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ENDORSED  
FILED  
ALAMEDA COUNTY  
APR 17 2013  
CLERK OF THE SUPERIOR COURT  
By Glenn Barbo Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION

11  
12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 TRACFONE WIRELESS, INC.; and DOES 1-  
16 150, inclusive,

17 Defendants.

Case No. LG 13675860

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code. § 25249.6 *et seq.*)

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BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff RUSSELL  
3 BRIMER in the public interest of the citizens of the State of California to enforce the People’s  
4 right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical  
5 found in vinyl/PVC headset cords sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
7 warn California citizens about the risk of exposure to DEHP present in and on the vinyl/PVC  
8 headset cords manufactured, distributed, and offered for sale or use to consumers throughout the  
9 State of California.

10 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC headset  
11 cords that defendants manufacture, distribute, and offer for sale to consumers throughout the  
12 State of California.

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
14 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of  
15 doing business shall knowingly and intentionally expose any individual to a chemical known to  
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
17 warning to such individual . . . .” Health & Safety Code § 25249.6.

18 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed  
19 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became  
20 subject to the “clear and reasonable warning” requirements of the act one year later on October  
21 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
22 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, import, sell, and/or offer for sale vinyl/PVC  
24 headset cords DEHP without a warning, including, but not limited to, the *TracFone All-in-One*  
25 *Bonus Pack, Samsung S125G (#7 21003 02065 8)*. All such vinyl/PVC headset cords  
26 containing DEHP is referred to collectively hereinafter as “PRODUCTS.”  
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1 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the  
2 PRODUCTS.

3 23. The California Superior Court has jurisdiction over this action pursuant to  
4 California Constitution Article VI, section 10, which grants the Superior Court “original  
5 jurisdiction in all causes except those given by statute to other trial courts.” The statute under  
6 which this action is brought does not specify any other basis of subject matter jurisdiction.

7 24. The California Superior Court has jurisdiction over DEFENDANTS based on  
8 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
9 association that is a citizen of the State of California, has sufficient minimum contacts in the  
10 State of California, and/or otherwise purposefully avails itself of the California market.  
11 DEFENDANTS’ purposeful availing renders the exercise of personal jurisdiction by California  
12 courts consistent with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Proposition 65 - Against All Defendants)**

15 25. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,  
16 Paragraphs 1 through 24, inclusive.

17 26. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
18 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be  
19 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
20 harm.”

21 27. Proposition 65 states, “[n]o person in the course of doing business shall  
22 knowingly and intentionally expose any individual to a chemical known to the state to cause  
23 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
24 individual . . . .” Health & Safety Code § 25249.6.

25 28. On December 21, 2012, plaintiff’s sixty-day notice of violation, together with the  
26 requisite certificate of merit, was provided to AAMP and certain public enforcement agencies  
27 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED  
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1 CHEMICAL, purchasers and users in the State of California were being exposed to the LISTED  
2 CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS, without the  
3 individual purchasers and users first having been provided with a “clear and reasonable  
4 warning” regarding such toxic exposures, as required by Proposition 65.

5 29. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
6 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
7 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
8 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and  
9 continuous in nature, and will continue to occur in the future.

10 30. After receiving plaintiff’s sixty-day notice of violation, the appropriate public  
11 enforcement agencies have failed to commence and diligently prosecute a cause of action  
12 against DEFENDANTS under Proposition 65.

13 31. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
14 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require  
15 a “clear and reasonable” warning under Proposition 65.

16 32. DEFENDANTS knew or should have known that the PRODUCTS they  
17 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
18 CHEMICAL.

19 33. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
20 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during  
21 reasonably foreseeable use.

22 34. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
23 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
24 defined by title 27 of the California Code of Regulations, section 25602(b).

25 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
26 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact  
27 and/or ingestion.

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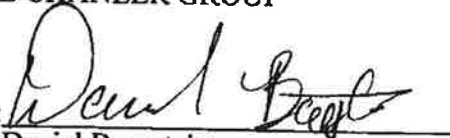
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reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601  
*et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

- 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: April 14, 2013

Respectfully Submitted,  
THE CHANLER GROUP

By:   
Daniel Bornstein  
Attorneys for Plaintiff  
RUSSELL BRIMER