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ENDORSED FILED
SAN MATEO COUNTY

JUL 18 2008

Clerk of the Superior Court
By R. Montgomery
DEPUTY CLERK

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN MATEO

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11
12 CENTER FOR ENVIRONMENTAL HEALTH,)
13 Plaintiff,)
14 v.)
15 AUDIOVOX CORP.; GRIFFIN)
INTERNATIONAL COMPANIES, INC.;)
16 MAXELL CORP. OF AMERICA; SAKAR)
INTERNATIONAL, INC.; and Defendant)
17 DOES 1 through 200, inclusive,)
18 Defendants.)
19 _____)

Case No. **CIV 474817**

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code §25249.6, *et seq.*
(Other)

FILED

1 Plaintiff Center for Environmental Health (“Plaintiff”), in the public interest, and
2 based on information and belief and investigation of counsel, except for information based on
3 personal knowledge, hereby makes the following allegations:

4 **INTRODUCTION**

5 1. This complaint seeks to remedy Defendants’ continuing failure to warn
6 individuals in California that they are being exposed to Di(2-ethylhexyl) Phthalate (“DEHP”) or
7 DEHP and Di-n-butyl Phthalate (“DBP”), chemicals known to the State of California to cause
8 cancer and birth defects or other reproductive harm. Such exposures have occurred, and
9 continue to occur, through the manufacture, distribution, sale and consumer use of Defendants’
10 headphone cables containing DEHP or both DEHP and DBP (the “Products”). Consumers are
11 exposed to DEHP or both DEHP and DBP when they use or otherwise handle the Products.

12 2. Under California’s Proposition 65, Health and Safety Code §25249.5, *et*
13 *seq.*,¹ it is unlawful for businesses to knowingly and intentionally expose individuals in
14 California to chemicals known to the State to cause cancer and/or birth defects or other
15 reproductive harm without providing clear and reasonable warnings to individuals prior to their
16 exposure. Despite the fact that Defendants’ Products expose consumers to DEHP or both DEHP
17 and DBP, Defendants provide no warnings whatsoever about the carcinogenic and reproductive
18 hazards associated with DEHP and/or the reproductive hazards of DBP exposure. Defendants’
19 conduct thus violates the warning provision of Proposition 65. Health & Safety Code §25249.6.

20
21 **PARTIES**

22 3. Plaintiff Center for Environmental Health (“CEH”) is a non-profit
23 corporation dedicated to protecting the public from environmental health hazards and toxic
24 exposures. CEH is based in Oakland, California, and incorporated under the laws of the State of
25 California. CEH is a “person” within the meaning of Health & Safety Code §25249.11(a) and
26 brings this enforcement action in the public interest pursuant to Health & Safety Code
27 §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has

28 ¹ All statutory references herein are to California statutes, unless otherwise noted.

1 prosecuted a large number of Proposition 65 cases in the public interest. These cases have
2 resulted in significant public benefit, including reformulation of toxic products to make them
3 safer and the provision of clear and reasonable warnings on hundreds of products sold
4 throughout California.

5 4. Defendant AUDIOVOX CORP. (“Audiovox”) is a “person in the course
6 of doing business” within the meaning of Health & Safety Code §25249.11(b). Audiovox
7 manufactures, distributes and/or sells Products that contain DEHP for sale and use in California.

8 5. Defendant GRIFFIN INTERNATIONAL COMPANIES, INC. (“Griffin”)
9 is a “person in the course of doing business” within the meaning of Health & Safety Code
10 §25249.11(b). Griffin manufactures, distributes and/or sells Products that contain DEHP and
11 DBP for sale and use in California.

12 6. Defendant MAXELL CORP. OF AMERICA (“Maxell”) is a “person in
13 the course of doing business” within the meaning of Health & Safety Code §25249.11(b).
14 Maxell manufactures, distributes and/or sells Products that contain DEHP for sale and use in
15 California.

