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ENDORSED
FILED
ALAMEDA COUNTY

JUN 29 2017

CLERK OF THE SUPERIOR COURT
By CURTIYAH GANTER

Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

10
11 KAREN CALACIN,
12 Plaintiff,

13 v.

14 NATIONAL CELLULAR, INC.,
15 Defendant.

Case No.:

RG17865826*

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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18 Plaintiff Karen Calcin ("Plaintiff"), by and through her attorneys, alleges the following
19 cause of action in the public interest of the citizens of the State of California.

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

BY FAX

1 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
2 Overtime Phantom Headphones/Earphones manufactured, sold and/or distributed in California
3 by defendant National Cellular USA, Inc. (“National Cellular” 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/earphones,
22 including but not limited to UPC No. 8 02029 06478 6 (“Product” or “Products”), that contain
23 DEHP.

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

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

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

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

6 24. Plaintiff, based on her best information and belief, avers that at all relevant times
7 herein, and at least since March 19, 2017, continuing until the present, that National Cellular 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 25. The exposures that are the subject of the 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 direct skin exposure. The ear cushion cover of these
13 headphones is likely to be in constant contact with the user's ear during normal expected use and
14 direct skin exposure is likely to occur. Skin exposure through direct contact with the user's
15 hands is possible during application, removal, and manipulation of the headphones. Should the
16 wearer's skin perspire underneath the ear cushion, aqueous DEHP skin permeation rates have
17 been reported to be faster than neat DEHP permeation. Although the association between
18 HMWP phthalates such as DEHP and atopic dermatitis has never been elucidated, as a multitude
19 of chemicals are present in headphones and hearing protection aids has been reported to induce
20 contact dermatitis. The ear cushion cover can be expected to emit gas-phase DEHP into the air
21 over the lifetime of the product. This gas-phase DEHP can be inhaled as the product is used in
22 the vicinity of the user's facial area. If the headphones are stored or transported in a carrier (e.g.
23 backpack, suitcase), DEHP that leaches from the headphones may contaminate other articles
24 contained within the carrier bag that are subsequently handled, worn, or consumer. Finally,
25 while mouthing of the product does not seem likely, some amount of exposure through ingestion
26 can occur by handling the product with subsequent touching of the user's hand to mouth.

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