

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY & SMITH, LLC
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160
8 *Attorneys for Plaintiff*

ENDORSED
FILED
ALAMEDA COUNTY
MAR 25 2016
CLERK OF THE SUPERIOR COURT
by _____
CHERYL CLARK
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 EMA BELL,
11 Plaintiff,
12 vs.
13 JVCKENWOOD USA CORPORATION,
14 Defendant.

CASE NO.: *RLG* 16809165
JUDGE
DEPT.:
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
**(Violation of Health & Safety Code §25249.5
et seq.)**

BY FAX

19 Plaintiff Ema Bell ("Plaintiff" or "Bell"), by and through her attorneys, alleges the
20 following cause of action in the public interest of the citizens of the State of California.

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.

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 the chemical Di(2-ethylhexyl) phthalate (DEHP) that is found in
4 audio listening devices sold and/or distributed by defendant JVCKenwood USA Corporation
5 (“JVC” or “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 since
9 such time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
10 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical known to
11 cause reproductive toxicity.

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, audio listening devices in California
24 containing DEHP. These products include, but are not limited to *JVC Flats Stereo Headphones*,
25 *UPC# 46838-04605* (the “Products”).

26 7. Defendant’s failure to warn consumers and other individuals in California of the
27 health hazards associated with exposure to DEHP in conjunction with the sale, manufacture,
28

1 and/or distribution of the Products is a violation of Proposition 65 and subjects Defendant to the
2 enjoinder and civil penalties described herein.

3 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
4 65 in accordance with Health and Safety Code § 25249.7(b).

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
6 Defendant to provide purchasers or users of the Products with the required warnings related to
7 the dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety
8 Code § 25249.7(a).

9 PARTIES

10 10. Plaintiff is a citizen of the State of California acting in the interest of the general
11 public to promote awareness of exposures to toxic chemicals in products sold in California and
12 to improve human health by reducing hazardous substances contained in such items. He brings
13 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

14 11. Defendant JVCKENWOOD USA is a leading developer and manufacturer of
15 consumer electronics and communications equipment. Founded in the United States in 1961,
16 JVCKENWOOD USA is the largest sales subsidiary of JVCKENWOOD Corporation of Japan.
17 Through its business, JVC effectively manufactures, imports, distributes, sells, and/or offers the
18 Products for sale or use in the State of California, or it implies by its conduct that it
19 manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of
20 California. JVC maintains a registered agent for service of process at c/o Corporation Service
21 Company, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833.

22 12. JVC is a “person” in the course of doing business within the meaning of Health &
23 Safety Code §§ 25249.6 and 25249.11.

24 VENUE AND JURISDICTION

25 13. Venue is proper in the County of Alameda because one or more of the instances
26 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant
27 conducted, and continues to conduct, business in the County of Alameda with respect to the
28 Products.

1 **FIRST CAUSE OF ACTION**

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

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

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

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

9 23. The Products do not comply with the Proposition 65 warning requirements.

10 24. Plaintiff, based on her best information and belief, avers that at all relevant times
11 herein, and at least since September 17, 2014, continuing until the present, that Defendant has
12 continued to knowingly and intentionally expose California users and consumers of the Products
13 to DEHP without providing required warnings under Proposition 65.

14 25. The exposures that are the subject of the Notice result from the purchase,
15 acquisition, handling and recommended use of the product. Consequently, the primary route of
16 exposure to these chemicals is through direct skin exposure. The black vinyl ear pad cover of
17 these earmuffs are likely to be in constant contact with the user's head/ears during normal use
18 and direct skin exposure is likely to occur. Direct skin exposure through direct contact with the
19 black vinyl ear pad cover of the earmuffs and the user's hands is possible during application,
20 removal, and manipulation of the earmuffs. Should the wearer's skin perspire underneath the
21 black vinyl ear pad cover, aqueous DEHP skin permeation rates have been reported to be faster
22 than neat DEHP permeation. Finally, while mouthing of the product does not seem likely, some
23 amount of exposure through ingestion can occur by handling the product with subsequent
24 touching of the users hand to mouth.

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

28

