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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF MARIN  
12 UNLIMITED CIVIL JURISDICTION  
13  
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15 JOHN MOORE,

16 Plaintiff,

17 v.

18 VOXX INTERNATIONAL CORPORATION;  
19 *et al.*,

20 Defendants.  
21

Case No. CIV1501533

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.*)  
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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between John Moore (“Moore”) and Voxx  
4 International Corporation (“Voxx”), with Moore and Voxx each individually referred to as a “Party”  
5 and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Moore is an individual residing in California who seeks to promote awareness of exposures to  
8 toxic chemicals and improve human health by reducing or eliminating hazardous substances contained  
9 in consumer products.

10 **1.3 Defendant**

11 Voxx employs ten or more persons and is a “person in the course of doing business” for  
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code  
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Voxx manufactures, imports, sells, or distributes for sale in California,  
16 vinyl/PVC headphone components containing di(2-ethylhexyl)phthalate (“DEHP”), and vinyl/PVC  
17 wireless speakers cords, cables, and components, without first providing the exposure warning  
18 required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the  
19 State of California to cause cancer and to cause birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The Voxx products that are covered by this Consent Judgment are defined as any (1)  
22 vinyl/PVC headphone components containing DEHP, including, but not limited to, *Ampz*  
23 *Headphones, HP5043 EFS CAW 01, UPC #0 44476 08559 8* and any variation of the *Ampz*  
24 *Headphone*, and (2) vinyl/PVC wireless speaker cables, cords, and components containing DEHP,  
25 including, but not limited to, *Sound Board Portable Speaker (Cord), SP20BKGR EFS CAW 00, UPC*  
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1 #0 44476 11462 5, which are manufactured, imported, distributed, sold and/or offered for sale by  
2 Voxx or any Voxx- affiliated brand in the State of California, hereinafter the “Products.”<sup>1</sup>

### 3 **1.6 Notices of Violation**

4 On or about February 27, 2015, Moore served Voxx, others, and certain requisite public  
5 enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that Voxx was in  
6 violation of Proposition 65 for failing to warn its customers and consumers in California that the  
7 Products expose users to DEHP. Based on further investigation, on October 21, 2015, Moore also  
8 issued a “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”) to Voxx alleging that  
9 certain additional Products (vinyl/PVC wireless speaker cables, cords, and components) contain and  
10 expose Californians to DEHP. The Notice and Supplemental Notice shall collectively be referred to  
11 as the “Notices.”

### 12 **1.7 Complaint**

13 On April 27, 2015 Moore filed the above-captioned action (“Complaint”), naming Voxx as a  
14 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of  
15 the Notices. Upon entry of this Consent Judgment, the Complaint shall be deemed amended *nunc pro*  
16 *tunc* to include the violations of Proposition 65 alleged by Moore in the Supplemental Notice.

### 17 **1.8 No Admission**

18 Voxx denies the material, factual, and legal allegations contained in the Notices and  
19 Complaint, and maintains that all of the products that it has sold and distributed for sale in California,  
20 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent  
21 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or  
22 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an  
23 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall  
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25 \_\_\_\_\_  
26 <sup>1</sup> Voxx is already subject to a consent judgment entered in the San Mateo County Superior Court on March 4, 2009 in the  
27 action *Center for Environmental Health v. Audiovox Corp. et al.*, Case No. CIV 474817 (“2009 Consent Judgment”). The  
28 products covered in the 2009 Consent Judgment are defined in Section 1.2 as “headphone cables.” To the extent that there  
is overlap between the Products covered in this Consent Judgment and the 2009 Consent Judgment, this Consent Judgment  
does not modify or supersede the terms of the 2009 Consent Judgment.

1 not, however, diminish or otherwise affect Voxx’s obligations, responsibilities, and duties under this  
2 Consent Judgment.

### 3 **1.9 Jurisdiction**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
5 jurisdiction over Voxx as to the allegations in the Complaint, that venue is proper in the County of  
6 Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Consent  
7 Judgment.

