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LEXINGTON LAW GROUP, LLP  
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Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN MATEO

CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )  
  
Plaintiff, )  
  
v. )  
  
AUDIOVOX CORP., et al., )  
  
Defendants. )

Case No. 474817

**[PROPOSED] CONSENT JUDGMENT  
RE: SAKAR INTERNATIONAL, INC.**

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**1. INTRODUCTION**

**1.1** On July 18, 2008, plaintiff the Center for Environmental Health (“CEH”), a non-profit corporation acting in the public interest, filed a complaint titled *Center for Environmental Health v. Audiovox, et al.*, San Mateo County Superior Court Case No. 474817 (the “CEH Action”), for civil penalties and injunctive relief pursuant to the provisions of Cal. Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”) naming Sakar International, Inc. (“Defendant”) as a defendant.

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

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

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

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

10                   **2.       COMPLIANCE - REFORMULATION**

11                   **2.1     Initial Reformulation Standard – Removal of DEHP and DBP.** After  
12 60-days following entry of this Consent Judgment (the "Initial Compliance Date"), Defendant  
13 shall not manufacture, distribute, ship, or sell, or cause to be manufactured, distributed or sold,  
14 any Product that contains in excess of trace amounts of DEHP and/or DBP. For purposes of this  
15 Consent Judgment only, "in excess of trace amounts" is more than 1000 parts per million  
16 ("ppm"). In reformulating the Products to remove DEHP and DBP, Defendant may not use butyl  
17 benzyl phthalate ("BBP"), di-n-hexyl phthalate ("DnHP") or di-isodecyl phthalate ("DIDP") in  
18 excess of trace amounts. DEHP, BBP, DnHP, DBP and DIDP are together referred to herein as  
19 "Listed Phthalates."

20                   **2.1.1   Certification From Suppliers.** Defendant shall issue  
21 specifications to its suppliers requiring that the Products shall not contain DEHP, DBP or any  
22 other Listed Phthalate in excess of trace amounts. Defendant shall obtain written certification  
23 from its suppliers of the Products certifying that the Products do not contain Listed Phthalates.

24                   **2.1.2   Testing.** In order to ensure compliance with the requirements of  
25 Section 2.1, Defendant shall cause to be conducted testing to confirm that the Products do not  
26 contain detectable amounts of Listed Phthalates. Testing shall be conducted in compliance with  
27 Section 2.1.2.1 below. All testing pursuant to this Section shall be performed by an independent  
28 laboratory in accordance with both of the following test protocols: (1) EPA SW8270C; and (2)

1 EPA SW3580A (together referred to as the "Test Protocols"). At the request of CEH, the results  
2 of the testing performed pursuant to this Section shall be made available to CEH on a  
3 confidential basis.

4 **2.1.2.1 Testing Frequency.** For each of the first two orders of  
5 Products purchased from each of Defendant's suppliers after the Initial Compliance Date,  
6 Defendant shall randomly select and test two of the total Products purchased from each supplier  
7 of the Products intended for sale in California.

8 **2.1.2.2 Products That Contain Listed Phthalates Pursuant to**  
9 **Defendant's Testing.** If the results of the testing required pursuant to Section 2.1.2 show Listed  
10 Phthalates in excess of trace amounts in a Product, Defendant shall: (1) refuse to accept all of the  
11 Products that were purchased under the particular purchase order; (2) send a notice to the  
12 supplier explaining that such Products do not comply with the suppliers' certification; and (3)  
13 apply the testing frequency set forth in 2.1.2.1 as though the next shipment from the supplier  
14 were the first one following the Initial Compliance Date.

15 **2.1.3 Confirmatory Testing by CEH.** CEH intends to conduct  
16 confirmatory testing of the Products. Any such testing shall be conducted by CEH at an  
17 independent laboratory, in accordance with both of the Test Protocols. In the event that CEH's  
18 testing demonstrates that the Products contain Listed Phthalates in excess of trace amounts  
19 subsequent to the Initial Compliance Date, CEH shall inform Defendant of the test results,  
20 including information sufficient to permit Defendant to identify the Product(s). Defendant shall,  
21 within 30 days following such notice, provide CEH, at the address listed in Section 11, with the  
22 certification and testing information demonstrating its compliance with Sections 2.1.1 and 2.1.2  
23 of this Consent Judgment. If Defendant fails to provide CEH with information demonstrating  
24 that it complied with Sections 2.1.1 and/or 2.1.2, Defendant shall be liable for stipulated  
25 payments in lieu of penalties for Products for which CEH produces tests demonstrating the  
26 presence of Listed Phthalates in the Products. The payments shall be made to CEH and used for  
27 the purposes described in Section 4.1.

