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6 ENVIRONMENTAL HEALTH

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

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11 CENTER FOR ENVIRONMENTAL HEALTH,)
12 a non-profit corporation,,)

13 Plaintiff,)

14 v.)

15 AUDIOVOX CORP., et al.,)

16 Defendants.)
17)
18)

Case No. CIV 474817

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

19 **1. INTRODUCTION**

20 1.1 On July 18, 2008, plaintiff the Center for Environmental Health (“CEH”), a non-
21 profit corporation acting in the public interest, filed a complaint titled Center for Environmental
22 Health v. Griffin International Companies, et al., San Mateo County Superior Court Case Number
23 474817 (the “CEH Action”), for civil penalties and injunctive relief pursuant to the provisions of
24 Cal. Health & Safety Code §25249.5 et seq. (“Proposition 65”) naming Griffin International
25 Companies, Inc. (“Defendant”) as a defendant.

26 1.2 Defendant is a corporation that employs 10 or more persons and manufactured,
27 distributed and/or sold headphone cables (the “Products”) in the State of California.

1 1.3 Beginning on or about January 31, 2008, CEH served Defendant and the
2 appropriate public enforcement agencies with the requisite 60-day notice (the “Notice”) alleging
3 that Defendant was in violation of Proposition 65. CEH’s Notice and the Complaint in this
4 Action allege that Defendant exposes people who use or otherwise handle the Products to di (2-
5 ethylhexyl) phthalate (“DEHP”), a chemical known to the State of California to cause cancer,
6 birth defects and other reproductive harm, as well as di-n-butyl phthalate (“DBP”), a chemical
7 known to the State of California to cause birth defects and other reproductive harm, without first
8 providing clear and reasonable warning to such persons regarding the carcinogenicity of DEHP
9 and the reproductive toxicity of both DEHP and DBP. The Notice and Complaint allege that
10 Defendants’ conduct violates Health & Safety Code §25249.6, the warning provision of
11 Proposition 65. Defendant disputes such allegations and assert that all of its products are safe and
12 comply with all applicable laws.

13 1.4 For purposes of this Consent Judgment only, the parties stipulate that this Court
14 has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and personal
15 jurisdiction over Defendant as to the acts alleged in CEH’s Complaint, that venue is proper in the
16 County of San Mateo, and that this Court has jurisdiction to enter this Consent Judgment as a full
17 and final resolution of all claims which were or could have been raised in the Complaint based on
18 the facts alleged therein.

19 1.5 The Parties enter into this Consent Judgment pursuant to a settlement of certain
20 disputed claims between the Parties as alleged in the Complaint. By executing this Consent
21 Judgment, the Parties do not admit any facts or conclusions of law. It is the parties’ intent that
22 nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact,
23 conclusion of law, issue of law or violation of law, nor shall compliance with the Consent
24 Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law,
25 issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or
26 impair any right, remedy, argument or defense the Parties may have in this or any other or future
27 legal proceedings.

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1 **2. REFORMULATION**

2 2.1 **Reformulation Standard.** Defendant shall not distribute, ship, sell, or offer for
3 sale, any Product manufactured more than 60 days following entry of this Consent Judgment (the
4 “Reformulation Date”) that contains more than 0.1% (or 1,000 parts per million [“ppm”]) of
5 either DEHP and/or DBP.

6 2.2 **Prohibition on Replacement with Other Phthalates.** In reformulating the
7 Products to remove DEHP and DBP, Defendant may not replace DEHP or DBP with butyl benzyl
8 phthalate (“BBP”), di-n-hexyl phthalate (“DnHP”) or di-isodecyl phthalate (“DIDP”) in amounts
9 of more than 0.1%.

10 2.3 **Availability of Test Data.** To the extent that Defendant is otherwise required by
11 law to perform phthalate testing on the Products, Defendant shall, upon request by CEH, provide
12 the results of such testing to CEH on a confidential basis.

13 **3. INTERIM WARNINGS**

14 3.1 Products manufactured prior to the Reformulation Date and shipped by Defendant
15 following entry of this Consent Judgment that contain DEHP and/or DBP in excess of trace
16 amounts shall bear a label containing the following warning language:

17 **“WARNING: This product contains chemicals known to the**
18 **State of California cause birth defects and**
19 **other reproductive harm.**

20 3.2 The warning must be displayed with such conspicuousness, as compared with
21 other words, statements, or designs as to render it likely to be read and understood by an ordinary
22 individual.

23 **4. SETTLEMENT PAYMENTS**

24 4.1 **Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH \$6,000 in
25 lieu of any penalty pursuant to Health and Safety Code §25249.7(b). CEH shall use such funds to
26 continue its work protecting people from exposures to toxic chemicals. As part of this work,
27 CEH intends to conduct periodic testing of the Products as set forth in sections 2.1.3 and 2.2.3.
28 The payment required under this section shall be made payable to CEH.

1 4.2 **Attorneys' Fees and Costs.** Defendant shall pay \$15,000 to reimburse CEH and
2 its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs
3 incurred as a result of investigating, bringing this matter to Defendant's attention, litigating and
4 negotiating a settlement in the public interest. The payment required under this section shall be
5 made payable to Lexington Law Group, LLP.

6 4.3 **Delivery of payments.** All of the payments made pursuant to this Section 3 shall
7 be delivered to the Lexington Law Group, LLP at the address set forth in section 12.1 within 10
8 days of entry of this consent judgment.

9 **5. MODIFICATION OF CONSENT JUDGMENT**

10 5.1 This Consent Judgment may be modified by written agreement of CEH and
11 Defendant, or upon motion of CEH or Defendant as provided by law. Any Party seeking to
12 modify this Consent Judgment shall attempt in good faith to meet and confer with all affected
13 Parties prior to filing a motion to modify the Consent Judgment.

