

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1. Parties.** This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Max Sales Group, Inc. (“Max Sales”), collectively referred to herein as “Parties.” Vinocur is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Max Sales is a Corporation, incorporated under the laws of California.

**1.2. General Allegations.** Vinocur alleges that Max Sales is a person in the course of doing business within the meaning of Health and Safety Code section 25249.11, and that Max Sales manufactures, distributes and/or sells headphones containing Di(2-ethylhexyl)phthalate (“DEHP”) called the FineAudio Products Dynamic Sound Headphones with Mic, NV-02577, UPC #8 49537 01624 1 (“Headphones”). Vinocur also alleges that Max Sales violated the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5, *et seq.* (“Proposition 65”), by knowingly and intentionally exposing California consumers to DEHP contained in or on the Headphones.

**1.3. Notice of Violation.** Vinocur served Max Sales and the requisite public prosecutors with a document entitled “60-Day Notice of Violation,” dated October 24, 2014, (“Notice”) that provided the recipients with notice of the alleged violations of Proposition 65 based on the alleged failure to warn customers, consumers and users in the State of California that the Headphones expose users to DEHP.<sup>1</sup> To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

**1.4. No Admission.** Max Sales denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, and/or sold in the State of California, including the Headphones, have been, and are, in compliance with all laws. Without limitation, Max Sales also specifically denies that it is a “person in the course of doing business” under Health and Safety Code section 25249.11(b), and denies that it employed 10 or more employees at all times relevant to the allegations in the

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<sup>1</sup> Pursuant to Proposition 65, DEHP is listed as a chemical known to cause birth defects and other reproductive harm. DEHP is subject to the “clear and reasonable warning” requirements of Proposition 65. 27 Cal. Code Regs. § 27001(b); Health & Safety Code §§ 25249.8, 25249.10(b).

Notice. Max Sales also affirmatively alleges that it is exempt from the requirements of Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Max Sales of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Max Sales of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Max Sales. This paragraph shall not, however, diminish or otherwise affect Max Sales's obligations, responsibilities, and duties under this Settlement Agreement.

**1.5. Effective Date.** For purposes of this Settlement Agreement, the term "Effective Date" shall mean May 27, 2016.

## **2. INJUNCTIVE RELIEF**

**2.1. Reformulation Standard.** "Reformulated Headphones" are defined as those Headphones containing DEHP in concentrations less than 0.1 percent (1,000 parts per million ("ppm")) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

**2.2. Reformulation Commitment.** Commencing on June 10, 2016, Max Sales shall not manufacture, import, ship, sell, or distribute for sale Headphones in California unless such Headphones are Reformulated Headphones.

**2.3. Current Inventory.** Commencing on the Effective Date, any Headphones in, or manufactured and en route to, Max Sales's inventory, that Max Sales has reason to believe may be sold or distributed for sale in California, shall contain a clear and reasonable warning.

**2.4. Product Warnings/Labeling.** For Headphones sold or shipped after the Effective Date, but prior to the Reformulation Commitment date of June 10, 2016 shall contain the clear and reasonable warning appearing below. Each warning shall be printed and prominently placed in or on the packaging with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use ("Conspicuousness Requirements"). For purposes of this Settlement Agreement, a warning printed in a font size no smaller than 8 point and that otherwise complies with the requirements referenced above in this paragraph, shall be deemed to meet the Conspicuousness Requirements and shall constitute a

clear and reasonable warning, in compliance with paragraph 2.3 of this Settlement Agreement:

**WARNING:** This product contains a chemical known to the State of California to cause birth defects and other reproductive harm.

**2.5. Exemption.** There is a disputed fact as to whether Max Sales has had fewer than 10 employees at all relevant times, but if, after the Effective Date, Vinocur provides notice and appropriate supporting information (such as product purchase receipts and test results from a laboratory using a methodology specified for the Reformulation Standard), and Max Sales can show by competent evidence (such as payroll tax records authenticated with a declaration) that it has employed less than 10 employees during all times relevant to any alleged violation, the injunctive terms of this Agreement will be of no force or effect.

### **3. MONETARY SETTLEMENT TERMS**

**3.1. Civil Penalty Payment.** Pursuant to Health and Safety Code section 25249.7(b), Max Sales shall pay the civil penalties described herein, with payments allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to Vinocur, as follows: Within five days of the Effective Date, Max Sales shall provide its civil penalty payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “Laurence Vinocur” in the amount of \$500.

**3.2. Attorney Fees and Costs.** The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. The Parties then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Vinocur and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. The Parties reached an accord on the compensation due to Vinocur and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Max Sales shall reimburse Vinocur and his counsel \$20,000 for the fees and costs incurred in investigating,

bringing this matter to the attention of Max Sales’s management, and negotiating a settlement in the public interest.