16 7. Defendant SAKAR INTERNATIONAL, INC. (“Sakar”) is a “person in
17 the course of doing business” within the meaning of Health & Safety Code §25249.11(b). Sakar
18 manufactures, distributes and/or sells Products that contain DEHP and DBP for sale and use in
19 California.

20 8. DOES 1 through 100 are each a person in the course of doing business
21 within the meaning of Health & Safety Code §25249.11. Defendant DOES 1 through 100 each
22 manufacture, distribute and/or sell Products that contain DEHP for sale or use in California.

23 9. DOES 101 through 200 are each a person in the course of doing business
24 within the meaning of Health & Safety Code §25249.11. Defendant DOES 101 through 200
25 each manufacture, distribute and/or sell Products that contain DEHP and DBP for sale or use in
26 California.

27 10. DOES 1 through 200 are each identified herein by fictitious names. The
28 true names of DOES 1 through 200 are unknown to Plaintiff at this time. When the identities of

1 DOES 1 through 200 are ascertained, the complaint shall be amended to reflect their true names.

2 11. Audiovox, Griffin, Maxell, Sakar, and DOES 1 through 200 are
3 collectively referred to herein as “Defendants.”

4 **JURISDICTION AND VENUE**

5 12. The Court has jurisdiction over this action pursuant to Health & Safety
6 Code §25249.7, which allows enforcement in any court of competent jurisdiction. The
7 California Superior Court has jurisdiction over this action pursuant to California Constitution
8 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except
9 those given by statute to other trial courts.” The statutes under which this action is brought do
10 not grant jurisdiction to any other trial court.

11 13. This Court has jurisdiction over the Defendants because each is a business
12 entity that does sufficient business, has sufficient minimum contacts or otherwise intentionally
13 avails itself of the California market through the sale, marketing or use of the Products in
14 California and/or by having such other contacts with California so as to render the exercise of
15 jurisdiction over it by the California courts consistent with traditional notions of fair play and
16 substantial justice.

17 14. Venue is proper in the San Mateo Superior Court because one or more of
18 the violations arise in the County of San Mateo.

19 **BACKGROUND FACTS**

20 15. The People of the State of California have declared by initiative under
21 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
22 defects, or other reproductive harm.” Proposition 65, §1(b).

23 16. To effectuate this goal, Proposition 65 requires that individuals be
24 provided with a “clear and reasonable warning” before being exposed to chemicals listed by the
25 State of California as known to cause cancer and/or birth defects or other reproductive harm
26 unless the business responsible for the exposure can prove that it fits within a statutory
27 exemption. Health & Safety Code §25249.6 states, in pertinent part:

28 No person in the course of doing business shall knowingly and

1 intentionally expose any individual to a chemical known to the
2 state to cause cancer or reproductive toxicity without first giving
clear and reasonable warning to such individual. . . .

3 17. On January 1, 1988, the State of California officially listed DEHP as a
4 chemical known to cause cancer. On January 1, 1989, one year after it was listed as a chemical
5 known to cause cancer, DEHP became subject to the clear and reasonable warning requirement
6 regarding cancer hazards under Proposition 65. 27 California Code of Regulations (“C.C.R.”)
7 §27001(c); Health & Safety Code §25249.10(b).

8 18. On October 24, 2003, the State of California officially listed DEHP as a
9 chemical known to cause reproductive toxicity. DEHP is specifically identified as a
10 reproductive toxicant under two subcategories: (1) “developmental reproductive toxicity,” which
11 means that it tends to harm the developing fetus and (2) “male reproductive toxicity,” which
12 means that it tends to harm the male reproductive system. 27 C.C.R. §27001(c). On October 24,
13 2004, one year after it was listed as a chemical known to cause reproductive toxicity, DEHP
14 became subject to the clear and reasonable warning requirement regarding reproductive toxins
15 under Proposition 65. 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

