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9 LAURENCE VINO CUR

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

LAURENCE VINO CUR,

Plaintiff,

v.

YAMAHA CORPORATION OF AMERICA;
and DOES 1-150, inclusive,

Defendants.

Case No. RG15757875

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Laurence Vinocur and Yamaha Corporation of America**

3 This Consent Judgment is entered into by and between Laurence Vinocur (“Vinocur” or
4 “Plaintiff”) and Yamaha Corporation of America (“Yamaha” or “Defendant”), with Vinocur and
5 Yamaha collectively referred to as the “Parties” and each individually referred to as a “Party.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Yamaha 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, California Health &
13 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Vinocur alleges that Yamaha has manufactured, imported, distributed, sold and/or offered
16 for sale in the California benches with vinyl/PVC seats containing the phthalate chemical di(2-
17 ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 health hazard warnings.
18 DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other
19 reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are benches with vinyl and/or
22 PVC seats that are manufactured, imported, distributed, sold and/or offered for sale in California
23 by Yamaha including, but not limited to, the *Keyboard Bench, PKBB1 MM (#0 86792 30466 3)*,
24 hereinafter referred to as the “Initial Noticed Products.”

25 In addition to the Initial Noticed Products, this Consent Judgment also covers the
26 following: (1) headphones with vinyl/PVC components including, but not limited to, the *Yamaha*
27 *RH2C Stereo Headphones, UPC #0 86792 28558 0*; (2) bags with vinyl/PVC shoulder strap pads
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1 including, but not limited to, *Yamaha's Backpack Style Gigbag for Npseries, YBNP76, UPC #0*
2 *86792 32056 4*; and (3) vinyl/PVC musical instrument cases including, but not limited to, the
3 *Yamaha APX Vinyl Hardshell Guitar Case, HC-AG2, UPC #0 86792 31821 9*, which were
4 manufactured, imported, distributed, sold and/or offered for sale in California by Yamaha,
5 hereinafter referred to collectively as the "Supplemental Noticed Products." The Initial Noticed
6 Products and the Supplemental Noticed Products are hereinafter referred to collectively as the
7 "Products."

8 **1.6 Notices of Violation**

9 On or about March 4, 2013, Vinocur served Yamaha and various public enforcement
10 agencies with a document entitled "60-Day Notice of Violation" ("Initial Notice") that provided
11 the recipients with notice of alleged violations of Proposition 65 by Yamaha for failing to warn its
12 customers and consumers in California that the Initial Noticed Products it sold exposed users to
13 DEHP.

14 On or about September 12, 2014, Vinocur served Yamaha and various public enforcement
15 agencies with a document entitled "Supplemental 60-Day Notice of Violation" ("Supplemental
16 Notice") that provided the recipients with notice of alleged violations of Proposition 65 by
17 Yamaha for failing to warn its customers and consumers in California that the Initial Noticed
18 Products and the Supplemental Noticed Products it sold exposed users to DEHP. To the best of
19 the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the
20 allegations set forth in the Notices.

21 **1.7 Complaint**

22 On or about February 9, 2015, Vinocur, who was and is acting in the interest of the
23 general public in California, filed a complaint ("Complaint" or "Action") in the Superior Court in
24 and for the County of Alameda against Yamaha and Does 1 through 150, alleging, *inter alia*,
25 violations of Proposition 65 based on the alleged exposures to DEHP contained in the Products
26 sold by Yamaha in the State of California.

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1.8 No Admission

Yamaha denies the material, factual, and legal allegations contained in the Notices and Complaint and maintains that all of the products that it has sold and distributed in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Yamaha of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Yamaha of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Yamaha. However, this Section shall not diminish or otherwise affect Yamaha’s obligations, responsibilities, and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Yamaha as to the allegations contained in the Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this Consent Judgment is approved by the Court.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Commitment

Beginning six months from the date this agreement is fully executed by the parties (“Compliance Date”), Yamaha shall only manufacture, cause to be manufactured, import, cause to be imported, distribute, or cause to be distributed for use or sale in California, Products that are “Reformulated Products.” For purposes of this Consent Judgment, “Reformulated Products” shall mean Products that contain less than or equal to 1,000 parts per million (0.1%) DEHP in each Accessible Component when analyzed pursuant to EPA testing methodologies 3580A and 8270C. “Accessible Component” shall mean a component of a Product that can be touched by a person during normal, intended and foreseeable use of the Product.

