

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Evelyn Wimberley and Emerge Technologies, Inc.

This Settlement Agreement is entered into by and between Evelyn Wimberley (hereinafter “Wimberley”) and Emerge Technologies, Inc. (hereinafter “Emerge”), with Wimberley and Emerge collectively referred to as the “Parties.” Wimberley is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Wimberley contends that Emerge is a company in the course of doing business for purposes of Proposition 65.

1.2 General Allegations

Wimberley alleges that Emerge distributed and/or sold in the State of California a car stereo audio cable containing lead and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”). Lead is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as car stereo audio cables and other accessories with metal connector tips containing lead, including but not limited to Car Stereo Audio Cables. All such items shall be referred to herein as the “Products.”

1.4 Notice of Violation

On or about May 16, 2011, Wimberley served Emerge, and all public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided Emerge and such public enforcers with notice that alleged that Emerge was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers and customers that the Products exposed users in California to lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Emerge denies the material factual and legal allegations contained in Wimberley’s Notice and maintains that all products that it has sold and distributed in California, including the Products, have been and are in compliance with Proposition 65 and all other applicable laws. Nothing in this Settlement Agreement shall be construed as an admission by Emerge of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Emerge of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Emerge under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Settlement Agreement is fully executed.

2. **WARNINGS AND REFORMULATION**

2.1 Reformulation Option. The Products shall be deemed to comply with Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if the Products do not exceed the following limits for lead: 300 ppm for any accessible component part. For purposes of this Settlement Agreement, accessible component part shall mean components of the Product to which a person would be exposed to lead by direct contact during normal and reasonably foreseeable use. Emerge may use any appropriate testing methodology including X-Ray fluorescence to establish compliance with this provision.

2.2 Warning Alternative. Products that do not meet the warning exemption standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. The warning requirements set forth in Section 2.3 below shall apply only to Products that Emerge offers for sale one hundred eighty (180) days after the Effective Date that are distributed, marketed, sold or shipped for sale or use inside the State of California. The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date.

2.3 Where required under Sections 2.1 and 2.2 above, Emerge shall provide Proposition 65 warnings as follows:

- (a) Emerge may use either of the following warning statements:
 - (1) **WARNING:** This product contains lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

or, where Emerge has reason to believe that chemicals listed under Proposition 65 in addition to lead may be present in a Product,

WARNING: This product contains lead and other chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

(b) The requirements for warnings, set forth in subsection (a) above are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.

(c) If Proposition 65 warnings for lead or lead compounds should no longer be required, Emerge shall have no further obligations pursuant to this Settlement Agreement. Except as provided in Section 2.1 above, in the event that Emerge ceases to implement or modifies the warnings required under this Settlement Agreement (because of a change in the law or otherwise), Emerge shall provide written notice to Wimberley (through counsel) of its intent to do so, and of the basis for its intent, no less than thirty (30) days in advance.

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

Pursuant to Health & Safety Code § 25249.7(b) the total civil penalty assessed shall be \$200. Civil penalties are to be apportioned in accordance with California Health & Safety Code §25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% to Wimberley.

Emerge shall issue two separate checks for the penalty payment: (a) one check made payable to "Law Offices of Stephen Ure, PC. in Trust for the Office of Environmental Health Hazard Assessment" in the amount of \$150, representing 75% of the total penalty; and (b) one check to "Law Offices of Stephen Ure, PC. in Trust for Evelyn Wimberley" in the amount of \$50, representing 25% of the total penalty.

Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$150. The second 1099 shall be issued to Evelyn

Wimberley in the amount of \$50, whose address and tax identification number shall be furnished three business days before payment is due. Payment shall be delivered within 10 business days of the Effective Date, at the following address:

Mr. Stephen Ure
Law Offices of Stephen Ure, PC.
1518 Sixth Avenue
San Diego, California 92101

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to Wimberley and her counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Emerge shall reimburse Wimberley's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Emerge's attention and negotiating a settlement. Emerge shall pay Wimberley's counsel \$4,800 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. Mr. Ure's tax identification number shall be furnished three business days before payment is due. Payment shall be delivered within 10 business days of the Effective Date, at the following address:

Mr. Stephen Ure
Law Offices of Stephen Ure, PC.
1518 Sixth Avenue
San Diego, California 92101

Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

5. RELEASE OF ALL CLAIMS

5.1 Release of Emerge and Downstream Customers

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Wimberley, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, and in the

interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Emerge and each of its distributors, wholesalers, licensors, licensees, auctioneers, retailers, including but not limited to FedEx Office and Print Services, Inc., franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to Emerge's or the Releasees' alleged failure to warn about exposures to listed chemicals contained in the Products.

Wimberley also, in her individual capacity, on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees and *not* in her representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Emerge and the Releasees arising under Proposition 65, as such claims relate to Emerge and the Releasees' alleged failure to warn under Proposition 65 about exposures to listed chemicals contained in the Products sold by Emerge and the Releasees. Wimberley acknowledges that she is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Wimberley, in her individual capacity only and *not* in her representative capacity, and on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which she may have under, or which may be conferred on her by the provisions of California Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to the released matters.

Compliance with the terms of this Settlement Agreement resolves any issue, now and in the future, concerning compliance by Emerge and the Releasees with the requirements of Proposition 65 with respect to alleged exposure to listed chemicals in the Products.

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Emerge and Releasees under Proposition 65 as covered under this release. If requested in writing by Emerge, Wimberley shall file a complaint and seek approval of this Settlement Agreement through a court approved consent judgment incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code Section 25249.7, or as may be otherwise allowed by law, and Wimberley shall reasonably cooperate with Emerge and use her best efforts and that of her counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to California Civil Procedure Sections 1021 and 1021.5, Emerge will reimburse Wimberley and her counsel for their reasonable attorney's fees and costs incurred in filing the complaint and seeking judicial

approval of this Settlement Agreement, in an amount not to exceed Five Thousand Dollars (\$5,000). No fees under this paragraph will be due and owing to Wimberley and her counsel unless a written request is made by Emerge to have Wimberley file a complaint and seek a consent judgment. Such additional fees shall be paid by Emerge within ten days after its receipt of monthly invoices from Wimberley's counsel for work performed under this paragraph.

5.2 Emerge's Release of Wimberley

Emerge waives any and all claims against Wimberley, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Wimberley and her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

Emerge acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Emerge on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

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 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Emerge shall provide written notice to Wimberley of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement.

7. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Emerge:

Gary Solomon
Emerge Technologies, Inc.
1431 Greenway Drive, Suite 800
Irving, TX 75038

With a copy to:

Peg Carew Toledo
Mennemeier, Glassman & Stroud LLP
980 9th Street, Suite 1700
Sacramento, CA 95814

And

For Wimberley:

Mr. Stephen Ure
Law Offices of Stephen Ure, PC.
1518 Sixth Avenue
San Diego, California 92101

Any party, from time to time, may specify in writing to the other party 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, 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)**

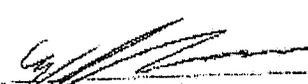
Wimberley agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

10. **MODIFICATION**

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

12. **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:	AGREED TO:
Date: October <u>18</u> , 2011	Date: October __, 2011
By:  Evelyn Wimberley	By: _____ On Behalf of Emerge Technologies, Inc.

Any party, from time to time, may specify in writing to the other party 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, 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)

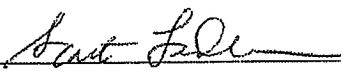
Wimberley agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

10. MODIFICATION

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

12. 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:	AGREED TO:
Date : October __, 2011	Date: October <u>21</u> , 2011
By: _____ Evelyn Wimberley	By: <u></u> On Behalf of Emerge Technologies, Inc.