

Michael Freund SBN 99687
Attorney at Law
1915 Addison Street
Berkeley, CA 94704
Telephone: (510) 540-1993
Facsimile: (510) 540-5543

Attorney for Plaintiff
Center for Environmental Health

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL
HEALTH,

Plaintiff

v.

EASTERN AMERICA TRIO PRODUCTS,
INC.,

Defendants.

Case No. RG08382114

**[PROPOSED] CONSENT
CONSENT JUDGMENT AS TO
EASTERN AMERICA TRIO
PRODUCTS, INC.**

I. INTRODUCTION

1.1 Plaintiff Center for Environmental Health (“CEH”) filed this action his action as a private attorney general and in the public interest pursuant to California Health Safety Code section 25249.7 (d). Based on the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety Code Section 25249.5 et seq) also known as “Proposition 65,” the complaint requested injunctive and declaratory relief and civil penalties based on Eastern America Trio Products, Inc.’s (“Eastern America”) failure to warn users of the company’s audio cord cable,

modular extension telephone cord and modular telephone coil cord that they are exposed to lead by the handling of these products. Lead is a chemical known to the State of California to cause developmental toxicity, male and female reproductive toxicity and cancer. Pursuant to Proposition 65, a “clear and reasonable warning” must be provided prior to exposing people to specified chemicals listed by the State to cause reproductive toxicity and cancer in excess of threshold levels.

1.2 CEH’s Complaint is based on allegations contained in Notices of Violation dated October 1, 2007 and October 1, 2008 served on the California Attorney General, other public enforcers and Eastern America. A true and correct copy of these Notices is attached hereto as Exhibit A. Each Notice contains a list of the “Covered Products” that are incorporated into this Consent Judgment.

1.3 CEH is a non-profit California corporation whose primary mission is to prevent and reduce toxic hazards to human health and the environment. Through CEH’s activities, numerous carcinogenic chemicals and reproductive toxicants listed pursuant to Proposition 65 contained in consumer products and emitted into the air from industries have been eliminated. CEH is, and at all times set forth herein has been, acting in the public interest under provisions of Proposition 65, as fully set forth at Health and Safety Code section 25249.7 (d).

1.4 Eastern America Trio Products is a corporation licensed to do business in the State of New York. The company operates a facility in College Point, New York where the Covered Products are manufactured and/or distributed. Defendant is a citizen of the State of New York, being a corporation organized under the laws of the State of New York and having its principal place of business at 25-10 Ulmer Street, Flushing, New York 11354.

1.5 The Parties enter into this Consent Judgment pursuant to a full settlement of disputed claims between the Parties as alleged in the Complaint for the purpose of avoiding prolonged litigation and to insure that the objectives of Proposition 65. The Parties seek to protect the public health by reducing or eliminating the public's exposure to toxic chemicals. CEH has diligently prosecuted this matter and is settling this case in the public interest. Plaintiff and Defendant also intend for this Consent Judgment to provide, to the maximum extent permitted by law, res judicata protection for Defendant against all other claims based on the same or similar allegations contained in CEH's Notice of Violation and CEH's Complaint.

1.6 Nothing in the Consent Judgment shall be construed as an admission by Eastern America of any fact, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by Eastern America of any fact, issue of law or violation of law, at any time, for any purpose. Nothing in the Consent Judgment shall prejudice, waive or impair any right, remedy or defense that Eastern America may have in any other or further legal proceedings. Nothing in the Consent Judgment or any document referred to herein, shall be construed as giving rise to any presumption or inference of admission or concession by Defendant as to any fault, wrongdoing or liability whatsoever. Nothing in the Consent Judgment or any of its terms or provisions, nor any of the negotiations or other proceedings connected with it, nor any other action taken to carry out the Consent Judgment entered by the Court, by any of the Parties hereto, shall be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce the Consent Judgment, to defend against the assertion of the released claims or as otherwise required by law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities and duties of Eastern America

under the Consent Judgment.

