

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Alpha Comm Enterprises, Inc. (“Alpha Comm”), with Brimer and Alpha Comm each individually referred to as a “Party” and, collectively, as the “Parties.” Brimer is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Alpha Comm employs ten or more individuals and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Brimer alleges that Alpha Comm manufactures, sells, and distributes for sale in California vinyl/PVC audio cables containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause cancer, birth defects or other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are vinyl/PVC audio cables containing DEHP that are sold or distributed for sale in California by Alpha Comm, including, but not limited to, the cable component of the *Quikcell Stereo Bluetooth Speaker Phone (Micro USB Cable)*, *S1100-BLK*, *UPC #8 46537 02639 3*, hereinafter “Products”. This Settlement Agreement also covers vinyl/PVC audio cables containing DINP that are sold or distributed for sale in California by Alpha Comm, including, but not limited to, the cable component of the *Quikcell Cross Trainer Earphones*, *CROSS-T-BLK*, *UPC #8 46537 03453 4*, hereinafter “Additional Products.”

### 1.4 Notice of Violation

On January 29, 2016, Brimer served Alpha Comm, the California Attorney General, and

other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Alpha Comm violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

### **1.5 No Admission**

Alpha Comm denies the material, factual, and legal allegations in the Notice, and maintains that all of the products it has sold and distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Alpha Comm of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Alpha Comm of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Alpha Comm. This Section shall not, however, diminish or otherwise affect Alpha Comm’s obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean June 22, 2016.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

Commencing on the Effective Date and continuing thereafter, Alpha Comm agrees to only manufacture for sale or purchase for sale in California, “Reformulated Products.” For purposes of this Settlement Agreement, Reformulated Products are defined as Products and Additional Products containing DEHP and/or DINP in a maximum concentration of 1,000 parts per million (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodologies utilized by state or federal agencies for the purpose of determining DEHP and DINP content in a solid substance.

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

#### **3.1 Civil Penalty Payments**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Alpha Comm agrees to pay \$11,250 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (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 amount retained by Brimer. Brimer’s counsel shall be responsible for delivering OEHHA’s portion of any penalty payment(s) made under this Settlement Agreement.

##### **3.1.1 Initial Civil Penalty**

Within five days of the Effective Date, Alpha Comm shall make an initial civil penalty payment of \$3,750, in a single check made payable to “Russell Brimer, Client Trust Account” and delivered to the address in Section 3.3, below.

##### **3.1.2 Final Civil Penalty; Waiver**

On September 30, 2016, Alpha Comm will make a final civil penalty payment of \$7,500. Pursuant to title 11 Cal. Code Regs. § 3203(c), the final civil penalty will be waived in its entirety if, by September 15, 2016, an officer of Alpha Comm provides Brimer’s counsel with a signed declaration certifying that, as of the date of the declaration, all Products and Additional Products sold or distributed for sale in California by Alpha Comm are Reformulated Products, and that Alpha Comm will continue to offer only Reformulated Products in California in the future. Alternately, Alpha Comm may provide Brimer’s counsel with a signed declaration certifying it is no longer selling Products or Additional Products in the State of California, and, if Alpha Comm recommences sales in the State, it will only distribute, sell and/or offer for sale Reformulated Products, per Section 2, above. The option to provide a declaration certifying complete reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and time is of the essence.

#### **3.2 Attorneys’ Fees and Costs**

The Parties reached an accord on the compensation due to Brimer and his counsel under

general contract principles and the private attorney general doctrine codified at Code of Civil Procedure § 1021.5 for all work performed in this matter. Under these legal principles, within five days of the Effective Date, Alpha Comm agrees to pay \$25,000 to Brimer and his counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Alpha Comm's management, and negotiating a settlement. Alpha Comm's payment shall be delivered in the form of a check payable to "The Chanler Group" and delivered to the address in Section 3.3, below.

### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

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

### **4.1 Brimer's Release of Alpha Comm**

This Settlement Agreement is a full, final, and binding resolution between Brimer, as an individual and not on behalf of the public, and Alpha Comm, of any violation of Proposition 65 that was or could have been asserted by Brimer on his own behalf, on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Alpha Comm, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Alpha Comm directly or indirectly distributes or sells Products and Additional Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on the failure to warn about exposures to DEHP and/or DINP in Products and Additional Products manufactured, sold or distributed for sale in California by Alpha Comm before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Brimer on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all rights that he may have to institute or participate in,

directly or indirectly, any form of legal action, and releases all claims against Alpha Comm and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP and/or DINP in Products and Additional Products manufactured, distributed, sold or offered for sale by Alpha Comm, before the Effective Date.

Pursuant to the California Attorney General's guidance on the scope of Proposition 65 releases, the parties acknowledge that the releases provided by Brimer under this Settlement Agreement are provided solely on Brimer's behalf and are not releases on behalf of the public.

#### **4.2 Alpha Comm's Release of Brimer**

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

#### **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 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Alpha Comm may provide written notice to Brimer of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

7. **NOTICE**

Unless specified herein, all correspondence and notice 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 Alpha Comm:

Jad Daye, President  
Alpha Comm Enterprises, Inc.  
1500 Lakes Parkway, Suite B  
Lawrenceville, GA 30043

with a copy to:

Steven G. Hill, Esq.  
Hill, Kertscher and Wharton, LLP  
Riverwood 100  
3350 Riverwood Parkway, Suite 800  
Atlanta, GA 30339

For Brimer:

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

Any Party may, from time to time, specify in writing to the other 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. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

10. **MODIFICATION**

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

**11. 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: 6/24/2016

By: \_\_\_\_\_

RUSSELL BRIMER, PH.D.

**AGREED TO:**

Date: 6/21/2016

By: \_\_\_\_\_

Lyle Dickler, VP Finance  
ALPHA COMM ENTERPRISES, INC.