14 **6. ENFORCEMENT OF CONSENT JUDGMENT**

15 6.1 The parties may, by motion or application for an order to show cause, enforce the
16 terms and conditions contained in this Consent Judgment. The prevailing party shall be entitled
17 to recover its reasonable attorneys' fees and costs associated with any action brought to enforce
18 the Consent Judgment.

19 **7. APPLICATION OF CONSENT JUDGMENT**

20 7.1 This Consent Judgment shall apply to and be binding upon the parties hereto, their
21 divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

22 7.2 This Consent Judgment shall not apply to Products manufactured, distributed, or
23 sold by Defendant for use outside of California.

24 **8. CLAIMS COVERED AND RELEASE OF CLAIMS**

25 8.1 This Consent Judgment is a full, final and binding resolution between CEH on the
26 one hand, and Defendant and its parent, shareholders, divisions, subdivisions, subsidiaries,
27 affiliates, and licensors and each of their successors and assigns ("Defendant Releasees"), and all
28 entities to whom they distribute or sell Products, including but not limited to distributors,

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1 wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Downstream
2 Defendant Releasees”) on the other hand, of any violation of Proposition 65 or any other statutory
3 or common law claims that have been or could have been asserted in the public interest or on
4 behalf of the general public against Defendant, Defendant Releasees, and Downstream Defendant
5 Releasees based on failure to warn about exposure to DEHP and/or DBP contained in the
6 Products, or any claim based on the facts or conduct alleged in the Complaint, or facts similar to
7 those alleged, whether based on actions committed by Defendant, Defendant Releasees, or
8 Downstream Defendant Releasees, with respect to any Products distributed, shipped, sold, or
9 offered for sale by Defendant on or prior to the entry of this Consent Judgment.

10 8.2 Compliance with the terms of this Consent Judgment by Defendant and Defendant
11 Releasees resolves any issue in the future concerning compliance by Defendant, Defendant
12 Releasees and Downstream Defendant Releasees regarding failure to warn about exposure to
13 DEHP, DBP, DnHP, BBP, and DIDP arising in connection with Products distributed, shipped,
14 sold, or offered for sale by Defendant after the date of entry of this Consent Judgment. This
15 Section does not limit or affect the obligations of any party created under this Consent Judgment.

16 **9. SEVERABILITY**

17 9.1 In the event that any of the provisions of this Consent Judgment are held by a court
18 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

19 **10. ENTIRE AGREEMENT**

20 10.1 This Consent Judgment contains the sole and entire agreement of the Parties, and
21 any and all prior discussions, negotiations, commitments, or understandings related thereto, if
22 any, are hereby merged herein. No supplementation, modification, waiver, or termination of this
23 Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby.

24 **11. GOVERNING LAW**

25 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of
26 California.

27 11.2 The Parties, including their counsel, have participated in the preparation of this
28 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This

1 Consent Judgment was subject to revision and modification by the Parties and has been accepted
2 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
3 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
4 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
5 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
6 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
7 this regard, the Parties hereby waive California Civil Code section 1654.

8 **12. RETENTION OF JURISDICTION**

9 12.1 This Court shall retain jurisdiction of this matter to implement and enforce the
10 terms this Consent Judgment.

11 **13. PROVISION OF NOTICE**

12 13.1 All notices required pursuant to this Consent Judgment and correspondence shall
13 be sent to the following:

14 For CEH:

15 Mark N. Todzo
16 Lexington Law Group, LLP
17 1627 Irving Street
San Francisco, CA 94122

18 For Defendant:

19 John Griffin
20 Griffin International Companies
21 100 N Sixth Street, Suite 300C
Minneapolis, MN 55403

22 With a copy to:

23 Jeffrey B. Margulies, Esq.
24 Fulbright & Jaworski, LLP
25 555 South Flower Street, 41st Floor
Los Angeles, CA 90071

26 **14. COURT APPROVAL**

27 14.1 CEH will comply with the settlement notice provisions of Health and Safety Code
28 § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

1 14.2 If this Consent Judgment is not approved by the Court, it shall be of no further
2 force or effect, and shall not be introduced into evidence or otherwise used in any proceeding for
3 any purpose.

4 **15. EXECUTION AND COUNTERPARTS**

5 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by
6 means of facsimile, which taken together shall be deemed to constitute one document.

7 **16. AUTHORIZATION**

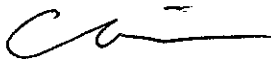
8 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
9 by the party he or she represents to stipulate to this Consent Judgment and to enter into and
10 execute the Consent Judgment on behalf of the party represented and legally bind that party. The
11 undersigned have read, understand and agree to all of the terms and conditions of this Consent
12 Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

13
14 **AGREED TO:**

15 CENTER FOR ENVIRONMENTAL HEALTH

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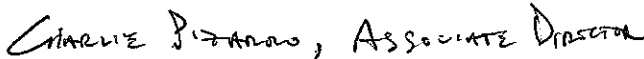


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Michael Green, Executive Director
Center for Environmental Health

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GRIFFIN INTERNATIONAL COMPANIES, INC.

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Dated: 9/25/2008

Dated: _____

[Name]

[Title]

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14 AGREED TO:

15 CENTER FOR ENVIRONMENTAL HEALTH

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19 Michael Green, Executive Director
Center for Environmental Health

Dated: _____

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21 GRIFFIN INTERNATIONAL COMPANIES, INC.

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24 John R. Griffin

Dated: 9/19/08

25 JOHN R. GRIFFIN
26 [Name]

27 VICE PRESIDENT
28 [Title]

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Griffin International Companies, 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