II. JURISDICTION AND VENUE

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the subject matter of this action and personal jurisdiction over the Parties, that venue is proper in this Court, and that this Court has jurisdiction to enter a Consent Judgment pursuant to the terms set forth herein.

III. INJUNCTIVE RELIEF -REFORMULATION AND TESTING

3.1 Level of Compliance

Pursuant to the terms of this Consent Judgment, Eastern America shall be enjoined from offering for sale, selling, distributing or shipping the Covered Products anywhere unless the surface contact layer of the Covered Products has a lead content by weight of less than 300 parts per million, or “300 ppm.” (“Reformulation Standard”).

3.2 Certification of Level of Compliance from Suppliers

Within sixty (60) days of entry of this Consent Judgment, Eastern America shall obtain written certification from its suppliers certifying that the surface contact layer of the Covered Products complies with the Reformulation Standard. Such supplier certifications shall be obtained annually for five successive years. If Eastern America commences purchases from a new supplier, certifications shall be obtained annually from that supplier for five consecutive years after Eastern American’s initial purchase order from that supplier.

3.3 Testing

Eastern America shall conduct periodic testing on the surface contact layer of each of the Covered Products to ensure that the lead content complies with the Reformulation Standard. The test method shall be of sufficient sensitivity to establish a limit of quantification (as distinguished

from detection) of less than 300 ppm. The testing should be based on EPA method 3050B and EPA method 6020A or equivalent. Eastern America shall conduct testing on at least three of each of the Covered Products per batch of products received prior to offering for sale, selling, distributing or shipping the Covered Products. Eastern America shall continue this method testing on each of the Covered Products at least three times per year for the first year following entry of this Consent Judgment and at least twice per year thereafter. The results of all testing performed pursuant to this Section shall be made available to CEH on a confidential basis, upon request.

3.4 Products that Exceed Compliance Level

If Eastern America obtains information either from its own testing or from CEH that the lead content of any of the Covered Products exceeds the Reformulation Standard, Defendant shall immediately (1) refuse to accept all of the Covered Products that were purchased under the particular purchase order; (2) notify the manufacturer of the product of the exceedance and request an investigation to determine the cause of such lead level and to demand that the manufacturer immediately take steps to ensure that the lead content is reduced to a level below 300 ppm; and (3) for the next two orders of Covered Products that are purchased from the supplier, randomly select and test four of the products purchased in each purchase order.

3.5 Testing by CEH

CEH intends to conduct periodic testing of the Covered Products. If CEH discovers that the lead content of any of the Covered Products exceeds the Reformulation Standard, CEH shall within thirty (30) days of having such knowledge, provide a Notice of Default to Eastern America. The Notice of Default shall inform Eastern America of the test results, identify the Covered Product(s), and if available, identification code(s) as well as the dates and locations at

which all Defaults were observed. In the event that Eastern America notifies CEH within thirty (30) days of receiving the Notice of Default that it will implement, within forty (40) days thereafter, such measures as are necessary to correct the Default(s) so that the surface contact layer of the Covered Products has a lead content by weight of less than 300 ppm and provides CEH with the certification and testing information demonstrating compliance with the compliance level as set forth herein (“Notice of Cure”), no further payments shall be required by Eastern America. If Eastern America fails to provide CEH with certification and testing information demonstrating that it complied with the Reformulation Standard, Eastern America shall be liable for stipulated payments in lieu of penalties for Covered Products for which CEH produces tests demonstrating lead levels exceeding the Reformulation Standard, as set forth below.