1 **2.2 Vendor Notification/Certification**

2 2.2.1. On or before the Effective Date, Yamaha shall provide written notice to all
3 of its then-current vendors of the Products that will be sold or offered for sale in the California
4 instructing each such vendor to use reasonable efforts to provide only Reformulated Products for
5 sale in California.

6 2.2.2. Yamaha shall subsequently obtain written certifications, no later than the
7 Compliance Date, from such vendors, and any newly engaged vendors, that the Products
8 manufactured by such vendors are Reformulated Products. Certifications shall be held by
9 Yamaha for at least two years after their receipt and shall be made available to Vinocur upon
10 reasonable request in writing, such requests not to be more frequent than one per month. The
11 certification form attached as Exhibit A and incorporated herein shall be deemed to comply with
12 this section.

13 2.2.3. Provided that Yamaha has complied with the vendor
14 notification/certification set forth in Section 2.2.1 above, Products that were manufactured before
15 the Compliance Date are released pursuant to Section 5.1 and 5.2 below and shall not be
16 separately actionable in another case brought pursuant to Section 25249.7(d) of the Health &
17 Safety Code alleging a failure to warn under Proposition 65 with respect to DEHP in the Products,
18 as such Products were considered when determining civil penalties.

19 **2.3 Notice Regarding Violation**

20 2.3.1 Subject to conditions and exceptions below, within 30 days of receiving a
21 written notice of violation from Vinocur (“NOV”) containing: (a) a copy of the sales receipt
22 showing the date and location from which the Product was purchased, and the identification of the
23 Product, including the SKU and/or other identification number(s); and (b) test data obtained by
24 Vinocur regarding the Product and supporting documentation sufficient for validation of the test
25 results, including any laboratory reports, quality assurance reports and quality control reports
26 associated with the testing of the Product demonstrating that an Accessible Component of the
27 Product contains more than 1,000 parts per million DEHP, Yamaha shall discontinue its
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1 distribution and/or sale of that lot of Product in California and provide a copy of the certification
2 obtained from its vendor, pursuant to Section 2.2 above, with respect to the Product at issue, and
3 shall have no further liability under this Consent Judgment or Proposition 65 with respect to the
4 Product and DEHP. An NOV shall be based upon testing from an independent laboratory
5 pursuant to EPA testing methodologies 3580A and 8270C.

6 2.3.2 In the event that Vinocur purchases a Product in California that contains
7 more than 1,000 parts per million DEHP in an Accessible Component after the Compliance Date
8 and Yamaha fails to provide a copy of the certification obtained from its vendor pursuant to
9 Section 2.2 above for the Product at issue, Yamaha shall, in addition to Yamaha discontinuing
10 sale of the Product in California, pay \$5,000 in civil penalties. The civil penalty shall be
11 apportioned in accordance with Section 3 below.

12 2.3.3 In addition, Yamaha shall reimburse Vinocur and his counsel for
13 reasonable fees and costs incurred as a result of investigating and identifying the violation.
14 Payment shall be made in accordance with Section 4 below. The Parties agree that such fees and
15 costs shall not exceed \$12,000. Any payments stemming from this Section shall be delivered to
16 Vinocur's counsel at the address found in Section 3.3.1(a) within ten business days of the
17 expiration of the 30 day period Yamaha has to provide the written certification.

