

1 Evan J. Smith, Esquire (SBN 242352)  
Ryan P. Cardona, Esquire (SBN 302113)  
2 BRODSKY & SMITH, LLC  
9595 Wilshire Blvd., Ste. 900  
3 Beverly Hills, CA 90212  
Telephone: (877) 534-2590  
4 Facsimile: (310) 247-0160

5 *Attorneys for Plaintiff*

6  
7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA

10 EMA BELL,

11 Plaintiff,

12 vs.

13 JVCKENWOOD USA CORPORATION,

14 Defendant.  
15  
16

Case No. RG16809165

**[PROPOSED] CONSENT JUDGMENT**

Judge: Jo-Lynne Lee

Dept.: 18

Hearing Date: September 13, 2016

Hearing Time: 3:00 PM

Reservation #: R-1756720



1           1.5     General Allegations

2           Bell's Complaint alleges, among other things, that JVC has sold Listening Devices  
3 containing DEHP, and that the resulting exposures violated provisions of Proposition 65 by  
4 knowingly and intentionally exposing persons to a chemical known to the State of California to  
5 cause cancer and reproductive toxicity, without first providing a clear and reasonable warning to  
6 such individuals.

7           1.6     Consent to Jurisdiction

8           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
9 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
10 over JVC as to the acts alleged in the Complaint, that venue is proper in the county of Alameda,  
11 and that this Court has jurisdiction to enter this Consent Judgment as a resolution of the  
12 allegations contained in the Complaint.

13          1.7     No Admission

14          The Parties enter into this Consent Judgment pursuant to a full and final settlement of any  
15 and all disputed claims between the Parties as alleged in the Complaint or that could have been  
16 raised in the Complaint arising out of the facts or conduct alleged in the Notice, for the purpose of  
17 avoiding prolonged litigation. By execution of this Consent Judgment, JVC does not admit any  
18 facts or conclusions of law, including but not limited to, any facts or conclusions of law  
19 suggesting or demonstrating any violation of Proposition 65 or any other statutory, common law,  
20 or equitable requirements related to any prohibited substances including but not limited to DEHP  
21 in JVC Listening Devices, and specifically denies that it has committed any such violation.  
22 Nothing in this Consent Judgment shall be construed as an admission by JVC of any fact, issue of  
23 law, or violation of law, nor shall compliance with the Consent Judgment constitute or be  
24 construed as an admission by JVC of any fact, issue of law, or violation of law. Nothing in this  
25 Consent Judgment shall prejudice, waive, or impair any right, remedy or defense that JVC may  
26 have in any other future legal proceeding. However, this paragraph shall not diminish or  
27 otherwise affect the obligations, responsibilities, and duties of JVC under this Consent Judgment.

28

1           1.8    “Effective Date”

2           For purposes of this Consent Judgment, the term "Effective Date" shall mean the date the  
3           Consent Judgment is entered by the Court.

4           2.     Injunctive Relief

5           2.1    Commencing thirty (30) days after the Effective Date, and continuing thereafter,  
6           JVC shall only ship, sell, or offer for sale in California, reformulated Listening Devices pursuant  
7           to Section 2.2 or Listening Devices that are labeled with a clear and reasonable warning pursuant  
8           to Section 2.4. JVC and its downstream retailers shall have no obligation to label Listening  
9           Devices that entered the stream of commerce prior to the Effective Date. For purposes of this  
10          Consent Judgment, a “Reformulated Listening Device” are Listening Devices that are in  
11          compliance with the standard set forth below in section 2.2.

12          2.2    “Reformulated Listening Devices” are defined as those Listening Devices  
13          containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) in any  
14          Accessible Component (as defined herein) when analyzed pursuant to U.S. Environmental  
15          Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by  
16          federal or state agencies for the purpose of determining phthalate content in a solid substance.

17          2.3    “Accessible Component” is, for purposes of this Consent Judgment, a component  
18          of the Listening Devices that could be touched by a person during the reasonable and foreseeable  
19          use of the Listening Device.

20          2.4    Commencing thirty (30) days after the Effective Date, JVC shall, for all Listening  
21          Devices that it sells or distributes and which are intended for sale in California or which JVC has  
22          reason to believe will be shipped or sold in California and that are not a Reformulated Listening  
23          Devices, provide clear and reasonable warnings as set forth in subsections 2.4(a) below. The  
24          warning shall be prominently placed with such conspicuousness as compared with other words,  
25          statements, designs, or devices as to render it likely to be read and understood by an ordinary  
26          individual under customary conditions before purchase or use. Each warning shall be provided in  
27          a manner such that the consumer or user understands to which specific Product the warning  
28          applies, so as to minimize the risk of consumer confusion.