28 **2.1.3.1 Stipulated Payments In Lieu of Penalties.** If stipulated

1 payments in lieu of penalties are warranted under section 2.1.3, the stipulated payment amount  
2 shall be as follows for each unit of Product for which CEH produces a test result showing that  
3 Defendant sold a Product containing Listed Phthalates after the Initial Compliance Date:

4	First Occurrence:	\$500
5	Second Occurrence:	\$750
6	Third Occurrence:	\$1,000
7	Thereafter:	\$2,500

8 A single-amount stipulated payment in lieu of penalty above shall only be  
9 imposed on Defendant if warranted above. As used in this Section 2.1.3.1, an "Occurrence" is a  
10 finding of any Phthalate in one Product sample from the same lot. Defendant will identify a  
11 "lot" by labeling Products with a model number(s) that also have a lot identifier suffix number  
12 such as the following suffix: " - NP/L-01" (relates to or indicates non-Phthalates/[and Lead]  
13 content Products).

#### 14 2.1.3.2 Good Faith Independent Laboratory Test Result

15 **Conducted by Defendant as to Any Supplier Showing Less than Trace Amounts Deemed**  
16 **Compliant and Shall Exempt Defendant From Stipulated Payments in Lieu of Penalties.** If  
17 Defendant relies on an independent Laboratory Test result from a lab that CEH has approved  
18 (note: CEH has approved SGS Laboratories Test Reports submitted by Defendant earlier in this  
19 matter, and may approve other lab(s)) conducted as to Products or other accused cords and/or  
20 cables and showing that such Products <sup>or</sup> other accused cords and/or cables contain less than trace  
21 amounts of any Phthalate from any supplier, and provides a copy of such independent  
22 Laboratory Test to CEH within 30 days of notice or request from CEH, such Laboratory Test  
23 result shall be deemed good faith compliance and shall exempt Defendant from stipulated  
24 payments in lieu of penalties or any other liability to CEH.

25 **2.2 Additional Reformulation -- Removal of All Phthalates.** Defendant  
26 shall attempt to meet the Additional Reformulation Standard within 9 months of entry of this  
27 Consent Judgment (the "Additional Reformulation Date"). For purposes of this Consent  
28 Judgment, a Product is in compliance with the Additional Reformulation Standard if it contains

1 no more than trace amounts of any Phthalate. For purposes of this Consent Judgment,  
2 "Phthalate" means "any dialkyl or alkyl aryl esters of 1,2-benzenedicarboxylic acid." If  
3 Defendant is able to meet the Additional Reformulation Standard, following the Additional  
4 Reformulation Date, Defendant: (a) shall not manufacture, distribute, ship, or sell or cause to be  
5 manufactured, distributed or sold, any Product that contains any Phthalate in excess of trace  
6 amounts; (b) must comply with the remainder of this Section 2.2; and (c) may waive the second  
7 installment of the payment in lieu of penalty set forth in Section 4.1.2. Should Defendant be  
8 unable to achieve the Additional Reformulation Standard by the Additional Reformulation Date,  
9 Defendant shall: (1) continue complying with the Initial Reformulation Standard and Section 2.1  
10 above; and (2) pay the second installment of the payment in lieu of penalty as set forth in Section  
11 4.1.2.

12 **2.2.1 Certification From Suppliers.** Defendant shall issue  
13 specifications to its suppliers requiring that the Products shall not contain any Phthalate.  
14 Defendant shall obtain written certification from its suppliers of the Products certifying that the  
15 Products do not contain any Phthalate.

