

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Mark Moorberg (“Moorberg”) and Southern Telecom Inc. (“Southern”), with Moorberg and Southern collectively referred to as the “Parties.” Moorberg is an individual residing in the State of 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. Southern 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

Moorberg alleges that Southern manufactures, imports, distributes, sells, and/or offers for sale headphones with vinyl/PVC ear cushions containing di(2-ethylhexyl)phthalate (“DEHP”), in the State of California without the requisite Proposition 65 health hazard warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as headphones with vinyl/PVC ear cushions containing DEHP including, but not limited to, the *The Sharper Image Studio Headphones, SHP1400WH, UPC #6 80079 61140 8* (the “Exemplar Product”), which were manufactured, imported, distributed, sold and/or offered for sale in California by Southern, hereinafter referred to as the “Products.”

### 1.4 Notice of Violation

On or about August 28, 2014, Moorberg served Southern and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”), alleging that Southern was in violation of Proposition 65 for failing to warn its customers and consumers in

the State of California that the Products exposed 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**

Southern denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported and distributed, that are sold and/or offered for sale in the State of 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 Southern of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Southern of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Southern. This Section shall not, however, diminish or otherwise affect Southern'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 April 15, 2015.

**2. INJUNCTIVE RELIEF**

**2.1 Reformulation Commitment and Warnings**

Commencing on May 31, 2015, Southern shall only manufacture, import, distribute, sell and/or offer for sale in the State of California Products that are Reformulated Products or Products that comply with the warning requirements found below in Section 2.2. For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing 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. For purposes of this Settlement Agreement, "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.

## **2.2 Product Warnings**

### **2.2.1 Product Labeling**

Any warning provided under Section 2.1 above shall be affixed to the packaging, labeling, or directly on each Product. Each warning shall be prominently placed with such conspicuousness as 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 before purchase. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion. A warning provided pursuant to this Settlement Agreement shall state:

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

### **2.2.2 Mail Order Catalog and Internet Website Warning**

In the event that Southern sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Southern shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.2.2(i) and (ii).

**(i) Mail Order Catalog Warning.** Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

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

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Southern may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol”

with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

**WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalog contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Southern must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

**(ii) Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

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

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

**WARNING:** Products identified on this page with the following symbol ▼ contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

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

In settlement of all the claims referred to in this Settlement Agreement, Southern shall pay a total of \$8,500 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Moorberg. Moorberg’s counsel shall be responsible for remitting Southern’s penalty payment(s) under this Settlement Agreement to OEHHA.

**3.1 Initial Civil Penalty**

Southern shall pay an initial civil penalty in the amount of \$2,500 on or before the Effective Date.

**3.2 Final Civil Penalty**

Southern shall pay a final civil penalty of \$6,000 on or before June 15, 2015, the final civil penalty shall be waived in its entirety, however, if, no later than June 1, 2015, an officer of Southern provides Moorberg with written certification that, as of the date of such certification and continuing into the future, Southern has met the reformulation standard specified in Section 2.1 above, such that all Exemplar Products manufactured, imported, distributed, sold and/or offered for sale in California by Southern are Reformulated Products. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence.

**3.3 Payment Address**

All payments required by this Settlement Agreement 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. REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that Moorberg and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Southern then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Moorberg and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Southern shall pay \$22,000 for fees and costs incurred as a result of investigating, bringing this matter to Southern's attention, and negotiating a settlement in the public interest. Southern shall issue a check payable to "The Chanler Group" and shall deliver payment on or before the Effective Date to the address listed in Section 3.3.

#### **5. RELEASES**

##### **5.1 Moorberg's Release of Southern**

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

In further consideration of the promises and agreements herein contained, Moorberg, in his individual capacity only, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all his rights 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 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, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to DEHP in the Products manufactured, imported, distributed, sold and/or offered for sale by Southern before the Effective Date, against Southern and Releasees.

**5.2 Southern's Release of Moorberg**

Southern, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Moorberg 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 Moorberg 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.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision is held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**7. 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.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be sent by: (i) personal delivery; (ii) first-class, registered or

certified mail, return receipt requested; or (iii) overnight courier on any party by the other party at the following addresses:

To Southern:

Sammy Ayal, Chief Executive Officer  
Southern Telecom Inc.  
14C 53<sup>rd</sup> Street  
Brooklyn, NY 11232

To Moorberg:

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

With Copy to:

Gerry Grunsfeld, Esq.  
Lazar Grunsfeld Elnadav  
1795 Coney Island Avenue  
Brooklyn, NY 11230

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

**9. 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.

**10. POST-EXECUTION ACTIVITIES**

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

**11. 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:**

Date: April 8, 2015

By:   
Mark Moorberg

**AGREED TO:**

Date: 4/6/2015

By:   
Sammy Ayal, Chief Executive Officer  
Southern Telecom Inc.