3.6 Stipulated Payments in Lieu of Penalties

If stipulated payments in lieu of penalties are warranted under Section 3.5, the stipulated payment shall be made within thirty (30) days of receiving of demand from CEH and shall cover CEH’s attorney’s fees and costs. The stipulated payment amount shall be as follows:

First Occurrence:	\$2,500.00
Second Occurrence:	\$3,000.00
Third Occurrence:	\$3,500.00
Thereafter:	\$ 5,000.00

V. PAYMENT

In full and final satisfaction of CEH’s costs of litigation, attorney’s fees and all other expenses, Eastern America shall make a total payment of \$25,000.00, payable within five (5) business days of receiving the Notice of Entry of Consent Judgment. Said payments shall be for

the following:

A. \$8,333.33 payable to the Center for Environmental Health which includes:

- a) research into alternatives to the use of toxic chemicals and promotion of those alternatives and
- b) reimbursement of out of pocket expenses of \$1,097.34 . CEH's Tax Identification No. is 94-3169008.

B. \$16,666.66 payable to Michael Freund as reimbursement of CEH's attorney's fees.

Eastern America's payments shall be mailed to the Law Office of Michael Freund.

VI. RELEASE AND CLAIMS COVERED

This Consent Judgment entered by the Court is a final and binding resolution between and among, CEH, its officers, directors, agents, employees, attorneys, successors and assigns, acting on behalf of the general public, and Eastern America, its parents, subsidiaries, affiliates, divisions, subdivisions, officers, directors, shareholders, employees, agents, attorneys, successors and assigns, of any and all claims, known or unknown, that have been or could have been asserted by CEH against Eastern America in the Complaint in regard to a violation of Proposition 65, up to and including the date of entry of Consent Judgment arising from the use of lead in the Covered Products Except for such rights and obligations as have been created under this Consent Judgment, Plaintiff, on its own behalf and bringing an action "in the public interest" pursuant to California Health and Safety Code Section 25249.7 (d) with respect to the matters alleged in the CEH lawsuit, does hereby fully, completely, finally and forever release, relinquish and discharge Eastern America and its respective parents, subsidiaries, affiliates, division, subdivisions, officers, directors, shareholders, employees, agents, attorneys, successors and assigns ("released parties") of and from any and all claims, actions, causes of action, demands, rights, debts, agreements, promises, liabilities,

damages, accountings, costs and expenses, whether known or unknown, suspected or unsuspected, of every nature whatsoever which Plaintiff has or may have against the said released parties, arising directly or indirectly out of any fact or circumstance occurring prior to the date upon which the Consent Judgment becomes final, relating to alleged violations of Proposition 65 by the Defendant.

It is the intention of the Parties to this release that, upon entry of Consent Judgment and conclusion of any litigation relating to (i) this Consent Judgment and the Consent Judgment entered by the Court and (ii) the CEH lawsuit itself, that this Consent Judgment and Consent Judgment entered by the Court shall be effective as a full and final accord and satisfaction and Release of every released claim up to and including the date of entry of the Consent Judgment. In furtherance of this intention, Plaintiff acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Plaintiff hereby waives and relinquishes all of the rights and benefits that Plaintiff has, or may have, under California Civil Code section 1542 (as well as any similar rights and benefits which they may have by virtue of any statute or rule of law in any other state or territory of the United States). Plaintiff hereby acknowledges that it may hereafter discover facts in addition to, or different from, those which it now knows or believes to be true with respect to the subject matter of this Consent Judgment and the Consent Judgment entered by the Court and the released claims, but that notwithstanding the foregoing, it is Plaintiff's intention hereby to fully,

finally, completely and forever settle and release each, every and all released claims, and that in furtherance of such intention, the release herein given shall be and remain in effect as a full and complete general release, notwithstanding the discovery or existence of any such additional or different facts. Plaintiff hereby warrants and represents to Defendant that (a) Plaintiff has not previously assigned any released claim, and (b) Plaintiff has the right, ability and power to release each released claim.

VII. CONTINUING OBLIGATIONS

Nothing herein shall be construed as diminishing Eastern America's continuing obligations to comply with Proposition 65.

VIII. SEVERABILITY OF UNENFORCED PROVISIONS

In the event that any of the provisions hereof are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

IX. ENFORCEMENT OF CONSENT JUDGMENT

CEH may, by motion or order to show cause before the United States District Court, Northern District of California, enforce the terms and conditions contained in the Consent Judgment entered by the Court.

