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*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**

**JOINT CASE MANAGEMENT  
STATEMENT**

Date: October 1, 2015

Time: 9:30 AM

Place: Courtroom 5, 17th Floor, San Francisco

Pursuant to Local Rule 16-9 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 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 safety is excised from the notice.” (Dkt. 53).

Defendants state that the Berkeley City Attorney's staff intends to recommend to the City Council that it amend the Ordinance per this Court's order on the motion for preliminary injunction.

1 They further state that the first reading of the amended Ordinance would occur on October 6, 2015,  
2 with a second reading at a date thereafter to be determined.

3 3. Legal Issues.

4 The legal issues in this case are: (1) whether the Ordinance violates the First Amendment;  
5 (2) whether the Ordinance violates the Supremacy Clause and is preempted by federal law; and  
6 (3) whether Defendants have violated CTIA's members constitutional rights in violation of 42 U.S.C.  
7 § 1983.

8 4. Motions.

9 There are no pending motions. All prior motions filed in this case, listed below, have been  
10 resolved:

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

13 2) Motions for leave to appear Pro Hac Vice, filed on June 8, 2015 (Dkt. 8, 9),  
14 June 22, 2015 (Dkt. 27), and July 1, 2015 (Dkt. 32), respectively; all granted by orders, filed on  
15 June 22, 2015 (Dkt. 28, 29), June 24, 2015 (Dkt. 30), and July 7, 2015 (Dkt. 35), respectively.

16 3) National Resources Defense Council's Motion to File Amicus Brief in Opposition to  
17 CTIA's Motion for Preliminary Injunction (Dkt. 36); granted by order (Dkt. 53), filed on  
18 September 21, 2015.

19 The parties agree that any future motions will depend on how Defendants respond to this  
20 Court's order (Dkt. 53).

21 5. Amendment of Pleadings.

22 CTIA states that it is premature to decide whether it will seek to amend its complaint, given  
23 Defendants' consideration of what final action to take in response to this Court's order (Dkt. 53).

24 6. Evidence Preservation.

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

1           7. Disclosures.

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

4           8. Discovery.

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

8           9. Class Actions.

9           This case is not a class action.

10          10. Related Cases.

11          The parties are not aware of any related cases or proceedings.

12          11. Relief.

13          CTIA seeks the relief set forth in its complaint.

14          12. Settlement and ADR.

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

17          13. Consent to Magistrate Judge For All Purposes.

18          The parties do not consent to assignment to a Magistrate Judge.

19          14. Other References.

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

22          15. Narrowing of Issues.

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

25          16. Expedited Trial Procedures.

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

1           17. Scheduling.

2           Given this Court's order regarding CTIA's motion for preliminary injunction (Dkt. 53), the  
3 fact that the Ordinance is currently enjoined, and Defendants' consideration of what final action to  
4 take in response, no dates need be scheduled at this time.

5           18. Trial.

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

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

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

14           20. Professional Conduct.

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

1 September 24, 2015

By: /s/ Theodore B. Olson

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11 September 24, 2015

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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.