1                   (a)     **Retail Store Sales.**    JVC shall affix a warning to the packaging, labeling  
2 or directly on each Listening Device sold in retail outlets in California by JVC or any person  
3 selling the Listening Device that states:

4                   **PROPOSITION 65 WARNING:**

5                   This product contains a chemical known to the State of California to cause cancer, birth  
6 defects or other reproductive harm.

7                   **3.     Entry of Consent Judgment**

8                   3.1     The Parties hereby request that the Court promptly enter this Consent Judgment.

9                   Upon entry of this Consent Judgment, Bell and JVC waive their respective rights to a hearing or  
10 trial on the allegations of the Bell Complaint and 60-Day Notice.

11                   **4.     Matters Covered By This Consent Judgment**

12                   4.1     **Plaintiff's Public Release of Proposition 65 Claims.**     This Consent

13 Judgment is a final and binding resolution between Plaintiff Bell, acting on her own behalf, and  
14 on behalf of the public and in the public interest, and Defendant JVC (including JVC's parent  
15 JVC KENWOOD Corporation, and JVC's shareholders, divisions, subdivisions, subsidiaries,  
16 partners, affiliates, and sister companies and JVC's successors and assignees, downstream  
17 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and  
18 licensees, and any other person or entity to whom JVC or JVC KENWOOD Corporation directly  
19 or indirectly distributes or sells Listening Devices), and shall have preclusive effect such that no  
20 other person or entity, whether purporting to act in his, her, or its interests or the public interest  
21 shall be permitted to pursue and/or take any action with respect to any violation of Proposition 65  
22 relating to the Listening Devices, or that was alleged in the Complaint, or that could have been  
brought pursuant to the 60-Day Notice.

23                   4.2     **Plaintiff's Release of Additional Claims.**     As to Plaintiff Bell for and in her

24 individual capacity and on behalf of her past and current agents, representatives, attorneys'  
25 successors, and/or assignees, this Consent Judgment shall have preclusive effect such that she  
26 shall not be permitted to pursue and/or take any action with respect to any statutory or common  
27 law claim, to the fullest extent that any of the foregoing were or could have been asserted by her  
28

1 against JVC and JVC KENWOOD Corporation, JVC's shareholders, divisions, subdivisions,  
2 subsidiaries, partners, affiliates, and sister companies and their successors and assignees, and  
3 JVC's downstream distributors, wholesalers, customers, retailers, franchisees, cooperative  
4 members, licensors, and licensees, and any other person or entity to whom they directly or  
5 indirectly distribute or sell Listening Devices , or their failure to provide a clear and reasonable  
6 warning of exposure to such individuals or, as to alleged exposures to DEHP in the Listening  
7 Devices, any other claim based on whole or in part on the facts alleged in the Complaint and the  
8 60-Day Notice, whether based on actions committed by JVC. As to alleged exposures to DEHP  
9 in the Listening Devices this Consent Judgment resolves any issues, past, present and in the  
10 future, and is deemed sufficient to satisfy all obligations concerning compliance by JVC with the  
11 requirements of Proposition 65 with respect to the Listening Devices, and any alleged resulting  
12 exposure.

13           **4.3 Waiver of Rights Under Section 1542 of the California Civil Code.** As to  
14 alleged exposures to DEP in the Listening Devices, Bell acting in her individual capacity waives  
15 all rights to institute any form of legal or administrative action, and releases all claims against  
16 JVC and JVC KENWOOD Corporation, JVC's shareholders, divisions, subdivisions,  
17 subsidiaries, partners, affiliates, and sister companies and their successors and assignees, and  
18 JVC's downstream distributors, wholesalers, customers, retailers, franchisees, cooperative  
19 members, licensors, and licensees, and any other person or entity to whom they directly or  
20 indirectly distribute or sell Listening Devices, whether under Proposition 65 or otherwise, arising  
21 out of or resulting from, or related directly or indirectly to, in whole or in part, the Listening  
22 Devices, including but not limited to any exposure to, or failure to warn with respect to, DEHP in  
23 the Listening Devices (referred to collectively in this Section as the "Claims"). In furtherance of  
24 the foregoing, as to alleged exposures to DEHP in the Listening Devices, Bell waives any and all  
25 rights and benefits which she now has, or in the future may have, conferred upon her with respect  
26 to the Claims by virtue of the provisions of § 1542 of the California Civil Code, which provides  
27 as follows:

28           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE

1 CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS OR HER  
2 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
3 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
4 SETTLEMENT WITH THE DEBTOR.