### 8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term “Effective Date” means the date which this  
10 Court approves this Consent Judgment, including the date it adopts any unopposed tentative ruling  
11 approving this Consent Judgment.

## 12 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

### 13 **2.1 Reformulated Products**

14 Commencing on the Effective Date, and continuing thereafter, Voxx shall only purchase for  
15 sale, manufacture for sale, import, sell, or distribute for sale in California “Reformulated Products,” or  
16 Products that are sold with a clear and reasonable warning pursuant to Section 2.2 below. For  
17 purposes of this Consent Judgment, “Reformulated Products” are products that contain DEHP in  
18 concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.  
19 Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology  
20 utilized by federal or state agencies for the purpose of determining the DEHP content in a solid  
21 substance. In addition to the EPA test methods authorized above, the Parties may utilize equivalent  
22 methodologies employed by state or federal agencies to determine DEHP content in a solid substance.

### 23 **2.2 Product Warnings**

24 Commencing on the Effective Date, Voxx shall provide clear and reasonable warnings for all  
25 Products as set forth in subsections 2.2(a) and (b) for all products that do not currently have warnings  
26 and that do not qualify as Reformulated Products. Each warning shall be prominently placed with  
27 such conspicuousness as compared with other words, statements, designs, or devices as to render it  
28 likely to be read and understood by an ordinary individual under customary conditions before

1 purchase or use. Each warning shall be provided in a manner such that the consumer or user  
2 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer  
3 confusion.

4 (a) **Retail Store Sales.**

5 (i) **Product Labeling.** Voxx shall affix a warning to the packaging, labeling, or  
6 directly on each Product provided for sale in retail outlets in California that states:

7 **WARNING:** This product contains DEHP, a chemical  
8 known to the State of California to cause cancer and  
9 birth defects and other reproductive harm.

10 (ii) **Point-of-Sale Warnings.** Alternatively, Voxx may provide warning signs in  
11 the form below to its customers in California with instructions to post the warnings in close proximity  
12 to the point of display of the Products. Such instruction sent to Voxx's customers shall be sent by  
13 certified mail, return receipt requested.

14 **WARNING:** This product contains DEHP, a chemical  
15 known to the State of California to cause cancer and  
16 birth defects and other reproductive harm.

17 Where more than one Product is sold in proximity to other like items or to those that do not  
18 require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement  
19 shall be used:<sup>1</sup>

20 **WARNING:** The following products contain DEHP, a chemical  
21 known to the State of California to cause cancer and birth defects  
22 and other reproductive harm:

23 [*list products for which warning is required*]

24 (b) **Mail Order Catalog and Internet Sales.** In the event that Voxx sells Products via  
25 mail order catalog and/or the internet, to customers located in California, after the Effective Date, that  
26 are not Reformulated Products, Voxx shall provide warnings for such Products sold via mail order  
27 catalog or the internet to California residents. Warnings given in the mail order catalog or on the  
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<sup>1</sup>For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 internet shall identify the *specific* Product to which the warning applies as further specified in Sections  
2 2.2(b)(i) and (ii).

3 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog  
4 shall be in the same type size or larger than the Product description text within the catalog. The  
5 following warning shall be provided on the same page and in the same location as the display and/or  
6 description of the Product:

7 **WARNING:** This product contains DEHP, a chemical  
8 known to the State of California to cause cancer and  
9 birth defects and other reproductive harm.

10 Where it is impracticable to provide the warning on the same page and in the same location as  
11 the display and/or description of the Product, Voxx may utilize a designated symbol to cross reference  
12 the applicable warning and shall define the term “designated symbol” with the following language on  
13 the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

14 **WARNING:** Certain products identified with this symbol ▼  
15 and offered for sale in this catalog contain DEHP,  
16 a chemical known to the State of California to cause cancer and  
17 birth defects and other reproductive harm.

18 The designated symbol must appear on the same page and in close proximity to the display  
19 and/or description of the Product. On each page where the designated symbol appears, Voxx must  
20 provide a header or footer directing the consumer to the warning language and definition of the  
21 designated symbol.

