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**ENDORSED
FILED
ALAMEDA COUNTY**

JUN 29 2016

CLERK OF THE SUPERIOR COURT
By *Jamie Thomas*
JAMIE THOMAS, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
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12 Plaintiff,
13 vs.
14 I WORLD IP HOLDINGS LLC t/a
15 IWORLD,
16 Defendant.

Case No.: *RG16821420*

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

16 Plaintiff Anthony Ferreiro ("Plaintiff" or "Ferreiro"), by and through his attorneys,
17 alleges the following cause of action in the public interest of the citizens of the State of
18 California.
19

20 **BACKGROUND OF THE CASE**

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

27 2. This complaint is a representative action brought by Plaintiff in the public interest
28 of the citizens of the State of California to enforce the People's right to be informed of the health
hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in

BY FAX

1 *Racer Sport Buds* sold and/or distributed by defendant I World IP Holdings, LLC t/a I World (“I
2 World”) in California.

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

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

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

19 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
20 and/or offers for sale, without the required warning, *Racer Sport Buds* in California containing
21 DEHP. These products include, but are not limited to, *UPC No. 840824100674* (the “Product”).

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

26 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
27 65 in accordance with Health and Safety Code § 25249.7(b).

28

1 22. Defendant has, at all times mentioned herein, acted as a manufacturer, distributor,
2 and/or retailer of the Product.

3 23. The Product contains DEHP, hazardous chemicals found on the Proposition 65
4 list of a chemical known to be hazardous to human health.

5 24. The Product does not comply with the Proposition 65 warning requirements.

6 26. Plaintiff, based on his best information and belief, avers that at all relevant times
7 herein, and at least since December 2, 2015, continuing until the present, that Defendant has
8 continued to knowingly and intentionally expose California users and consumers of the Product
9 to DEHP without providing required warnings under Proposition 65.

10 27. The exposures that are the subject of this notice result from the purchase,
11 acquisition, handling and recommended use of the product. Consequently, the primary route of
12 exposure to these chemicals is through dermal transfer. The black ear loop of the sports bud is in
13 contact with the user's scalp and ear during normal expected use and thus dermal transfer of
14 phthalates to these two skin areas is likely. Additionally, dermal transfer to the user's bare hands
15 can occur during manipulation and fitting the ear loop on the ear. Should the product come into
16 contact with a wet or humid environment, as may be expected if the user perspires during
17 exercise, aqueous DEHP skin permeation rates have been reported to be faster than neat DEHP
18 permeation. The product can be expected to emit gas phase DEHP into the air in the vicinity of
19 the user's personal breathing space over the lifetime of the product. This gas phase DEHP can
20 potentially be inhaled or can be absorbed to particulates that can be resuspended and potentially
21 ingested. If the item is stored or transported in a carrier, DEHP that leaches from the ear loop
22 may contaminate other articles contained within the carrier bag that are subsequently handled by
23 the user. Finally, while mouthing of the product does not seem likely, some amount of exposure
24 through ingestion can occur by touching the product with subsequent touching of the user's hand
25 to mouth.

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