5 Bell understands and acknowledges that the significance and consequence of this waiver of  
6 California Civil Code § 1542 is that even if Bell suffers future damages arising out of or resulting  
7 from, or related directly or indirectly to, in whole or in part, the Listening Devices, including but  
8 not limited to any exposure to, or failure to warn with respect to exposure to DEHP in the  
9 Listening Devices, Bell will not be able to make any claim for those damages against JVC.

10 **5. Enforcement of Judgment**

11 5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties  
12 hereto. Any Party may, by motion or application for an order to show cause before the Superior  
13 Court for the County of Alameda, enforce the terms and conditions contained in this Consent  
14 Judgment. A Party may file such a motion or application only after that Party first provides 30  
15 days' notice to the Party allegedly failing to comply with the terms and conditions of this Consent  
16 Judgment and attempts to resolve such Party's failure to comply in an open and good faith  
17 manner for a period of no less than 30 days. The Parties agree and understand that the meet and  
18 confer requirements of this Section shall not apply to an application or motion to enforce the  
19 monetary settlement terms specified in Section 2.

20 **6. Modification of Judgment**

21 6.1 This Consent Judgment may be modified only by written agreement of the Parties  
22 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as  
23 provided by law and upon an entry of a modified Consent Judgment by the Court.

24 6.2 Should any court enter final judgment in a case brought by Bell or the People  
25 involving Listening Devices that sets forth standards defining when Proposition 65 warnings will  
26 or will not be required ("Alternative Standards"), or if the California Attorney General's office  
27 otherwise provides written endorsement (i.e., a writing that is circulated by the Attorney General  
28 that is not intended for the purpose of soliciting further input or comments) of Alternative

1 Standards applicable to the products that are of the same general type and function as Listening  
2 Devices and constructed from the same materials, JVC shall be entitled to seek a modification of  
3 this Consent Judgment on thirty (30) days' notice to Bell so as to be able to utilize and rely on  
4 such Alternative Standards in lieu of those set forth in Section 2 of this Consent Judgment. Bell  
5 shall not unreasonably contest any proposed application to effectuate such a modification  
6 provided that Listening Devices for which such a modification is sought are of the same general  
7 type and function as those to which the Alternative Standards apply.

8         6.3 Brodsky & Smith, LLC ("Brodsky Smith") and Bell agree to notify the parties for  
9 JVC identified in Section 8.1 prior to instituting any action, including a 60-Day Notice of  
10 Violation submitted to public enforcement agencies, or any Complaint in any court in the State of  
11 California, should Brodsky Smith and/or Bell become aware of any other product manufactured  
12 by JVC that, upon reasonable use of said product, exposes consumers within the State of  
13 California to a chemical known to the State to cause cancer or reproductive toxicity when such  
14 exposure exceeds the No Significant Risk Level and/or the Maximum Allowable Dose Level.  
15 Should Brodsky Smith and/or Bell become aware of such violation, they agree to notify the  
16 parties for JVC identified in Section 8.1 of this Consent Judgment within 60 days of learning of  
17 such violation.

18         6.4 By Bell's signature to this Consent Judgment, Brodsky Smith and Bell state that,  
19 with the exception of the Listening Devices described herein, they are unaware of any other  
20 products or components that are manufactured by JVC that are in violation of Proposition 65.

21         7.         Settlement Payment

22         7.1 In settlement of all the claims referred to in this Consent Judgment, and without  
23 any admission of liability thereof, JVC shall make the following monetary payments:

24                 7.1.1 Civil Penalties

25                 JVC shall pay a total of \$9,000.00 in civil penalties (the "Civil Penalty") in accordance  
26 with this Section. The Civil Penalty will be allocated in accordance with California Health &  
27 Safety Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of  
28 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the civil

1 penalty remitted to Bell. Each penalty payment shall be delivered to the addresses listed in  
2 Section 7.1.3 below. Each respective portion of the Civil Penalty shall be delivered to the  
3 addresses listed in Section 7.1.3 below.

4 7.1.2 Reimbursement of Fees and Costs

5 In addition to the Civil Penalty, JVC shall pay \$56,000.00 to Brodsky Smith whose tax ID  
6 number is as follows: 23-2971061, as complete reimbursement for Plaintiff Bell's attorneys' fees  
7 and costs, including any investigation and laboratory costs or expert fees, in serving the Notice  
8 and bringing the Action, and in enforcing Proposition 65, including without limitation,  
9 preparation of the Notice letter and discussions with the office of the Attorney General. Payment  
10 shall be made within ten (10) days of the Effective Date.