16 **2.2.2 Testing.** In order to ensure compliance with the requirements of  
17 Section 2.2, Defendant shall cause to be conducted testing to confirm that the Products do not  
18 contain Phthalates in excess of trace amounts. Testing shall be conducted in compliance with  
19 Section 2.2.2.1 below. All testing pursuant to this Section shall be performed by an independent  
20 laboratory in accordance with both of the Test Protocols. At the request of CEH, the results of  
21 the testing performed pursuant to this Section shall be made available to CEH on a confidential  
22 basis.

23 **2.2.2.1 Testing Frequency.** For each of the first two orders of  
24 Products purchased from each of Defendant's suppliers after the Additional Reformulation Date,  
25 Defendant shall randomly select and test two of the total Products purchased from each supplier  
26 of the Products intended for sale in California.

27 **2.2.2.2 Products That Contain Phthalates Pursuant to**  
28 **Defendant's Testing.** If the results of the testing required pursuant to Section 2.2.2 show the

1 presence of any Phthalate in excess of trace amounts in a Product, Defendant shall: (1) refuse to  
2 accept all of the Products that were purchased under the particular purchase order; (2) send a  
3 notice to the supplier explaining that such Products do not comply with the suppliers'  
4 certification; and (3) apply the testing frequency set forth in 2.2.2.1 as though the next shipment  
5 from the supplier were the first one following the Additional Reformulation Date.

6 **2.2.3 Confirmatory Testing by CEH.** CEH intends to conduct  
7 confirmatory testing of the Products. Any such testing shall be conducted by CEH at an  
8 independent laboratory, in accordance with both of the Test Protocols. In the event that CEH's  
9 testing demonstrates that the Products contain any Phthalate in excess of trace amounts  
10 subsequent to the Additional Reformulation Date, CEH shall inform Defendant of the test  
11 results, including information sufficient to permit Defendant to identify the Product(s).  
12 Defendant shall, within 30 days following such notice, provide CEH, at the address listed in  
13 Section 11, with the certification and testing information demonstrating its compliance with  
14 Sections 2.2.1 and 2.2.2 of this Consent Judgment. If Defendant fails to provide CEH with  
15 information demonstrating that it complied with Sections 2.2.1 and/or 2.2.2, Defendant shall be  
16 liable for stipulated payments in lieu of penalties for Products for which CEH produces tests  
17 demonstrating the presence of a Phthalate in the Products. The payments shall be made to CEH  
18 and used for the purposes described in Section 4.1.

19 **2.2.3.1 Stipulated Payments In Lieu of Penalties.** If stipulated  
20 payments in lieu of penalties are warranted under section 2.2.3, the stipulated payment amount  
21 shall be as follows for each tested unit of Product for which CEH produces a test result showing  
22 that Defendant sold a Product containing Phthalates after the Additional Reformulation Date:

23	First Occurrence:	\$500
24	Second Occurrence:	\$750
25	Third Occurrence:	\$1,000
26	Thereafter:	\$2,500

27 A single-amount stipulated payment in lieu of penalty above shall only be  
28 imposed on Defendant if warranted above. As used in this Section 2.2.3.1, an "Occurrence" is a

1 finding of any Phthalate in one Product sample from the same lot. Defendant will identify a  
2 "lot" by labeling Products with a model number(s) that also have a lot identifier suffix number  
3 such as the following suffix: " - NP/L-01" (relates to or indicates non-Phthalates/[and Lead]  
4 content Products).

### 5 **2.2.3.2 Good Faith Independent Laboratory Test Result**

6 **Conducted by Defendant as to Any Supplier Showing Less than Trace Amounts Deemed**  
7 **Compliant and Shall Exempt Defendant From Stipulated Payments in Lieu of Penalties.** If  
8 Defendant relies on an independent Laboratory Test result from a lab that CEH has approved  
9 (note: CEH has approved SGS Laboratories Test Reports submitted by Defendant earlier in this  
10 matter, and may approve other lab(s)) conducted as to Products or other accused cords and/or  
11 cables and showing that such Products <sup>or</sup> other accused cords and/or cables contain less than trace  
12 amounts of any Phthalate from any supplier, and provides a copy of such independent  
13 Laboratory Test to CEH within 30 days of notice or request from CEH, such Laboratory Test  
14 result shall be deemed good faith compliance and shall exempt Defendant from stipulated  
15 payments in lieu of penalties or any other liability to CEH.

