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ENDORSED
FILED
ALAMEDA COUNTY

APR 28 2013

CLERK OF THE SUPERIOR COURT
By Xian-Xi Bowie

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF ALAMEDA

9
10 ANTHONY FERREIRO,
11 Plaintiff,
12 vs.
13 WIRELESS ONE, INC.,
14 Defendant.

CASE NO.: RG 16813480

JUDGE

DEPT.:

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELEIF

(Violation of Health & Safety Code §25249.5
et seq.)

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19 Plaintiff Anthony Ferreiro (“Plaintiff”), by and through his attorneys, alleges the
20 following cause of action in the public interest of the citizens of the State of California.

21 **BACKGROUND OF THE CASE**

22 1. Plaintiff brings this representative action on behalf of all California citizens to
23 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified
24 at the Health and Safety Code § 25249.5 *et seq* (“Proposition 65”), which reads, in relevant part,
25 “[n]o person in the course of doing business shall knowingly and intentionally expose any
26 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
27 giving clear and reasonable warning to such individual ...”. Health & Safety Code § 25249.6.

28

1 2. This complaint is a representative action brought by Plaintiff in the public interest
2 of the citizens of the State of California to enforce the People’s right to be informed of the health
3 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
4 sport armbands sold and/or distributed by defendant Wireless One, Inc. (“Wireless One” or
5 “Defendant”) in California.

6 3. DEHP is a harmful chemical known to the State of California to cause cancer and
7 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical
8 known to the State to cause cancer and it has come under the purview of Proposition 65
9 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
10 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical
11 known to cause developmental male reproductive toxicity. *Id.*

12 4. Proposition 65 requires all businesses with ten (10) or more employees that
13 operate within California or sell products therein to comply with Proposition 65 regulations.
14 Included in such regulations is the requirement that businesses must label any product containing
15 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
16 intentionally” exposing any person to it.

17 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
18 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
19 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
20 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety
21 Code § 25249.7.

22 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
23 and/or offers for sale, without the required warning, *Premium Universal Sports Armbands, UPC*
24 *No. 8 11583 010184* (the “Products”) in California containing DEHP.

25 7. Defendant’s failure to warn consumers and other individuals in California of the
26 health hazards associated with exposure to DEHP in conjunction with the sale, manufacture,
27 and/or distribution of the Products is a violation of Proposition 65 and subjects Defendant to the
28 enjoinder and civil penalties described herein.

1 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
2 this Court has jurisdiction over this lawsuit.

3 15. This Court has jurisdiction over Defendant because it is either is a citizen of the
4 State of California, has sufficient minimum contacts with the State of California, is registered
5 with the California Secretary of State as foreign corporations authorized to do business in the
6 State of California, and/or has otherwise purposefully availed itself of the California market.
7 Such purposeful availment has rendered the exercise of jurisdiction by California courts
8 consistent and permissible with traditional notions of fair play and substantial justice.

9 **SATISFACTION OF NOTICE REQUIREMENTS**

10 16. On September 2, 2015, Plaintiff gave notice of alleged violation of Health and
11 Safety Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California
12 citizens to DEHP contained in the Products without proper warning, subject to a private action to
13 Defendant and to the California Attorney General's office and the offices of the County District
14 attorneys and City Attorneys for each city with a population greater than 750,000 persons
15 wherein the herein violations allegedly occurred.

16 17. The Notice complied with all procedural requirements of Proposition 65 including
17 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
18 least one person with relevant and appropriate expertise who reviewed relevant data regarding
19 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a
20 private action.

21 18. After receiving Plaintiff's notice, and to Plaintiff's best information and belief,
22 none of the noticed appropriate public enforcement agencies have commenced and diligently
23 prosecuted a cause of action against Defendant under Proposition 65 to enforce the alleged
24 violations which are the subject of Plaintiff's notice of violation.

25 19. Plaintiff is commencing this action more than sixty (60) days from the date of his
26 notice to Defendant, as required by law.

27 **FIRST CAUSE OF ACTION**

28 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

1 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of
2 this complaint as though fully set forth herein.

3 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
4 and/or retailer of the Products.

5 22. The Products contains DEHP, a hazardous chemical found on the Proposition 65
6 list of a chemical known to be hazardous to human health.

7 23. The Products does not comply with the Proposition 65 warning requirements.

8 24. Plaintiff, based on his best information and belief, avers that at all relevant times
9 herein, and at least since August 5, 2015 continuing until the present, that Defendant has
10 continued to knowingly and intentionally expose California users and consumers of the Products
11 to DEHP without providing required warnings under Proposition 65.

12 25. The exposures that are the subject of this notice result from the purchase,
13 acquisition, handling and recommended use of the product. Consequently, the primary route of
14 exposure to these chemicals is through dermal exposure. The potential exists for dermal
15 exposure of DEHP through direct contact with the user's skin when the armband is worn,
16 handled, or through the users hands when a key is placed or retrieved from the key slot. Should
17 the armband be used in wet conditions or be wet from perspiration, skin permeation rates can
18 potentially increase for DEHP as aqueous DEHP skin permeation rates are faster than neat
19 permeation. The product is expected to leach gas phase DEHP over its lifetime that can be
20 inhaled and will leach DEHP at higher rates if the armband is used in elevated temperatures.
21 Finally, while mouthing of the product does not seem likely, some amount of exposure through
22 ingestion can occur by handling the product with subsequent touching of the user's hand to
23 mouth.

24 26. Plaintiff, based on his best information and belief, avers that such exposures will
25 continue every day until clear and reasonable warnings are provided to Products purchasers and
26 users or until this known toxic chemical is removed from the Products.

27 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
28 Products exposes individuals to DEHP, and Defendant intends that exposures to DEHP will

1 occur by their deliberate, non-accidental participation in the manufacture, importation,
2 distribution, sale and offering of the Products to consumers in California

3 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
4 Complaint.

5 29. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
6 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

7 30. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
8 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

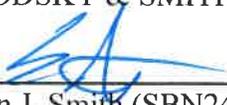
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
11 following relief:

- 12 A. That the court assess civil penalties against Defendant in the amount of
13 \$2,500 per day for each violation in accordance with Health and Safety
14 Code § 25249.7(b);
- 15 B. That the court preliminarily and permanently enjoin Defendant mandating
16 Proposition 65 compliant warnings on the Products;
- 17 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 18 D. That the court grant any further relief as may be just and proper.

19
20 Dated: April 28, 2016

BRODSKY & SMITH, LLC

21 By:  _____

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