11 7.1.3 Payment Procedure

12 Within ten (10) days of the Effective Date, JVC shall issue two separate checks for the  
13 Civil Penalty amounts to (a) "OEHHA" in the amount of \$6,750.00; and (b) "Brodsky & Smith,  
14 LLC in Trust for Bell" in the amount of \$2,250.00. Payment owed to Bell pursuant to this  
15 Section shall be delivered to the following payment address:

16 Evan J. Smith, Esquire  
17 Brodsky & Smith, LLC  
18 Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004

19 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly  
20 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

21 For United States Postal Service Delivery:

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

25 For Non-United States Postal Service Delivery:

26 Mike Gyurics  
27 Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
28 1001 I Street  
Sacramento, CA 95814

1 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth  
2 above as proof of payment to OEHHA.

3  
4 7.1.4 In the event that the Attorney General objects or otherwise comments on  
5 one or more provisions of this Consent Judgment, Bell and JVC agree to take reasonable steps to  
6 satisfy such concerns or objections.

7 7.2 Issuance of IRS form 1099

8 After this Consent Judgment has been approved, JVC shall issue IRS form 1099 to each of  
9 the following entities: a) OEHHA, at the address listed in section 7.1.3; b) Ema Bell; and c)  
10 Brodsky Smith, at the address listed in section 7.1.3, for fees and costs reimbursed pursuant to  
11 section 7.1.2 above.

12 **8. Notices**

13 8.1 Any and all notices between the Parties provided for or permitted under this  
14 Agreement, or by law, shall be in writing and personally delivered or sent by: (i) first-class  
15 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any  
16 party by the other party to the following addresses:

17 For JVC:

18 Harvey D. Mitnick  
19 General Counsel  
20 JVCKENWOOD USA Corporation  
1700 Valley Rd.  
Wayne, N. J. 07470

21 With Copy To:

22 Timothy J. Daley  
23 Musick, Peeler & Garrett LLP  
24 225 Broadway, Suite 1900  
San Diego, CA 92101  
T.Daley@MPGLAW.com

25 For Bell:

26 Evan J. Smith  
27 Brodsky & Smith, LLC  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004

28 Any party, from time to time, may specify in writing to the other party a change of address to

1 which all notices and other communications shall be sent.  
2  
3

4 **9. Authority to Stipulate**

5 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
6 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
7 the party represented and legally to bind that party.

8 **10. Counterparts**

9 10.1 This Consent Judgment may be executed in counterparts and by facsimile or pdf  
10 signature, each of which shall be deemed an original, and shall be binding upon the Parties hereto  
11 as if all said Parties executed the original hereof.

12 **11. Retention of Jurisdiction**

13 11.1 This Court shall retain jurisdiction of this matter to implement or modify this  
14 Consent Judgment pursuant to Code of Civil Procedure section 664.6.

15 **12. Service on the California Attorney General**

16 12.1 Bell agrees to comply with the reporting form requirements set forth in Health and  
17 Safety Code section 25249.7(f). Bell shall serve a copy of this Consent Judgment, signed by both  
18 parties, on the California Attorney General on behalf of the Parties so that the Attorney general  
19 may review this Consent Judgment prior to its submittal to the Court for Approval. No sooner  
20 than forty-five (45) days after the Attorney General has received the aforementioned copy of this  
21 Consent Judgment, and in the absence of any written objection by the Attorney General to the  
22 terms of this Consent Judgment, the Parties may then submit it to the Court for Approval.

23 **13. Entire Agreement**

24 13.1 This Consent Judgment contains the sole and entire agreement and understanding  
25 of the Parties with respect to the entire subject matter hereof, and any and all discussions,  
26 negotiations, commitment and understandings related thereto. No representations, oral or  
27 otherwise, express or implied, other than those contained herein have been made by any party  
28 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed

1 to exist or to bind any of the Parties. No waiver of any of the provisions of this Consent Judgment  
2 shall be deemed or shall constitute a waiver of any other provisions hereof, nor shall such waiver  
3 constitute a continuing waiver.

4 **14. Governing Law and Construction**

5 14.1 The validity, construction and performance of this Consent Judgment shall be  
6 governed by the laws of the State of California, without reference to any conflicts of law  
7 provisions of California law.

8 14.2 The Parties, including their counsel, have participated in the preparation of this  
9 Consent Judgment, and this Consent Judgment is the result of the joint efforts of the Parties. This  
10 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
11 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
12 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
13 of the manner of preparation of this Consent Judgment.

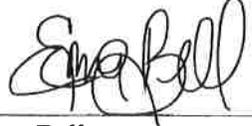
14 **15. Court Approval**

15 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or  
16 effect, and cannot be used in any proceeding for any purpose.

17 **IT IS SO STIPULATED:**

18  
19 Dated: July 25, 2016

Dated: 07/25/2016

20  
21 By:   
22 Ema Bell

By:   
JVCKENWOOD USA CORP.

23 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

24  
25 Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court

26  
27  
28