## 16 **3. SETTLEMENT PAYMENTS**

17 **3.1 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH  
18 \$10,000 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 and 2.2.3. The payment required under this section shall be made payable to CEH. This  
22 payment is due in two installments as set forth below.

23 **3.1.1 First Installment of Payment in Lieu of Penalty.** The first  
24 installment of \$6,000 shall be due within 10 days of entry of this Consent Judgment.

25 **3.1.2 Second Installment of Payment in Lieu of Penalty.** The second  
26 installment of \$4,000 shall be due within 10 days of the Additional Reformulation Date.

27 However, should Defendant achieve the Additional Reformulation Standard, this payment will  
28 be waived.

1                   **3.2 Attorneys' Fees and Costs.** Defendant shall pay \$13,500 to reimburse  
2 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any  
3 other costs incurred as a result of investigating, bringing this matter to Defendant's attention,  
4 litigating and negotiating a settlement in the public interest. The payment required under this  
5 section shall be made payable to Lexington Law Group, LLP and is due within 10 days of entry  
6 of this Consent Judgment..

7                   **3.3 Delivery of Payments.** All of the payments made pursuant to this Section  
8 3 shall be delivered to the Lexington Law Group, LLP at the address set forth in Section 12.1.

9                   **4. MODIFICATION OF CONSENT JUDGMENT**

10                   **4.1** This Consent Judgment may be modified by written agreement of CEH  
11 and Defendant, or upon motion of CEH or Defendant as provided by law.

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. Should CEH prevail on any such  
15 motion, it shall be entitled to recover its reasonable attorneys' fees and costs associated with  
16 enforcing the Consent Judgment.

17                   **6. APPLICATION OF CONSENT JUDGMENT**

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

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

22                   **7.1** This Consent Judgment is a full, final and binding resolution between  
23 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in  
24 the Complaint against Defendant (including any claims that could be asserted in connection with  
25 any of the Products covered by this Consent Judgment) or its parents, subsidiaries, affiliates,  
26 directors, officers, employees, agents, attorneys, distributors, or customers (collectively,  
27 "Defendant Releasees") based on failure to warn about alleged exposures to DEHP and DBP  
28 resulting from any Products manufactured, distributed or sold by Defendant ("Covered Claims")

1 on or prior to the date of entry of this Consent Judgment. CEH, its directors, officers, employees  
2 and attorneys hereby release all Covered Claims against Defendant Releasees. Compliance with  
3 the terms of this Consent Judgment constitutes compliance with Proposition 65 for purposes of  
4 DEHP and DBP exposures from the Products.

5 **8. SEVERABILITY**

6 **8.1** In the event that any of the provisions of this Consent Judgment are held  
7 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
8 affected.

9 **9. GOVERNING LAW**

10 **9.1** The terms of this Consent Judgment shall be governed by the laws of the  
11 State of California.

12 **10. RETENTION OF JURISDICTION**

13 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce  
14 the terms this Consent Judgment.

15 **11. PROVISION OF NOTICE**

16 **11.1** All notices required pursuant to this Consent Judgment and  
17 correspondence shall be sent to the following:

18 For CEH:

19 Mark N. Todzo  
20 Lexington Law Group, LLP  
21 1627 Irving Street  
22 San Francisco, CA 94122

23 For Defendant:

24 James C. Tuttle  
25 Law Offices of James C. Tuttle  
26 82 Wall Street, Suite 1105  
27 New York, NY 10005

28 **12. COURT APPROVAL**

**12.1** CEH will comply with the settlement notice provisions of Health and

1 Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

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**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

  
\_\_\_\_\_  
Michael Green, Executive Director  
Center for Environmental Health  
*Charles Pizzocci Associate Director*

Dated: 10/30/08

SAKAR INTERNATIONAL, INC.

\_\_\_\_\_  
Dated: \_\_\_\_\_

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
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**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between CEH and Sakar International, Inc., the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge, Superior Court of the State of California