

1 LEXINGTON LAW GROUP, LLP
Mark N. Todzo, State Bar No. 168389
2 Howard Hirsch, State Bar No. 213209
Lisa Burger, State Bar No. 239676
3 1627 Irving Street
San Francisco, CA 94122
4 Telephone: (415) 759-4111
Facsimile: (415) 759-4112

5 Attorneys for Plaintiff
6 CENTER FOR ENVIRONMENTAL HEALTH

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN MATEO
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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.)
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Case No. CIV 474817

~~PROPOSED~~ CONSENT JUDGMENT
RE: MAXELL CORPORATION OF
AMERICA

FILED
SAN MATEO COUNTY

OCT 10 2008

Clerk of the Superior Court
By E. J. J. J.
CLERK

1 **1. INTRODUCTION**

2 **1.1** On July 18, 2008, plaintiff the Center for Environmental Health
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint titled *Center for*
4 *Environmental Health v. Maxell Corporation of America, et al.*, San Mateo County Superior
5 Court Case Number 474817 (the “CEH Action”), for civil penalties and injunctive relief
6 pursuant to the provisions of Cal. Health & Safety Code §25249.5 *et seq.* (“Proposition 65”)
7 naming Maxell Corporation of America (“Defendant”) as a defendant.

8 **1.2** Defendant is a corporation that employs 10 or more persons and
9 manufactured, distributed and/or sold headphone cables (the “Products”) in the State of
10 California.

11 **1.3** Beginning on or about January 31, 2008, CEH served Defendant and the
12 appropriate public enforcement agencies with the requisite 60-day notice (the “Notice”) alleging
13 that Defendant was in violation of Proposition 65. CEH’s Notice and the Complaint in this
14 Action allege that Defendant exposes people who use or otherwise handle the Products to di (2-
15 ethylhexyl) phthalate (“DEHP”), a chemical known to the State of California to cause cancer,
16 birth defects and other reproductive harm, without first providing clear and reasonable warning
17 to such persons regarding the carcinogenicity and reproductive toxicity of DEHP. The Notice
18 and Complaint allege that Defendants’ conduct violates Health & Safety Code §25249.6, the
19 warning provision of Proposition 65. Defendant disputes such allegations and asserts that all of
20 its products are safe and comply with all applicable laws.

21 **1.4** For purposes of this Consent Judgment only, the parties stipulate that this
22 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and
23 personal jurisdiction over Defendant as to the acts alleged in CEH’s Complaint, that venue is
24 proper in the County of San Mateo, and that this Court has jurisdiction to enter this Consent
25 Judgment as a full and final resolution of all claims which were or could have been raised in the
26 Complaint based on the facts alleged therein.

27 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of
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1 certain disputed claims between the Parties as alleged in the Complaint. By executing this
2 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the parties'
3 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
4 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
5 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
6 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
7 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
8 any other or future legal proceedings.

9 **2. COMPLIANCE - REFORMULATION**

10 **2.1 Reformulation Standard – Removal of Phthalates.** After 30 days
11 following entry of this Consent Judgment (the "Compliance Date"), Defendant shall not
12 manufacture, distribute, ship, or sell, or cause to be manufactured, distributed or sold, any
13 Product that contains in excess of trace amounts of DEHP or any replacement/substitution
14 Phthalate. For purposes of this Consent Judgment only: (1) "in excess of the trace amount" for
15 any individual phthalate compound means more than 100 parts per million ("ppm"); and (2)
16 "Phthalate" means "any dialkyl or alkyl aryl esters of 1,2-benzenedicarboxylic acid."

17 **2.1.1 Certification from suppliers.** Defendant shall issue
18 specifications to its suppliers requiring that the Products shall not contain any Phthalate in excess
19 of the trace amount. Defendant shall obtain written certification from its suppliers of the
20 Products certifying that the Products do not contain any DEHP or replacement/substitution
21 Phthalate in excess of the trace amount.

22 **2.1.2 Testing.** In order to ensure compliance with the requirements of
23 Section 2.1, Defendant shall cause to be conducted testing to confirm that the Products do not
24 contain detectable amounts of Phthalates. Testing shall be conducted in compliance with Section
25 2.1.2.1. All testing pursuant to this Section shall be performed by an independent laboratory in
26 accordance with both of the following test protocols: (1) EPA SW8270C; and (2) EPA
27 SW3580A (together referred to as the "Test Protocols"). At the request of CEH, the results of
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1 the testing performed pursuant to this Section shall be made available to CEH on a confidential
2 basis.

