

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur, (“Vinocur”) and Altus Brands, LLC (“Altus”), with Vinocur and Altus each individually referred to as a “Party” and collectively as the “Parties.” Vinocur 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. Altus employs ten or more persons 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 & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Vinocur alleges that Altus manufactures, sells, and/or distributes for sale in California, hearing protection with vinyl/PVC components that contain the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Vinocur alleges that Altus failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the hearing protection with vinyl/PVC components sold in California.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are hearing protection with vinyl/PVC components containing DEHP including, but not limited to, the *Pro Ears ReVO Passive Ear Muffs for Smaller Heads & Ears, PE-26-U-Y-003, UPC #7 51710 50233 8*, manufactured, sold and/or distributed for sale in California by Altus (collectively, “Products”).

**1.4 Notice of Violation**

On July 11, 2014, Vinocur served Altus and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Altus violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

**1.5 No Admission**

Altus denies the material, factual, and legal allegations contained in the Notice 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 Settlement Agreement shall be construed as an admission by Altus 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 Altus of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Altus. This Section shall not, however, diminish or otherwise affect Altus’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 May 15, 2015.

**2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

**2.1 Reformulated Products**

As of the Effective Date, Altus represents that it will only purchase for sale or manufacture for sale in California Reformulated Products, or Products that are to be sold with a clear and reasonable health hazard warning pursuant to Section 2.2, below. For the purposes of this settlement, “Reformulated Products” are defined as Products that contain no more than 1,000 parts per million (“ppm”) DEHP content in any component

analyzed pursuant to EPA testing methodologies 3580A and 8270C. In addition to the above test methodologies, the Parties may employ equivalent methodologies used by state or federal agencies to determine the amount of DEHP in a solid substance.

## **2.2 Clear and Reasonable Warnings**

Altus agrees that as of the Effective Date, all Products it sells and/or distributes in California which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section. Altus further agrees that the warning will be prominently placed with such conspicuousness when compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in California and containing the following statement:

**WARNING:** This product contains DEHP, a chemical known to the State of California to cause birth defects (or other reproductive harm).

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Altus agrees to pay a \$2,000 civil penalty to be delivered on or before the Effective Date in the form of a single check made payable to “Laurence Vinocur, Client Trust Account.” The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% retained by Vinocur. Vinocur’s counsel shall be responsible for delivering OEHHA’s portion of the civil penalty payment to OEHHA.

### **3.2 Reimbursement of Vinocur's Attorneys' Fees and Costs**

The Parties reached an accord on the compensation due to Vinocur and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Altus agrees to pay \$13,000.00 to Vinocur and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Altus's management, and negotiating a settlement in the public interest.

#### **3.1.2 Payment Schedule for Vinocur's Attorney' Fees and Costs**

Altus' Reimbursement of Vinocur's fees and costs under this Settlement Agreement shall be paid in five installments of \$2,600 each, made payable to "The Chanler Group" to be delivered on the 25<sup>th</sup> of each month from May 2015 through September 2015.

#### **3.1.3 Acceleration of Payments**

In the event that Altus fails to make any payment under this Settlement within 10 days of the date that the obligation is due and owing, all sums payable under this Settlement, including any civil penalty and/or attorneys' fee and cost reimbursement amounts, shall become immediately due.

### **3.3 Payment Address**

All payments required by this Consent Judgment shall be delivered to the following address:

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

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

##### **4.1 Vinocur's Release of Altus**

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

In further consideration of the promises and agreements herein contained, Vinocur, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including, without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees, but exclusive of fees and costs on appeal, if any, arising under Proposition 65 with respect to the failure to warn about exposures to DEHP from Products sold or distributed for sale by Altus before the Effective Date. The releases provided by Vinocur under this Settlement Agreement are provided solely on Vinocur's behalf and are not releases on behalf of the public.

**4.2 Altus' Release of Vinocur**

Altus on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Vinocur and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Vinocur 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 of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining 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 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Altus may provide written notice to Vinocur of any asserted change in the law, and shall have no further 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 notices 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 Altus:

Gary Lemanski, President  
Altus Brands, LLC  
6893 Sullivan Road  
Grawn, MI 49637

For Vinocur:

The Chanler Group  
Attn: Prop 65 Coordinator  
2560 Ninth St.  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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)**

Vinocur and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 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:**

**AGREED TO:**

Date: April 2, 2015

Date: \_\_\_\_\_

By:   
Laurence Vinocur

By: \_\_\_\_\_  
Gary Lemanski, President  
ALTUS BRANDS, LLC

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.

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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: \_\_\_\_\_

Date: 3-20-15

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

By: [Signature]

Laurence Vinocur

Gary Lemanski, President  
ALTUS BRANDS, LLC