22 (ii) **Internet Website Warning.** A warning shall be given in conjunction with the  
23 sale of the Products via the internet, which warning shall appear either: (a) on the same web page on  
24 which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the  
25 same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser  
26 during the checkout process. The following warning statement shall be used and shall appear in any  
27 of the above instances adjacent to or immediately following the display, description, or price of the  
28 Product for which it is given in the same type size or larger than the Product description text:

1                   **WARNING:** This product contains DEHP, a chemical  
2   known to the State of California to cause cancer and  
3   birth defects and other reproductive harm.

4                   Alternatively, the designated symbol may appear adjacent to or immediately following the  
5                   display, description, or price of the Product for which a warning is being given, provided that the  
6                   following warning statement also appears elsewhere on the same web page, as follows:

7                   **WARNING:** This product contains DEHP, a chemical  
8   known to the State of California to cause  
9   cancer and birth defects and other reproductive harm.

10                   **3.     MONETARY SETTLEMENT TERMS**

11                   **3.1     Civil Penalty Payments**

12                   Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred  
13                   to in this Consent Judgment, Voxx shall pay \$30,000 in civil penalties. Each civil penalty payment  
14                   shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-  
15                   five percent (75%) of the funds paid to the California Office of Environmental Health Hazard  
16                   Assessment (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Moore.

17                   **3.1.1    Initial Civil Penalty**

18                   Within ten (10) business days of the date this Consent Judgment is approved by the  
19                   Court (including any unopposed tentative ruling), Voxx shall deliver a check in the amount of \$10,000  
20                   for the initial civil penalty payment to “John Moore, Client Trust Account.” Moore will provide 75%  
21                   of the payment to OEHHA in accordance with Health and Safety Code section 25249.12(c)(1) and (d)

22                   **3.1.2    Final Civil Penalty**

23                   On or before September 30, 2016, Voxx shall make a final civil penalty payment of  
24                   \$20,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Moore agrees that the  
25                   final civil penalty payment shall be waived in its entirety if, no later than September 16, 2016, an  
26                   officer of Voxx provides Moore with written certification that all of the Products purchased for sale or  
27                   manufactured for sale in California as of the date of such certification are Reformulated Products as  
28                   defined by Section 2.1, and that Voxx will continue to offer only Reformulated Products in California

1 in the future. The option to certify reformulation in lieu of making the final civil penalty payment  
2 required by this Section is a material term and time is of the essence.

### 3 **3.2 Reimbursement of Fees and Costs**

4 The parties acknowledge that Moore and his counsel offered to resolve this dispute without  
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to  
6 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the other  
7 settlement terms had been finalized, Voxx expressed a desire to resolve Moore's fees and costs. The  
8 Parties then attempted to (and did) reach an accord on the compensation due to Moore and his counsel  
9 under general contract principles and the private attorney general doctrine codified at California Code  
10 of Civil Procedure section 1021.5 for all work performed through the mutual execution of this Consent  
11 Judgment. Within ten (10) business days of the date this Consent Judgment is approved by the Court  
12 (including any unopposed tentative ruling), Voxx shall deliver a check for \$36,150 payable to "The  
13 Chanler Group" to the address found in Section 3.3 below.

### 14 **3.3 Payment Addresses**

15 All payments and tax documentation for OEHHA, Moore and his counsel shall be delivered  
16 to:

17 The Chanler Group  
18 Attn: Proposition 65 Controller  
19 2560 Ninth Street  
20 Parker Plaza, Suite 214  
21 Berkeley, CA 94710

## 21 **4. CLAIMS COVERED AND RELEASED**

### 22 **4.1 Moore's Public Release of Proposition 65 Claims**

23 Moore, acting on his own behalf and in the public interest, releases Voxx and its parents,  
24 subsidiaries, predecessors, affiliated entities under common ownership, directors, officers,  
25 employees, contractors, agents, and attorneys ("Releasees") and each entity to whom it directly or  
26 indirectly distributes or sells the Products, including but not limited to its downstream distributors,  
27 wholesalers, customers, retailers, franchisers, cooperative members, licensors, and licensees,  
28 ("Downstream Releasees") for violations arising under Proposition 65 for unwarned exposures to



1 DEHP from the Products sold by Voxx prior to the Effective Date, as set forth in the Notices.  
2 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
3 with respect to exposures to DEHP from the Products sold by Voxx.