3 **2.1.2.1 Testing Frequency.** For each of the first two orders of
4 Products purchased from each of Defendant's suppliers after the Compliance Date, Defendant
5 shall randomly select and test the greater of 0.1% (one-tenth of one percent) or eight, but in no
6 case more than ten, of the total Products purchased from each supplier of the Products intended
7 for sale in California. Following the testing of first two orders as described above, Defendant
8 shall randomly select and test the greater of 0.05% (one-twentieth of one percent) or four, but in
9 no case more than five, of the total Products purchased in that calendar year for sale in California
10 from each supplier of the Products.

11 **2.1.2.2 Products That Contain Phthalates Pursuant to**
12 **Defendant's Testing.** If the results of the testing required pursuant to Section 2.1.2 show a
13 Phthalate in excess of the trace amount in a Product, Defendant shall: (1) refuse to accept all of
14 the Products that were purchased under the particular purchase order; (2) send a notice to the
15 supplier explaining that such Products do not comply with the suppliers' certification; and (3)
16 apply the testing frequency set forth in 2.1.2.1 as though the next shipment from the supplier
17 were the first one following the Compliance Date.

18 **2.1.3 Confirmatory Testing by CEH.** CEH intends to conduct
19 confirmatory testing of the Products. Any such testing shall be conducted by CEH at an
20 independent laboratory, in accordance with both of the Test Protocols. In the event that CEH's
21 testing demonstrates that the Products manufactured, or otherwise initially placed in the stream
22 of commerce after the Compliance Date contain a Phthalate in excess of the trace amount
23 subsequent to the Compliance Date, CEH shall inform Defendant of the test results, including
24 information sufficient to permit Defendant to identify the Product(s). Defendant shall, within 30
25 days following such notice, provide CEH, at the address listed in Section 11, with the
26 certification and testing information demonstrating its compliance with Sections 2.1.1 and 2.1.2
27 of this Consent Judgment. If Defendant fails to provide CEH with information demonstrating
28 that it complied with Sections 2.1.1 and/or 2.1.2, Defendant shall be liable for stipulated

1 payments in lieu of penalties for Products for which CEH produces tests demonstrating the
2 presence of Phthalates in the Products in excess of the trace amount. The payments shall be
3 made to CEH and used for the purposes described in Section 4.1.

4 **2.1.3.1 Stipulated Payments In Lieu of Penalties.** If stipulated
5 payments in lieu of penalties are warranted under section 2.1.3, the stipulated payment amount
6 shall be as follows for each unit of Product for which CEH produces a test result showing that
7 Defendant sold a Product containing a Phthalate of a level in excess of the trace amount after the
8 Compliance Date:

9	First Occurrence:	\$500
10	Second Occurrence:	\$750
11	Third Occurrence:	\$1,000
12	Thereafter:	\$2,500

13 Notwithstanding the foregoing, the maximum stipulated payment in a calendar year, regardless
14 of the number of units of Product tested by CEH with a Phthalate in excess of the trace amount,
15 shall not exceed \$10,000.

16 **3. SETTLEMENT PAYMENTS**

17 **3.1 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH
18 \$7,000 in lieu of any penalty pursuant to Health and Safety Code §25249.7(b). CEH shall use
19 such funds to continue its work protecting people from exposures to toxic chemicals. As part of
20 this work, CEH intends to conduct periodic testing of the Products as set forth in sections 2.1.3.
21 The payment required under this section shall be made payable to CEH.

22 **3.2 Attorneys' Fees and Costs.** Defendant shall pay \$14,000 to reimburse
23 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
24 other costs incurred as a result of investigating, bringing this matter to Defendant's attention,
25 litigating and negotiating a settlement in the public interest. The payment required under this
26 section shall be made payable to Lexington Law Group, LLP.

27 **3.3 Delivery of payments.** All of the payments made pursuant to this Section
28 3 shall be delivered to the Lexington Law Group, LLP at the address set forth in section 11.1

1 within 10 days of entry of this Consent Judgment.

2 **4. MODIFICATION OF CONSENT JUDGMENT**

3 **4.1** This Consent Judgment may be modified by written agreement of
4 CEH and Defendant, or upon motion of CEH or Defendant as provided by law.