18 2.3.4 Notwithstanding the above, Yamaha shall make no payment or pay any
19 penalty, fee, or expense of any kind for a claim or NOV arising out of a violation occurring prior
20 to the deadline to obtain certifications under Section 2.2.2. Additionally, in the event that
21 Vinocur provides an NOV to Yamaha more than 60 days after the Effective Date, Yamaha shall
22 have the option to continue its distribution and/or sale of the Product subject to the NOV in
23 California from a new lot if Yamaha provides to Vinocur, within 60 days of receipt of the NOV,
24 proof that new Product lots consist of Reformulated Products. Such proof shall include all of the
25 following: (1) a copy of the Section 2.2 certification obtained from the vendor responsible for
26 providing the Product subject to the NOV; (2) a signed declaration from the vendor stating that all
27 future Products shipped, sold and/or provided to Yamaha from said vendor will comply with the
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1 reformulation standards such that they will be Reformulated Products; (3) the name, address and
2 contact information for the vendor responsible for providing the non-reformulated Product; and
3 (4) test results for the Product subject to the NOV showing DEHP concentration of 1,000 parts
4 per million or less in each Accessible Component.

5 2.3.5 Notwithstanding any other provision of this Consent Judgment or any law,
6 regulation, judgment, agreement, or contract, Section 2.3 shall constitute the exclusive means of
7 post-judgment enforcement of sections 2.1, 2.2, 2.3, and 2.4 of this Consent Judgment.

8 **2.4 Product Warnings**

9 Nothing in this Consent Judgment shall be construed to prohibit or limit Yamaha from
10 selling Products that contain a warning substantially conforming to Article 6 of the OEHHA
11 regulations, Cal. Code Reg. tit. 27, §§ 25601 et seq., if Yamaha determines that the product
12 contains a chemical, other than DEHP, listed under Proposition 65, Cal. Code Regs. tit. 27, §
13 27001. This section shall not vitiate or diminish any obligation under this Consent Judgment.

14 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

15 In settlement of all the claims referred to in this Consent Judgment, Yamaha shall pay a
16 total of \$10,000 in civil penalties in accordance with this Section. Each penalty payment will be
17 allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with 75%
18 of the funds remitted to the California Office of Environmental Health Hazard Assessment
19 (“OEHHA”) and the remaining 25% of the penalty remitted to Vinocur, as follows:

20 **3.1 Initial Civil Penalty**

21 Yamaha shall pay an initial civil penalty of \$4,000. Yamaha shall issue a check in the
22 amount of \$4,000 to “Greenberg Traurig, LLP” to be held in trust for OEHHA and Vinocur
23 within ten (10) days of the mutual execution of this Consent Judgment by the Parties. Greenberg
24 Traurig, LLP shall provide The Chanler Group with written confirmation within five (5) days of
25 receipt that the funds have been deposited in a trust account. Within two (2) days of the
26 Effective Date, Greenberg Traurig, LLP shall issue two separate checks for the initial civil
27 penalty payment to: (a) “OEHHA” in the amount of \$3,000; and (b) “Laurence Vinocur, Client
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1 Trust Account” in the amount of \$1,000.

2 **3.2 Final Civil Penalty**

3 Yamaha shall pay a final civil penalty of \$6,000 on or before November 15, 2015. The
4 final civil penalty shall be waived in its entirety, however, if, no later than November 1, 2015, an
5 officer of Yamaha provides Vinocur with written certification that, as of the date of such
6 certification and continuing into the future, Yamaha has met the reformulation standard specified
7 in Section 2.1 above, such that all Products manufactured, imported, distributed, sold and offered
8 for sale in California by Yamaha are Reformulated Products. The certification in lieu of a final
9 civil penalty payment provided by this Section is a material term, and time is of the essence. In
10 the event that the final civil penalty is not waived, Yamaha shall issue two separate checks for its
11 final civil penalty payments to: (a) “OEHHA” in the amount of \$4,500 and (b) “Laurence
12 Vinocur, Client Trust Account” in the amount of \$1,500.

13 **3.3 Payment Procedures**

14 **3.3.1 Issuance of Payments.** Payments shall be delivered as follows:

15 (a) All payments owed to Vinocur, pursuant to Sections 3.1 and 3.2, shall be
16 delivered to the following payment address:

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

22 (b) All payments owed to OEHHA, pursuant to Sections 3.1 and 3.2, shall
23 be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

24 For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 1001 I Street
5 Sacramento, CA 95814

6 With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address
7 set forth above in 3.3.1(a), as proof of payment to OEHHA.

