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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

(Unlimited Jurisdiction)

ECOLOGICAL ALLIANCE, LLC, a California
limited liability company,

Plaintiff,

v.

AUDIOVOX ADVANCED ACCESSORIES
GROUP LLC., a Delaware limited liability
company

Defendant.

Case No.:

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

1
2 Plaintiff Ecological Alliance, LLC ("Plaintiff"), and Defendant Audiovox Advanced
3 Accessories Group LLC ("Defendant") hereby enter into this Stipulated Consent Judgment
4 ("Consent Judgment") as follows:

5 WHEREAS: On or about August 24, 2018, Plaintiff, through Plaintiff's counsel, served a
6 60 Day Notice to Defendant, the retailer (Do It Best Corp.), the California Attorney General, the
7 District Attorneys of every County in the State of California, and the City Attorneys for every
8 City in the State of California with a population greater than 750,000 (collectively, "Public
9 Prosecutor(s)") alleging that Defendant violated California's Safe Drinking Water and Toxic
10 Enforcement Act of 1986, California Health and Safety Code § 25249.6, et seq., and its
11 implementing regulations (collectively, "Proposition 65") and that Plaintiff intended to file an
12 enforcement action in the public interest; and

13 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed quad
14 connector kits and related products, including but not limited to the product identified by
15 universal product code number 044476060809 (collectively the "Covered Products") that were
16 sold or distributed for sale in California and further alleges that those Covered Products expose
17 consumers in the State of California to chemicals including Di(2-ethylhexy)phthalate [DEHP],
18 which are listed by the State of California pursuant to California Health and Safety Code §
19 25249.8; and

20 WHEREAS: Plaintiff further alleges that persons in the State of California were exposed
21 to DEHP in Covered Products without being provided the Proposition 65 warning set out at
22 California Health and Safety Code § 25249.6 and its implementing regulations ("Proposition 65
23 Warning");

24 WHEREAS: Defendant denies the allegations of the 60 Day Notice, and denies that it has
25 violated Proposition 65 and expressly denies that it has engaged in any wrongdoing whatsoever,

26 WHEREAS: Plaintiff seeks to provide the public with Proposition 65 warnings and
27 believes that this objective is achieved by the actions described in this Consent Judgment; and

28 WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay
and expense of litigation.

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2 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN
3 PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:
4

5 **INTRODUCTION**

6 1.1. On August 24, 2018, Plaintiff served the 60-Day Notice upon Defendant and on
7 Public Prosecutors. No Public Prosecutors commenced an enforcement action. No
8 Public Prosecutor having commenced an enforcement action, Plaintiff proceeded to file
9 its Complaint against Defendant in the present action.

10 1.2. Defendant employs ten (10) or more persons.

11 1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the
12 "Parties") stipulate that: 1) this Court has jurisdiction over the allegations of violation
13 contained in the Complaint, and personal jurisdiction over Defendant as to the acts
14 alleged in the Complaint; 2) venue is proper in the County of Los Angeles; and 3) this
15 Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
16 claims which were or could have been raised in the Complaint based on the facts alleged
17 therein with respect to the Covered Products, and of all claims which were or could have
18 been raised by or against any person or entity based in whole or in part, directly or
19 indirectly, on the facts alleged in the 60-Day Notice, in the present action, or arising
20 therefrom or related thereto, with respect to Covered Products, including any Proposition
21 65 claim arising out of an exposure to Covered Products (collectively, "Proposition 65
22 Claims").

23 1.4. The Parties enter into this Consent Judgment as a full and final settlement of the
24 Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of
25 resolving the issues raised therein both as to past and future conduct. By execution of
26 this Consent Judgment and agreeing to comply with its terms, the Parties do not admit
27 any fact, conclusion of law, or violation of law, nor shall Defendant's compliance with
28 the Consent Judgment constitute or be construed as an admission by Defendant of any
fact, conclusion of law, or violation of law. Defendant denies the material, factual, and

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2 legal allegations in the 60-Day Notice and the Complaint and expressly denies any
3 wrongdoing whatsoever.

4 **2. DEFINITIONS**

- 5 2.1. "Effective Date" shall mean, with respect to this Consent Judgment, the date the
6 Consent Judgment has been approved and entered by the Court.

7 **3. INJUNCTIVE RELIEF**

- 8 3.1. For each Covered Product, Defendant agrees to provide a warning as prescribed in
9 Sections 3.2-3.3 below. Compliance with this Section 3.1 will constitute compliance by
10 Defendant with all requirements of Proposition 65:

- 11 3.2.

