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Attorneys for Plaintiff
CTIA – The Wireless Association®

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CTIA – THE WIRELESS ASSOCIATION®,

Plaintiff,

v.

THE CITY OF BERKELEY, CALIFORNIA,
and CHRISTINE DANIEL, CITY
MANAGER OF BERKELEY, CALIFORNIA,
in her official capacity,

Defendants.

CASE NO. 3:15-cv-02529-EMC

**FURTHER JOINT CASE MANAGEMENT
STATEMENT**

Date: May 12, 2016

Time: 10:30 AM

Place: Courtroom 5, 17th Floor, San Francisco

Pursuant to Local Rule 16-10 and this Court's Standing Order, Plaintiff CTIA – The Wireless Association® (“CTIA”) and Defendants the City of Berkeley, California, (“the City”) and Christine Daniel, in her official capacity as City Manager of Berkeley, California, (collectively, “Defendants”) file this Further Joint Case Management Statement.

1. Jurisdiction and Service.

This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1337. There is no dispute regarding personal jurisdiction or venue. All parties have been served.

2. Facts.

This action challenges the City's Ordinance “REQUIRING NOTICE CONCERNING RADIO FREQUENCY EXPOSURE OF CELL PHONES,” Berkeley Municipal Code Chapter 9.96 (“Ordinance”), which requires cell phone retailers to distribute to their customers or post a notice stating that:

The City of Berkeley requires that you be provided the following notice:

To assure safety, the Federal Government requires that cell phones meet radio frequency (RF) exposure guidelines. If you carry or use your phone in a pants or shirt pocket or tucked into a bra when the phone is ON and connected to a wireless network, you may exceed the federal guidelines for exposure to RF radiation. This potential risk is greater for children. Refer to the instructions in your phone or user manual for information about how to use your phone safely.

Berkeley Municipal Code § 9.96.030(A).

On June 8, 2015, CTIA filed a motion for preliminary injunction (Dkt. 4) asking this Court to enjoin enforcement of the Ordinance on a preliminary basis as preempted by federal law and violating the First Amendment. This Court on September 21, 2015 “grant[ed] in part and denie[d] in part CTIA's motion for a preliminary injunction,” enjoining the Ordinance “unless and until the sentence in the City notice regarding children's safety is excised from the notice.” (Dkt. 53).

On November 17, 2015, Defendants filed a motion to dissolve the preliminary injunction based on the Berkeley City Council's amendment of the Ordinance to remove the sentence regarding children's safety. CTIA filed its opposition to Defendants' motion on December 1, 2015, Defendants

1 filed their reply on December 8, 2015, and oral argument was heard on January 21, 2016. On
 2 January 27, 2016, the Court granted Defendants' motion, which incorporated the holding and
 3 reasoning of the Court in its prior ruling on CTIA's motion for preliminary injunction, and also
 4 denied CTIA's request for a stay of dissolution pending appeal. (Dkt. 74).

5 On February 1, 2016, CTIA appealed to the United States Court of Appeals for the Ninth
 6 Circuit (the "Ninth Circuit") from this Court's Order granting Defendants' motion to dissolve the
 7 preliminary injunction. (Dkt. 76). CTIA filed its opening brief with the Ninth Circuit on February
 8 29, 2016, Defendants filed their answering brief on April 4, 2016, and CTIA's reply is due on May 9,
 9 2016.

10 The City of Berkeley began enforcing the Ordinance on March 21, 2016.

11 3. Legal Issues.

12 The legal issues in this case are: (1) whether the Ordinance violates the First Amendment;
 13 (2) whether the Ordinance violates the Supremacy Clause and is preempted by federal law; and
 14 (3) whether Defendants have violated CTIA's members' constitutional rights in violation of
 15 42 U.S.C. § 1983.

16 4. Motions.

17 A. Pending Motions

18 There are no pending motions before this Court. As noted above, CTIA's appeal to the Ninth
 19 Circuit is currently pending and CTIA's reply brief is due on May 9, 2016.