8 **4. REIMBURSEMENT OF FEES AND COSTS**

9 The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
11 this fee issue to be resolved after the material terms of the agreement had been settled. Vinocur
12 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms
13 had been finalized. The Parties then attempted to (and did) reach an accord on the compensation
14 due to Vinocur and his counsel under general contract principles and the private attorney general
15 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through
16 the mutual execution of this agreement. Yamaha shall pay \$49,000 for fees and costs incurred as
17 a result of investigating, bringing this matter to Yamaha’s attention, and negotiating a settlement
18 in the public interest. Yamaha shall issue a check payable to “Greenberg Traurig, LLP” in the
19 amount of \$49,000 within ten (10) business days of the mutual execution of this Consent
20 Judgment by the Parties. Greenberg Traurig, LLP shall provide The Chanler Group with written
21 confirmation within five (5) business days of receipt that the funds have been deposited in a trust
22 account. Within two (2) days of the Effective Date, Greenberg Traurig, LLP shall issue a check
23 payable to “The Chanler Group” to the address listed in Section 3.3.1(a) above.

24 **5. CLAIMS COVERED AND RELEASED**

25 **5.1 Vinocur’s Public Release of Proposition 65 Claims**

26 Vinocur acting on his own behalf and in the public interest releases Yamaha, its parents,
27 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
28 attorneys, each upstream entity from whom Yamaha receives a Product, and each entity to whom
Yamaha directly or indirectly distributes or sells Products, including but not limited to

1 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,
2 licensors, and licensees (“Releasees”) from all claims for violations of Proposition 65 up through
3 the Compliance Date based on exposure to DEHP from the Products imported, distributed, sold
4 and/or offered for sale in the State of California by Yamaha. Compliance with the terms of this
5 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP
6 in the Products.

7 **5.2 Vinocur’s Individual Release of Claims**

8 Vinocur also, in his individual capacity only and *not* in his representative capacity,
9 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
10 bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,
11 claims, liabilities and demands of Plaintiff of any nature, character or kind, whether known or
12 unknown, suspected or unsuspected, limited to and arising out of any violation of Proposition 65
13 regarding the failure to warn about exposure to DEHP in the Products manufactured, imported,
14 distributed, sold and/or offered for sale by Releasees.

15 **5.3 Yamaha’s Release of Vinocur**

16 Yamaha on behalf of itself, its past and current agents, representatives, attorneys,
17 successors, and/or assignees, hereby waives any and all claims against Vinocur, his attorneys and
18 other representatives, for any and all actions taken or statements made (or those that could have
19 been taken or made) by Vinocur and his attorneys and other representatives, whether in the course
20 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter
21 with respect to the Products.

22 **6. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court and
24 shall be null and void if, for any reason, it is not approved and entered by the Court within one
25 year after it has been fully executed by all Parties, in which event any monies that have been
26 provided to Vinocur or his counsel pursuant to Section 3 and 4 above, shall be refunded within
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1 fifteen (15) days after receiving written notice from Yamaha that the one-year period has
2 expired.

3 **7. SEVERABILITY**

4 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
5 Consent Judgment are deemed by a Court to be unenforceable, the validity of the enforceable
6 provisions remaining shall not be adversely affected.

7 **8. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the State of
9 California and apply within the State of California. In the event that Proposition 65 is repealed or
10 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Yamaha
11 may provide written notice to Vinocur of any asserted change in the law, and shall have no further
12 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products
13 are so affected.

14 **9. NOTICES**

15 Unless specified herein, all correspondence and notices required to be provided pursuant
16 to this Consent Judgment shall be in writing and personally delivered or sent by: (a) first-class,
17 registered or certified mail, return receipt requested; or (b) overnight courier on any Party by the
18 other Party at the following addresses:

19 To Yamaha:

20 Brian J. Jemelian
21 Senior Vice President and Secretary
22 Yamaha Corporation of America
23 6600 Orangethorpe Avenue
24 Buena Park, CA 90620

To Vinocur:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

25 With copy to:

26 Greg Sperla, Esq.
27 Ron Husdon, Esq.
28 Greenberg Traurig, LLP
1201 K Street, Suite 1100
Sacramento, CA 95814

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

3 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

4 This Consent Judgment may be executed in counterparts and by facsimile or portable
5 document format (“.pdf”) signature, each of which shall be deemed an original, and all of which,
6 when taken together, shall constitute one and the same document. A facsimile or .pdf signature
7 shall be as valid as the original.