X. APPLICATION OF CONSENT JUDGMENT

This Consent Judgment entered by the Court shall apply to, be binding upon and inure to the benefit of Eastern America, its parents, subsidiaries, affiliates, divisions, subdivisions, officers, directors, shareholders, employees, agents, attorneys, successors and assigns, and upon CEH on its own behalf and on behalf of the general public, and each and every one of its members, and its directors, officers, employees, agents, successors, attorneys and assigns.

XI. MODIFICATION OF CONSENT JUDGMENT

This Consent Judgment entered by the Court may be modified only upon written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon a regularly-noticed motion of any Party to the Consent Judgment as provided by law and upon entry of a modified Consent Judgment by the Court.

XII. RETENTION OF JURISDICTION

This Court shall retain jurisdiction of this matter to enforce, modify or terminate the Consent Judgment.

XIII. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT

Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

XIV. NON-CONFIDENTIALITY

The terms and conditions of the Consent Judgment entered by the Court shall not be confidential.

XV. COURT APPROVAL

The Consent Judgment shall be effective only after it has been executed by the Court. Otherwise, it shall be of no force or effect and cannot be used in any proceeding for any purpose.

XVI. EXECUTION IN COUNTERPARTS

This Consent Judgment may be executed in counterparts and/or by facsimile, which taken together shall be deemed to constitute one document.

XVII. NOTICES

All notices required to be given to either Party to this Consent Judgment by the other shall be sent to the following agents:

FOR CENTER FOR ENVIRONMENTAL HEALTH:

Michael Green, Executive Director
Caroline Cox, Research Director
Center for Environmental Health
2201 Broadway, Suite 302
Oakland, CA 94612

Michael Bruce Freund
Law Offices of Michael Freund
1915 Addison Street
Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 540-5543

FOR EASTERN AMERICA TRIO PRODUCTS INC.:

Michael Harap
Chief Executive Officer
Eastern America Trio Products, Inc.
25-10 Ulmer Street
Flushing, N.Y. 11354

Caroline Shields, LLP
41-60 Main Street, Suite 208 A
Flushing, N.Y. 11355
Telephone: (718) 463-1868
Facismile: (718) 463-2883

XVIII. GOVERNING LAW

The validity, construction and performance of this Consent Judgment shall be governed by the laws of the State of California.

XIX. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for the Parties to this Settlement prior to its signing, and each Party has had an opportunity to fully discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment entered thereon, the terms and provisions shall not be construed against either Party.

XX. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

In the event a dispute arises with respect to either party's compliance with the terms of this Consent Judgment entered by the Court, the Parties shall meet either in person or by telephone and endeavor to resolve the dispute in an amicable manner. No action may be filed in the absence of such a good faith attempt to resolve the dispute beforehand. In the event an action is filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party who is successful in obtaining relief more favorable to it than the relief that the other party was amenable to providing during the parties' good faith attempt to resolve the dispute that is the subject of such enforcement action.

XXI. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

XXII. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF CONSENT JUDGMENT

This settlement has come before the Court upon the request of the Parties. The Parties request the Court to fully review this settlement and, being fully informed regarding the matters which are the subject of this action, to:

(1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of CEH's Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

(2) Make the findings pursuant to Health & Safety Code § 25249.7 (f) (4), approve the Settlement and approve this Consent Judgment.

IT IS SO STIPULATED:

Dated: _____, 2010

Michael Harap, Chief Executive Officer
Eastern America Trio Products, Inc.

Dated: _____, 2010

Michael Green, Director
Center for Environmental Health

Dated: _____, 2010

LIU & SHIELDS, LLP

Caroline Shields
Attorney for Defendant
Eastern America Trio Products, Inc.

Dated: _____, 2010

Michael Freund
Attorney for Plaintiff
Center for Environmental Health

IT IS SO ORDERED:

Judge Wynne Carvill