16 19. On December 2, 2005, the State of California officially listed DBP as a
17 chemical known to cause reproductive toxicity. DBP is specifically identified as a reproductive
18 toxicant under three subcategories: “developmental reproductive toxicity,” which means that it
19 tends to harm the developing fetus, “female reproductive toxicity,” which means that it tends to
20 harm the female reproductive system, and “male reproductive toxicity,” which means that it
21 tends to harm the male reproductive system. 27 C.C.R. §27001(c). On December 2, 2006, one
22 year after it was listed as a chemical known to cause reproductive toxicity, DBP became subject
23 to the clear and reasonable warning requirement regarding reproductive toxins under Proposition
24 65. 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

25 20. Defendants’ Products contain sufficient quantities of DEHP such that
26 individuals who handle the Products are exposed to DEHP through the average use of the
27 Products. For example, ordinary consumers absorb DEHP through the skin when they touch,
28

1 use, handle, put on, wear and/or take off the Products. Ordinary consumers also ingest DEHP
2 when they put the Products in their mouths during normal use, including when consumers put on,
3 wear and/or take off the Products. Ordinary consumers ingest DEHP via hand to mouth contact
4 after they touch, use, handle, put on, wear and/or take off the Products or touch other objects that
5 they then put in their mouths.

6 21. Defendants Griffin's and Sakar's Products also contain sufficient
7 quantities of DBP such that individuals who handle Griffin's and Sakar's Products are exposed
8 to DBP through the average use of the Products. For example, ordinary consumers absorb DBP
9 through the skin when they touch, use, handle, put on, wear and/or take off the Products.
10 Ordinary consumers also ingest DBP when they put the Products in their mouths during normal
11 use, including when consumers put on, wear and/or take off the Products. Ordinary consumers
12 ingest DBP via hand to mouth contact after they touch, use, handle, put on, wear and/or take off
13 the Products or touch other objects that they then put in their mouths.

14 22. Defendants both know and intend that the Products contain DEHP or both
15 DEHP and DBP . The Products typically use DEHP or both DEHP and DBP to provide the
16 Products with flexibility.

17 23. Defendants both know and intend that individuals will handle, wear, and
18 otherwise use the Products, thus exposing them to DEHP or both DEHP and DBP . DEHP or
19 both DEHP and DBP are intended ingredients of the Products.

20 24. Nevertheless, Defendants have, since January 2005, and continuing to the
21 present, exposed consumers to DEHP or both DEHP and DBP without providing clear and
22 reasonable warnings regarding the cancer and/or reproductive hazards of DEHP or both DEHP
23 and DBP .

24 25. Any person acting in the public interest has standing to enforce violations
25 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
26 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
27 action within such time. Health & Safety Code §25249.7(d).

28 26. More than sixty days before naming each Defendant in this Complaint,

1 Plaintiff provided a 60-Day Notice of Violation of Proposition 65 to the California Attorney
2 General, the District Attorneys of every county in California, the City Attorneys of every
3 California city with a population greater than 750,000 and to the Defendant named. Each of the
4 Notices contained the information required by Health & Safety Code §25249.7(d) and 27 C.C.R.
5 §25903(b).

6 27. At the same time, Plaintiff also sent a Certificate of Merit for each Notice
7 of Violation to the California Attorney General, the District Attorneys of every county in
8 California, the City Attorneys of every California city with a population greater than 750,000,
9 and the Defendants named in the Notice. In compliance with Health & Safety Code §25249.7(d)
10 and 11 C.C.R. §3101, each Certificate of Merit certified that Plaintiff's counsel: (1) has
11 consulted with one or more persons with relevant and appropriate experience or expertise who
12 reviewed facts, studies or other data regarding the exposures to DEHP or both DEHP and DBP
13 alleged in the Notice; and (2) based on the information obtained through such consultations,
14 believes that there is a reasonable and meritorious case for a citizen enforcement action based on
15 the facts alleged in the attached Notice. In compliance with Health & Safety Code §25249.7(d)
16 and 11 C.C.R. §3102, the Certificate served on the Attorney General included factual
17 information – provided on a confidential basis – sufficient to establish the basis for the
18 Certificates, including the identity of the person(s) consulted by Plaintiff's counsel and the facts,
19 studies or other data reviewed by such persons.