8 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

9 Vinocur and his attorneys agree to comply with the reporting form requirements
10 referenced in California Health & Safety Code § 25249.7(f).

11 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

12 The Parties agree to mutually employ their and their counsel’s reasonable best efforts to
13 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
14 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California
15 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
16 Consent Judgment, which Vinocur shall file, and which Yamaha shall not oppose. If any third
17 party objection to the noticed motion is filed, Vinocur and Yamaha shall work together to file a
18 joint reply and appear at any hearing before the Court. If the Court does not approve the motion
19 to approve this Consent Judgment, and the Parties choose not to pursue a modified Consent
20 Judgment within 30 days of said denial, or in the event that the Court approves this Consent
21 Judgment and any person successfully appeals that approval, all payments made pursuant to this
22 Consent Judgment will be returned to Yamaha within fifteen (15) days of an order reversing or
23 vacating the approval.

24 **13. MODIFICATION**

25 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
26 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
27 of any Party and entry of a modified Consent Judgment by the Court.
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1 **14. ENTIRE AGREEMENT**

2 This Consent Judgment contains the sole and entire agreement and understanding of the
3 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, and understandings related hereto. No representations, oral or
5 otherwise, express or implied, other than those contained herein have been made by any Party
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
7 deemed to exist or to bind any of the Parties.

8 **15. AUTHORIZATION**

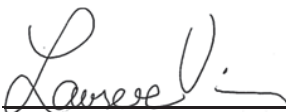
9 The undersigned are authorized to execute this Consent Judgment on behalf of their
10 respective parties and have read, understood, and agree to all of the terms and conditions of this
11 Consent Judgment.

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13 AGREED TO:

AGREED TO:

14 Date: March 19, 2015

Date: _____

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16 By: 
Laurence Vinocur

By: _____
Brian J. Jemelian
Senior Vice President and Secretary
Yamaha Corporation of America

1 **14. ENTIRE AGREEMENT**

2 This Consent Judgment contains the sole and entire agreement and understanding of the
3 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, and understandings related hereto. No representations, oral or
5 otherwise, express or implied, other than those contained herein have been made by any Party
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
7 deemed to exist or to bind any of the Parties.

8 **15. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment on behalf of their
10 respective parties and have read, understood, and agree to all of the terms and conditions of this
11 Consent Judgment.

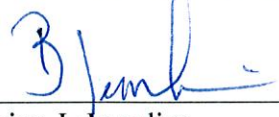
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13 AGREED TO:

AGREED TO:

14 Date: _____

Date: 3-19-15

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16 By: _____
Laurence Vinocur

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16 By:  _____
Brian J. Jemelian
17 Senior Vice President and Secretary
18 Yamaha Corporation of America

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EXHIBIT A

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DEHP CERTIFICATION

1. My name is _____. I am a resident of _____, _____. I am over the age of twenty one and am competent to make this Certification. The facts set forth in this Certification are based on my personal knowledge.
2. In the position of _____ for _____, I am familiar with compliance with California's Safe Drinking Water and Toxic Enforcement Act of 1986 (Generally known as California Proposition 65).
3. For purposes of this Certification, "Products" shall mean [(1) benches with vinyl and/or PVC seats; (2) headphones with vinyl/PVC components; (3) bags with vinyl/PVC shoulder strap pads; and/or (4) vinyl/PVC musical instrument cases].
4. For purposes of this Certification, "Accessible Component" shall mean a component of a Product that can be touched by a person during normal, intended, and foreseeable use of the Product.
5. I certify that, as of the date this Certification is executed and continuing into the future, [vendor name] will only distribute, sell and/or offer Products to Yamaha Corporation of America that contain less than or equal to 1,000 parts per million (0.1%) of di(2-ethylhexyl)phthalate ("DEHP") in each Accessible Component.

[Date]

[Signature]