12 Warning

13 Subject to section 3.4, Covered Products shall be accompanied by a warning as described
14 in Section 3.3 below. This warning requirement shall only be required as to Covered
15 Products that are manufactured, distributed, marketed, sold or shipped for sale to
16 consumers by Defendant in the State of California, after the Effective Date. No
17 Proposition 65 warning shall be required as to any Covered Products that are already in
18 the stream of commerce as of the Effective Date, and all such Covered Products are
19 hereby deemed to be exempt from Proposition 65.

- 20 3.3. Warning Language

21 Defendant shall provide one of the following warning statements on or within the unit
22 packaging of the Covered Products, or affixed to the Covered Products, displayed in a
23 reasonably conspicuous manner:

- 24 (1) **WARNING:** This product can expose you to chemicals including
25 DEHP, which is known to the State of California to cause cancer
26 and birth defects or other reproductive harm. For more information
27 go to www.P65Warnings.ca.gov.
28

(2) **WARNING: Cancer and Reproductive Harm –**
www.P65Warnings.ca.gov.

If Defendant elects to use the warning statements identified in either (1) or (2) above, it may also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

3.4. **90-Day Grace Period**

Although Defendant shall be deemed in compliance on the Effective Date, Defendant shall have a ninety (90)-day grace period from the Effective Date to complete the warning steps provided in Sections 3.1 – 3.3.

4. MONETARY RELIEF

4.1. Within ten (10) days of the date the Consent Judgment has been approved and entered by the Court, Defendant shall pay the total sum of \$28,000 which includes \$6,000 in civil penalties and \$22,000 in payment of Plaintiff’s costs and reasonable attorney’s fees. The \$6,000 civil penalty shall be apportioned pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$4,500, paid to the State of California’s Office of Environmental Health Hazard Assessment and 25%, or \$1,500, payable to Plaintiff.

4.2. The payments specified in Section 4.1. shall be made by wire transfer to Plaintiff’s counsel Custodio & Dubey LLP as set forth below. Plaintiffs’ counsel will remit the portions due to the State of California Office of Environmental Health Hazard Assessment and to Plaintiff.

Bank: Bank of America, N.A.

Routing Transit No.: 026009593

Account No.: 325054144600

Beneficiary: Custodio & Dubey LLP

5. CLAIMS COVERED AND RELEASE

5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on behalf of itself, and acting in the public interest, and Defendant, and all of Defendant's parent, subsidiary and affiliate companies, as well as all of Defendant's officers, directors, members, shareholders, employees, attorneys, agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, and retailers, including, without limitation Do It Best Corp and Voxx Accessories Corp. as well as their respective parents, subsidiaries, affiliates, employees, agents and assigns, as well as all other upstream and downstream entities in the distribution chain for any of the Covered Products, and the predecessors, successors, and assigns of any of them (collectively, the "Released Parties"), for any alleged violation of Proposition 65, and its implementing regulations, for failure to provide Proposition 65 warnings for the Covered Products, and fully resolves all claims that have been brought, or which could have been brought in this action up to and including the Effective Date. Plaintiff on behalf of itself, and in the public interest, hereby discharges and releases the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could have been asserted, with respect to any alleged violation of Proposition 65 arising from the failure to provide Proposition 65 warnings for any or all of the Covered Products, through and including the Effective Date.

5.2. It is possible that other claims not known to the Parties arising out of the facts contained in the 60-Day Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be discovered or developed. Plaintiff, on behalf of itself only, on the one hand, and Defendant, on the other hand, acknowledge that this Consent Judgment is expressly intended to cover and include all such claims through and including the Effective Date, including all rights of action thereon. Plaintiff and Defendant acknowledge that the claims released in Sections 5.1 and 5.2 may include unknown claims, and nevertheless intend to release such claims, and in doing so waive California Civil Code § 1542 which reads as follows:

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2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
3 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
4 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
5 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
6 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
7 DEBTOR OR RELEASED PARTY.

8 5.3. Plaintiff understands and acknowledges that the significance and consequence of
9 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages
10 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
11 Covered Products, including but not limited to any exposure to, or failure to warn with
12 respect to exposure to, the Covered Products, Plaintiff will not be able to make any claim
13 for those damages against any of the Released Parties.

14 5.4. Compliance by Defendant with the terms of this Consent Judgment shall constitute
15 compliance with Proposition 65 with respect to the Covered Products as set forth in the
16 60 Day Notice and/or the Complaint.

17 **6. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(F)**

18 6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements
19 referenced in California Health and Safety Code § 25249.7(f).