20 28. None of the public prosecutors with the authority to prosecute violations
21 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against the
22 Defendants under Health & Safety Code §25249.5, *et seq.*, based on the claim asserted in the
23 Notice.

24 29. Plaintiff has engaged in good-faith efforts to resolve the claims alleged
25 herein prior to filing this complaint.

26 30. Any person “violating or threatening to violate” Proposition 65 may be
27 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to
28 violate” is defined to mean “to create a condition in which there is a substantial probability that a

1 violation will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil
2 penalties up to \$2,500 per day for each violation of Proposition 65.

3 **FIRST CAUSE OF ACTION**
4 **(Violations of the Health & Safety Code §25249.6)**
5 **(Against All Defendants)**

6 31. Plaintiff realleges and incorporates by reference as if specifically set forth
7 herein Paragraphs 1 through 30, inclusive.

8 32. By placing the Products into the stream of commerce, Defendants are
9 persons in the course of doing business within the meaning of Health & Safety Code §25249.11.

10 33. Defendants know that average use of the Products will expose users of the
11 Products to DEHP or both DEHP and DBP as described in paragraphs 4-7 and 20-21.
12 Defendants intend that the Products be used in a manner that results in users of the Products
13 being exposed to DEHP or both DEHP and DBP contained in the Products.

14 34. Defendants have failed, and continue to fail, to provide clear and
15 reasonable warnings regarding the carcinogenicity and reproductive toxicity of the DEHP and/or
16 the reproductive toxicity of the DBP contained in their Products.

17 35. DEHP is a chemical listed by the State of California as known to cause
18 cancer and birth defects or other reproductive harm.

19 36. DBP is a chemical listed by the State of California as known to cause birth
20 defects or other reproductive harm.

21 37. By committing the acts alleged above, Defendants have at all times
22 relevant to this complaint violated Proposition 65 by knowingly and intentionally exposing
23 individuals to DEHP or both DEHP and DBP without first giving clear and reasonable warnings
24 to such individuals regarding the carcinogenicity and/or reproductive toxicity of DEHP or both
25 DEHP and DBP .

26 Wherefore, Plaintiff prays judgment against the Defendants, as set forth hereafter.

27 **PRAYER FOR RELIEF**

28 Wherefore, Plaintiff prays for judgment against Defendants as follows:

1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess

1 civil penalties against each of the Defendants in the amount of \$2,500 per day for each violation
2 of Proposition 65 according to proof;

3 2. That the Court, pursuant to Health & Safety Code §25249.7(a),
4 preliminarily and permanently enjoin Defendants from offering the Products for sale in
5 California without providing clear and reasonable warnings, as Plaintiff shall specify in further
6 application to the Court;

7 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order
8 Defendants to take action to stop ongoing unwarned exposures to DEHP and DBP resulting from
9 use of Products sold by Defendants, as Plaintiff shall specify in further application to the Court;

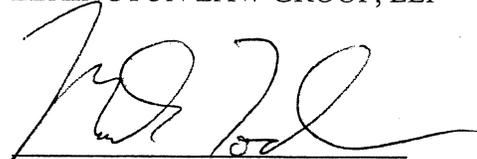
10 4. That the Court, pursuant to Code of Civil Procedure §1021.5 and any
11 other applicable theory, grant Plaintiff its reasonable attorneys' fees and costs of suit; and

12 5. That the Court utilize its inherent equitable power to grant such other and
13 further relief as may be just and proper.

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15 Dated: July 18, 2008

Respectfully submitted,

16 LEXINGTON LAW GROUP, LLP

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19 Mark N. Todzo
20 Attorneys for Plaintiff
21 CENTER FOR ENVIRONMENTAL HEALTH
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