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6 CENTER FOR ENVIRONMENTAL HEALTH

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN MATEO  
10

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12 CENTER FOR ENVIRONMENTAL HEALTH, ) Case No. CIV 474817

13 Plaintiff, )

14 v. )

15 ) **[PROPOSED] CONSENT JUDGMENT**  
16 ) **RE: MAXELL CORPORATION OF**  
17 ) **AMERICA**

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 \_\_\_\_\_ )

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 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



Michael Green, Executive Director  
Center for Environmental Health

Dated: 7/24/08



1 MAXELL CORPORATION OF AMERICA

2 J. Haine

Dated: JULY 21, 2008

3  
4 LEONARD HAINE

[Name]

5 VICE PRESIDENT

[Title]

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**ORDER AND JUDGMENT**

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: \_\_\_\_\_

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Judge, Superior Court of the State of California

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