District Court for the Central
4 District of California ("Ford Lawsuit").

5 14. The Ford Lawsuit was resolved by Ford taking a non-exclusive license to
6 the '728 patent.

7 15. Plaintiff sued Harley Davidson Motor Co. ("Harley") for infringing the
8 '728 patent in the action entitled Frank M. Weyer v. Harley Davidson Motor Co.,
9 Civil Action No. CV 07-02602 DDP (Ex) in the United States District Court for the
10 Central District of California ("Harley Lawsuit").

11 16. The Harley Lawsuit was resolved by Harley taking a non-exclusive
12 license to the '728 patent.

13 17. Plaintiff sued Autosales Incorporated d/b/a Summit Racing Equipment
14 ("Summit Racing") and Auto Meter Products, Inc. ("Auto Meter") for infringing the
15 '728 patent in the action entitled Frank M. Weyer v. Autosales Incorporated d/b/a
16 Summit Racing Equipment and Auto Meter Products, Inc., Civil Action No. CV 12-
17 8410 DDP (PJWx) in the United States District Court for the Central District of
18 California ("Summit Auto Meter Lawsuit").

19 18. The Summit Auto Meter Lawsuit was resolved under terms that are
20 confidential.

21 19. Defendant Make Waves has infringed, and continues to infringe, the '728
22 Patent directly pursuant to 35 U.S.C. §271 making, using, offering for sale, importing
23 and selling, without the consent of the Plaintiff, dashboard instruments that include
24 illumination systems that are covered by the claims of the '728 Patent including at
25 least the SuperPro model numbers 5188, 1288, 5088, 1788, 2488, 1688, 2288, 2188,
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1 and 3488 guages (collectively, the “infringing Super Pro gauges”), as well as similar
2 products, the full list of which is not currently known by Weyer.

3
4 20. Defendant Pep Boys has infringed, and continues to infringe, the ‘728
5 Patent directly pursuant to 35 U.S.C. §271 offering for sale and selling, without the
6 consent of the Plaintiff, dashboard instruments that include illumination systems that
7 are covered by the claims of the ‘728 Patent including at least the infringing Super Pro
8 gauges, as well as similar products, the full list of which is not currently known by
9 Weyer.

10 21. Defendants have actual notice of Plaintiff’s patent rights but continue to
11 act in a conscious and willful disregard of those rights.

12 22. Defendants’ infringement of Plaintiff’s patent rights has irreparably
13 damaged Plaintiff and will continue to cause irreparable harm unless enjoined by the
14 Court.
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DEMAND FOR RELIEF

WHEREFORE, Plaintiff asks this Court to:

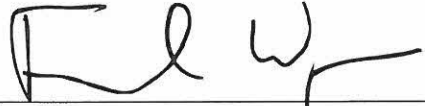
- a. Enter judgment for Plaintiff against each Defendant on this Complaint;
- b. Enter a preliminary and permanent injunction to enjoin each Defendant, and all those in privity with such Defendant, from further infringement of the '728 Patent during the remaining term of the patent;
- c. Award compensatory damages to Plaintiff and to increase said damages three times in accordance with 35 U.S.C. § 284;
- d. Award Plaintiff reasonable attorneys' fees in accordance with 35 U.S.C. § 285;
- e. Award Plaintiff interest and costs; and
- f. Award Plaintiff such other and further relief as is just and proper.

1 DEMAND FOR JURY TRIAL

2
3 Plaintiff hereby demands a trial by jury of all issues so triable.

4
5 Respectfully submitted,
6 **TECHCOASTLAW®**

7
8 Dated: December 13, 2012

9 By: 
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11 2032 Whitley Ave.
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14 Fax (310) 494-9089
15 Attorney for Plaintiff
16 FRANK M. WEYER
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Dean D. Pregerson and the assigned discovery Magistrate Judge is Ralph Zarefsky.

The case number on all documents filed with the Court should read as follows:

CV12- 10693 DDP (RZx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

===== :
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**I (a) PLAINTIFFS** (Check box if you are representing yourself) ☒
FRANK M. WEYER**DEFENDANTS****(b)** Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)TECHCOASTLAW
2032 WHITLEY AVE
LOS ANGELES CA 90068, 310-926-3928

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)**CLASS ACTION** under F.R.C.P. 23: ☐ Yes ☒ No**MONEY DEMANDED IN COMPLAINT:** \$ _____**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL PROPERTY	PETITIONS	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General Habeas Corpus	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE / PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input checked="" type="checkbox"/> 830 Patent
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	IMMIGRATION	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				FEDERAL TAX SUITS
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
					<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:(Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involvedX. SIGNATURE OF ATTORNEY (OR PRO PER): _____ Date Dec. 13 2012**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))