Within five days of the Effective Date, Max Sales shall provide payment in the form of a check for \$20,000 made payable to “Moscone Emblidge & Otis LLP.”

**3.3. Payment Procedures.** Payments are to be delivered according to the following paragraphs.

**3.3.1 Payment Address for Vinocur.** All payments to Vinocur and his counsel under this Settlement Agreement are to be delivered to the following address:

Moscone Emblidge & Otis LLP  
Attn: Proposition 65 Controller  
220 Montgomery Street, Suite 2100  
San Francisco, CA 94104

**3.3.2 Payment Addresses for OEHHA.** All payments to OEHHA under this Settlement Agreement will be delivered directly to OEHHA (memo line: “Prop. 65 Penalties”) at one of the following addresses, as appropriate:

For United States Postal Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-U.S. Postal Delivery or Courier:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95812-4010

**3.3.3 Copy of Payments to OEHHA.** Max Sales agrees to provide Vinocur’s counsel with a copy of each check payable to OEHHA, simultaneous with its penalty payments to Vinocur, to be delivered to the address provided in paragraph 3.3.1.

**4. CLAIMS COVERED AND RELEASED**

**4.1. Vinocur’s Release of Max Sales.** This Settlement Agreement is a full, final, and binding resolution between Vinocur, in his individual capacity and not on behalf of the public,

and Max Sales of any violation of Proposition 65 that was or could have been asserted by Vinocur, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, based on unwarned exposures to DEHP in Headphones manufactured, sold or distributed for sale in California prior to the Effective Date, against: (a) Max Sales and each entity to whom Max Sales directly or indirectly distributes or sells the Headphones, including, without limitation, Tuesday Morning Corporation and Tuesday Morning, Inc.; (b) all downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees of the entities identified in (a), above; and (c) all past and current parents, subsidiaries, affiliates, directors, officers, employees, attorneys, shareholders, agents, successors, and assignees of the entities and individuals identified in (a) and (b) above, (the released entities and individuals identified in (a), (b), and (c), above, are collectively, referred to as “Releasees”).

In further consideration of the promises and agreements herein contained, Vinocur, in his individual capacity and not on behalf of the public, and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against the Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to DEHP from Headphones manufactured, sold, or distributed for sale in California by Max Sales prior to the Effective Date.

The Parties agree that compliance with this Settlement Agreement by Max Sales shall be deemed to be compliance with Proposition 65 with respect to any exposure to DEHP in the Headphones.

**4.2. Max Sales’s Release of Vinocur.** Max Sales, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, assignees and Releasees, hereby waives any and all claims that it may have against Vinocur and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Vinocur and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it and the Releasees in this matter, or with respect to the Headphones.

**4.3. No Upstream Release.** The Parties understand and agree that this release shall not extend upstream to any entities that manufactured the Headphones for Max Sales or any component parts thereof or to any distributors or suppliers who sold the Headphones or any component parts thereof to Max Sales.

**5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Headphones, then Max Sales may provide written notice to Vinocur of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Headphones are so affected.

**7. NOTICE**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Max Sales:

Dinesh Sadhwani  
Chief Executive Officer  
Max Sales Group, Inc.  
2331 South Tubeway Avenue  
Commerce, CA 90040

with a copy to:

Steven H. Haney, Esq.  
Haney & Young LLP  
1055 West Sevent Street, Suite 1950  
Los Angeles, CA 90017

For Vinocur:

Moscone Emblidge & Otis LLP  
Attn: Proposition 65 Controller  
220 Montgomery Street, Suite 2100  
San Francisco, CA 94104

Any Party may, from time to time, specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts, and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**9. POST-EXECUTION ACTIVITIES**

Vinocur agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

**10. ENFORCEMENT**

This Settlement Agreement is enforceable pursuant to Code of Civil Procedure section 664.6.

**11. ENTIRE AGREEMENT**

This Settlement Agreement 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 among the Parties or to bind any Party to any other Party.

**12. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

**13. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.


**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Laurence Vinocur

**AGREED TO:**

Date: 5-20-16

By:   
Dinesh Sadhwani  
Chief Executive Officer  
Max Sales Group, Inc.

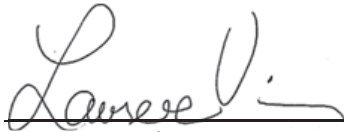


**AGREED TO:**

**AGREED TO:**

Date: 5/23/2016

Date: \_\_\_\_\_

By:   
\_\_\_\_\_  
Laurence Vinocur

By: \_\_\_\_\_  
Dinesh Sadhwani  
Chief Executive Officer  
Max Sales Group, Inc.