20 B. Prior Motions

21 All prior motions filed in this case, listed below, have been resolved:

22 1) CTIA's Motion for Preliminary Injunction (Dkt. 4), filed on June 8, 2015; granted in
 23 part and denied in part by order (Dkt. 53), filed on September 21, 2015.

24 2) Motions for leave to appear Pro Hac Vice, filed on June 8, 2015 (Dkt. 8, 9),
 25 June 22, 2015 (Dkt. 27), and July 1, 2015 (Dkt. 32), respectively; all granted by orders, filed on
 26 June 22, 2015 (Dkt. 28, 29), June 24, 2015 (Dkt. 30), and July 7, 2015 (Dkt. 35), respectively.
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3) National Resources Defense Council's Motion to File Amicus Brief in Opposition to CTIA's Motion for Preliminary Injunction (Dkt. 36); granted by order (Dkt. 53), filed on September 21, 2015.

4) Defendants' Motion to Dissolve Preliminary Injunction (Dkt. 59), filed on December 8, 2015; granted by order (Dkt. 74), filed on January 27, 2016.

5. Amendment of Pleadings.

CTIA does not currently anticipate amending its complaint, but reserves all rights to do so.

6. Evidence Preservation.

Although the parties do not anticipate seeking any discovery, they are aware of and have complied with their evidence preservation obligations.

7. Disclosures.

The parties have agreed to defer any initial disclosures until such time as they may become relevant.

8. Discovery.

The parties do not anticipate that any discovery will be necessary. The parties agree that, should either party wish to take discovery, the parties will meet and confer regarding the prompt scheduling of such discovery.

9. Class Actions.

This case is not a class action.

10. Related Cases.

The parties are not aware of any related cases or proceedings, except for CTIA's currently pending appeal to the Ninth Circuit, as discussed above.

11. Relief.

CTIA seeks the relief set forth in its complaint.

12. Settlement and ADR.

The parties have conferred and agree that the validity of the Ordinance is an issue of broad importance that is not amenable to resolution through settlement or ADR.

13. Consent to Magistrate Judge For All Purposes.

The parties do not consent to assignment to a Magistrate Judge for all purposes.

14. Other References.

This case is not suitable for assignment to binding arbitration, to a Special Master, or to the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues.

The parties believe that the issues are adequately framed by the complaint and that no furthering narrowing of the issues or bifurcation of the case is necessary or advisable.

16. Expedited Trial Procedures.

The parties agree that this is not the type of case that can be handled under the Expedited Trial Procedure of General Order No. 64 Attachment A.

17. Scheduling.

The parties do not believe that any dates need to be scheduled at this time given CTIA's currently pending appeal to the Ninth Circuit of this Court's Order granting Defendants' motion to dissolve the preliminary injunction, which incorporated the holding and reasoning of the Court in its prior ruling on CTIA's motion for preliminary injunction.

18. Trial.

The parties expect this case to be resolved through motions practice, without the need for any trial.

19. Disclosure of Non-party Interested Entities or Persons.

CTIA filed its Certification of Interested Entities or Persons on June 8, 2015. As stated in that Certification, CTIA is a nonprofit membership organization that represents the wireless communications industry. Membership in the association includes wireless carriers and their suppliers, as well as providers and manufacturers of wireless data services and products. The current membership list is available at <http://www.ctia.org/about-us/current-members>.

20. Professional Conduct.

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

1 May 5, 2016

By: /s/ Theodore B. Olson

2 Theodore B. Olson
3 Helgi C. Walker
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5 Joshua D. Dick
6 Michael R. Huston
7 Jacob T. Spencer

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9 *Attorneys for Plaintiff*
10 *CTIA – The Wireless Association®*

11 May 5, 2016

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19 *City of Berkeley, California and*
20 *Christine Daniel, City Manager of*
21 *Berkeley, California*

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** Pursuant to Civ. L.R. 5-1(i)(3), the
electronic signatory has obtained
approval from this signatory.