5 **4.2** CEH intends to enter into agreements with other entities that manufacture,
6 distribute, and/or sell headphone cables. Should Defendant determine that the provisions of any
7 such Consent Judgment with a similarly situated manufacturer or distributor are less stringent,
8 Defendant may request a modification of this Consent Judgment to conform with the terms of
9 the later entered Consent Judgment. Upon 30 days prior written notice of Defendant's request
10 for a modification, CEH shall inform Defendant whether it will agree to such modification. If
11 CEH does not agree, Defendant may move the Court for a modification pursuant to this section.

12 **5. ENFORCEMENT OF CONSENT JUDGMENT**

13 **5.1** CEH may, by motion or application for an order to show cause, enforce
14 the terms and conditions contained in this Consent Judgment. The prevailing party on any such
15 motion shall be entitled to recover its reasonable attorneys' fees and costs associated therewith.

16 **6. APPLICATION OF CONSENT JUDGMENT**

17 **6.1** This Consent Judgment shall apply to and be binding upon the
18 parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any
19 of them.

20 **6.2** This Consent Judgment shall continue in full force and effect for five
21 years after the Compliance Date, at which time it and all obligations set forth in this Consent
22 Judgment shall terminate by operation of law without further action required by the Court.

23 **7. CLAIMS COVERED AND RELEASE OF CLAIMS**

24 **7.1** This Consent Judgment is a full, final and binding resolution between
25 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in
26 the Complaint against Defendant (including any claims that could be asserted in connection with
27 any of the Products covered by this Consent Judgment) or its parents, subsidiaries, affiliates,
28 directors, officers, employees, agents, attorneys, distributors, retailers, or customers

1 (collectively, "Defendant Releasees") based on failure to warn about alleged exposures to DEHP
2 resulting from any Products manufactured, distributed or sold by Defendant ("Covered Claims")
3 on or prior to the date of entry of this Consent Judgment. CEH, its directors, officers, employees
4 and attorneys hereby release all Covered Claims against Defendant Releasees. Compliance with
5 the terms of this Consent Judgment constitutes compliance with Proposition 65 for purposes of
6 Phthalate exposures from the Products.

7 7.2 Defendant's Products that have been manufactured, shipped, or sold, or
8 otherwise are in the stream of commerce, prior to the Compliance Date shall be released from
9 any claims that were brought or that could have been brought by CEH in its complaint as though
10 they were Covered Claims.

11 7.3 Notwithstanding any other provision herein, the terms of this Consent
12 Judgment shall apply only to Products manufactured, distributed or sold for the United States
13 market.

14 8. SEVERABILITY

15 8.1 In the event that any of the provisions of this Consent Judgment are
16 held by a court to be unenforceable, the validity of the enforceable provisions shall not be
17 adversely affected.

18 9. GOVERNING LAW

19 9.1 The terms of this Consent Judgment shall be governed by the laws of
20 the State of California.

21 10. RETENTION OF JURISDICTION

22 10.1 This Court shall retain jurisdiction of this matter to implement and
23 enforce the terms this Consent Judgment.

24 11. PROVISION OF NOTICE

25 11.1 All notices required pursuant to this Consent Judgment and
26 correspondence shall be sent to the following:

27 For CEH:

28 Mark N. Todzo

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Lexington Law Group, LLP
1627 Irving Street
San Francisco, CA 94122

For Defendant:

Maxell Corporation of America
22-08 Route 208
Fair Lawn, NJ 07410
ATTENTION: General Counsel

12. COURT APPROVAL

12.1 CEH will comply with the settlement notice provisions of Health and Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

13. EXECUTION AND COUNTERPARTS

13.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

14. AUTHORIZATION

14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the party represented and legally bind that party. The undersigned have read, understand and agree to all of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH



Dated: 7/24/08

Michael Green, Executive Director
Center for Environmental Health

1 MAXELL CORPORATION OF AMERICA

2 J. Haine

Dated: JULY 21, 2008

3
4 LEONARD HAINE
[Name]

5 VICE PRESIDENT
6 [Title]

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ORDER AND JUDGMENT

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Based upon the stipulated Consent Judgment between CEH and Maxell Corporation of America, the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: ~~_____~~ **OCT 10 2008**

MARIE S. WEINER

Judge, Superior Court of the State of California