

ENDORSED  
FILED  
ALAMEDA COUNTY

JUN 23 2017

By SUE PESKO

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF ALAMEDA

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EMA BELL,  
Plaintiff,  
v.  
SAKAR INTERNATIONAL, INC.,  
Defendant.

RG17865272

Case No.:

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

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

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

**BACKGROUND OF THE CASE**

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

2. This complaint is a representative action brought by Plaintiff in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health

**BY FAX**

1 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in  
2 Vivitar Bluetooth Headphones manufactured, sold and/or distributed in California by defendant  
3 Sakar International, Inc. (“Sakar” or “Defendant”) in California.

4 3. DEHP is a harmful chemical known to the State of California to cause cancer. On  
5 December 20, 2013, the State of California listed DEHP as a chemical known to the State to  
6 cause cancer and it has come under the purview of Proposition 65 regulations since that time.  
7 Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On  
8 October 24, 2003, the State of California listed DEHP as a chemical known to cause  
9 reproductive toxicity. *Id.*

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

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

20 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,  
21 and/or offers for sale in California, without the required warning, headphones, including but not  
22 limited to Style V12910-BLK (“Product” or “Products”), that contain DEHP.

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

27 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition  
28 65 in accordance with Health and Safety Code § 25249.7(b).



1 with the California Secretary of State as foreign corporations authorized to do business in the  
2 State of California, and/or has otherwise purposefully availed itself of the California market.  
3 Such purposeful availment has rendered the exercise of jurisdiction by California courts  
4 consistent and permissible with traditional notions of fair play and substantial justice.

5 **SATISFACTION OF NOTICE REQUIREMENTS**

6 16. On March 7, 2017, Plaintiff gave notice of alleged violation of Health and Safety  
7 Code § 25249.6 (the "Notice") to Sakar concerning the exposure of California citizens to DEHP  
8 contained in the Product without proper warning, subject to a private action to Sakar and to the  
9 California Attorney General's office and the offices of the County District attorneys and City  
10 Attorneys for each city with a population greater than 750,000 persons wherein the herein  
11 violations allegedly occurred.

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

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

21 19. Plaintiff is commencing this action more than sixty (60) days from the date of the  
22 Notice to Sakar, as required by law.

23 **FIRST CAUSE OF ACTION**

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

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

27 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,  
28 and/or retailer of the Product.

1           22.     The Product contains DEHP, a hazardous chemical found on the Proposition 65  
2 list of chemicals known to be hazardous to human health.

3           23.     The Product does not comply with the Proposition 65 warning requirements.

4           24.     Plaintiff, based on her best information and belief, avers that at all relevant times  
5 herein, and at least since February 8, 2017, continuing until the present, that Sakar has continued  
6 to knowingly and intentionally expose California users and consumers of the Product to DEHP  
7 without providing required warnings under Proposition 65.

8           25.     The exposures that are the subject of the Notice result from the purchase,  
9 acquisition, handling and recommended use of the product. Consequently, the primary route of  
10 exposure to these chemicals is through direct skin exposure. The ear cushion cover of these  
11 headphones is likely to be in constant contact with the user's ears during normal expected use  
12 and direct skin exposure is likely to occur. Skin exposure through direct contact with the user's  
13 hands is possible during application, removal, and manipulation of the headphones. Should the  
14 wearer's skin perspire underneath the ear cushion, aqueous DEHP skin permeation rates have  
15 been reported to be faster than neat DEHP permeation. Although the association between  
16 HMWP phthalates such as DEHP and atopic dermatitis has never been elucidated, as a multitude  
17 of chemicals are present in headphones that come into contact with human skin, DEHP in  
18 headphones and hearing protection aids has been reported to induce contact dermatitis. The ear  
19 cushion cover can be expected to emit gas phase DEHP into the air over the lifetime of the  
20 product. This gas phase DEHP can potentially be inhaled as the product is used in the vicinity of  
21 the user's facial area. If the headphones are stored or transported in a carrier, DEHP that leaches  
22 from the headphones may contaminate other articles contained within the carrier bag that are  
23 subsequently handled, worn, or consumed. Finally, while mouthing of the product does not seem  
24 likely, some amount of exposure through ingestion can occur by handling the product with  
25 subsequent touching of the users hand to mouth.

26           26.     Plaintiff, based on her 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.

1 27. Defendant has knowledge that the normal and reasonably foreseeable use of the  
2 Product exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur  
3 by their deliberate, non-accidental participation in the manufacture, importation, distribution,  
4 sale and offering of the Product to consumers in California

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

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

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

11 **PRAYER FOR RELIEF**

12  
13 WHEREFORE, Plaintiff demands judgment against Defendant and requests the  
14 following relief:

- 15 A. That the court assess civil penalties against Defendant in the amount of  
16 \$2,500 per day for each violation in accordance with Health and Safety  
17 Code § 25249.7(b);  
18 B. That the court preliminarily and permanently enjoin Defendant mandating  
19 Proposition 65 compliant warnings on the Product;  
20 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.  
21 D. That the court grant any further relief as may be just and proper.  
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23 Dated: June 23, 2017

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