20 **7. PROVISION OF NOTICE**

21 7.1. When any Party is entitled to receive any notice or writing under this Consent
22 Judgment, the notice or writing shall be sent by first class certified mail with return
23 receipt requested, or by electronic mail, as follows:

24 To Defendant:
25 Larry Stopol, Esq.
26 Levy, Stopol & Camelo, LLP
27 1425 RXR Plaza
28 Uniondale, NY 11556-1426
lstopol@levystopol.com

1
2 David P. Waite, Esq.
3 Cox Castle & Nicholson LLP
4 2029 Century Park East, Suite 2100
5 Los Angeles, CA 90067
6 dwaite@coxcastle.com

7 To Plaintiff:
8 Vineet Dubey, Esq.
9 Custodio & Dubey LLP
10 448 S. Hill St., Ste 615
11 Los Angeles, CA 90013
12 dubey@cd-lawyers.com

- 13 7.2. Any party may modify the person and address to whom the notice is to be sent by
14 sending the other Party notice that is transmitted in the manner set forth in section 7.1.

15 **8. COURT APPROVAL**

- 16 8.1. Upon execution of his Consent Judgment by all Parties, Plaintiff shall prepare and
17 file, at its sole cost and expense, a Motion for Approval of this Consent Judgment that
18 Defendant shall support. This Consent Judgment shall not become effective until
19 approved and entered by the Court. If this Consent Judgment is not entered by the Court,
20 it shall be of no force or effect, and shall not be introduced into evidence or otherwise
21 used in any proceeding for any purpose.

22 **9. GOVERNING LAW AND CONSTRUCTION**

- 23 9.1. The terms of this Consent Judgment shall be governed by the laws of the State of
24 California.

25 **10. ENTIRE AGREEMENT**

- 26 10.1. This Consent Judgment contains the sole and entire agreement and understanding
27 of the Parties with respect to the entire subject matter hereof, and any and all prior
28 discussions, negotiations, commitments, or understandings related thereto, if any, are
hereby merged herein and therein.
- 10.2. There are no warranties, representations, or other agreements between the Parties
except as expressly set forth herein. No representations, oral or otherwise, express or
implied, other than those specifically referred to in this Consent Judgment have been

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2 made by any Party hereto.

3 10.3. No other agreements not specifically contained or referenced herein, oral or
4 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
5 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or
6 to bind any of the Parties hereto only to the extent that they are expressly incorporated
7 herein.

8 10.4. No supplementation, modification, waiver, or termination of this Consent
9 Judgment shall be binding unless executed in writing by the Party to be bound thereby,
10 and approved and ordered by the Court.

11 10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or
12 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor
13 shall such waiver constitute a continuing waiver.

14 **11. RETENTION OF JURISDICTION**

15 11.1. This Court shall retain jurisdiction of this matter to implement or modify the
16 Consent Judgment.

17 **12. NO EFFECT ON OTHER SETTLEMENTS**

18 12.1. Nothing in this Consent Judgment shall preclude Plaintiff from resolving any
19 claim against an entity that is not a Released Party on terms that are different from those
20 contained in this Consent Judgment.

21 **13. EXECUTION IN COUNTERPARTS**

22 13.1. This Consent Judgment may be executed in counterparts, each of which shall be
23 deemed to be an original, and all of which, taken together, shall constitute the same
24 document. Execution of the Consent Judgment by e-mail, facsimile, or other electronic
25 means, shall constitute legal and binding execution and delivery. Any photocopy of the
26 executed Consent Judgment shall have the same force and effect as the original.

27 **14. AUTHORIZATION**

28 14.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent
Judgment on behalf of their respective parties, and have read, understood, and agree to all

1
2 of the terms and conditions of this Consent Judgment.

3 **15. SEVERABILITY**

4 15.1. If subsequent to Court approval of this Consent Judgment, any part or provision is
5 declared by a Court to be invalid, void, or unenforceable, the remaining portions or
6 provisions shall continue in full force and effect.

7
8 **AGREED TO:**

9 **Ecological Alliance LLC**

10
11 Date: 3/22/17

12 By: [Signature]

13 Harmony Welsh

14 Its: Managing Member

15 **AGREED TO:**

16 **Audiovox Advanced Accessories Group LLC**

17
18 Date: 3-25-17

19 By: [Signature]

20
21 Its: VICE PRESIDENT

22
23 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health &
24 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

25
26 Dated: _____

27 _____
28 JUDGE OF THE SUPERIOR COURT