#### 4 **4.2 Moore's Individual Release of Claims**

5 Moore, in his individual capacity only and *not* in his representative capacity, also provides a  
6 release to Voxx, Releasees, and Downstream Releasees which shall be effective as a full and final  
7 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys'  
8 fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or kind,  
9 whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to  
10 DEHP and other phthalates from the Products sold or distributed for sale by Voxx before the Effective  
11 Date.

#### 12 **4.3 Voxx Release of Moore**

13 Voxx, on its own behalf, and on behalf of its past and current agents, representatives,  
14 attorneys, successors, and assignees, hereby waives any and all claims against Moore and his  
15 attorneys and other representatives, for any and all actions taken or statements made by Moore and  
16 his attorneys and other representatives, whether in the course of investigating claims, otherwise  
17 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

### 18 **5. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
20 be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
21 has been fully executed by the Parties.

### 22 **6. SEVERABILITY**

23 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any  
24 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be  
25 adversely affected.  
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1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the state of California  
3 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is  
4 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Voxx may  
5 provide written notice to Moore of any asserted change in the law, and shall have no further  
6 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are  
7 so affected. If there is a future revision of Title 27, California Code of Regulations, Article 6, section  
8 25601, *et seq.* relating to the content of any warning required for exposures to DEHP from the  
9 Products, then Voxx may use the statutory warning language required by the regulations, as revised, to  
10 warn of the risks of cancer and birth defects and reproductive harm caused by exposures to DEHP  
11 from the Products. Nothing in this Consent Judgment shall be interpreted to relieve Voxx from its  
12 obligation to comply with any pertinent state or federal law or regulation. Nothing in this Consent  
13 Judgment shall be interpreted to relieve Voxx from any obligation to comply with any pertinent state  
14 or federal toxics control laws.

15 **8. NOTICE**

16 Unless specified herein, all correspondence and notice required by this Consent Judgment shall  
17 be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail, return  
18 receipt requested; or (iii) a recognized overnight courier to the following addresses:

19 For Voxx:

20 Peter Morrisette, Esq.  
21 Cox, Castle & Nicholson, LLP  
22 555 California Street  
10th Floor  
San Francisco, CA 94104

23 For Moore:

24 The Chanler Group  
25 Attn: Proposition 65 Coordinator  
26 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

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

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **10. POST EXECUTION ACTIVITIES**

6 Moore agrees to comply with the reporting form requirements referenced in Health and Safety  
7 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code  
8 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In  
9 furtherance of obtaining such approval, Moore and Voxx agree to mutually employ their best efforts,  
10 and that of their counsel, to support the entry of this agreement as judgment, and to obtain judicial  
11 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall  
12 include, at a minimum, cooperating with the drafting and filing of the necessary moving papers, and  
13 supporting the motion for judicial approval.

14 **11. MODIFICATION**


15 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
16 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any  
17 Party, and the entry of a modified consent judgment by the Court.

18 **12. AUTHORIZATION**

19 The undersigned are authorized to execute this Consent Judgment and have read, understood,  
20 and agree to all of the terms and conditions contained herein.

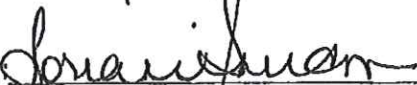
21 **AGREED TO:**

22  
23 Date: 01/04/2010

24  
25 By:   
26 JOHN MOORE

**AGREED TO:**

23 Date: 12/23/15

24  
25 By:   
26 Loriann Shelton, Sr. Vice President  
27 VOXX International Corporation  
28