

SETTLEMENT AGREEMENT

BETWEEN

SARA HAMMOND

AND

SOUTHERN TELECOM, INC.

Sara Hammond ("Hammond") and Southern Telecom, Inc. (herein referred to as "Southern") (Hammond and Southern are collectively referred to as the "Parties"), enter into this agreement ("Settlement Agreement") for the purpose of avoiding prolonged and costly litigation to settle Hammond's allegations that Southern violated Proposition 65. The effective date of this Settlement Agreement shall be the date upon which it is fully executed by all Parties hereto (the "Effective Date").

1. Introduction

- 1.1. Hammond alleges she is an individual who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.
- 1.2. Southern previously sold, imported, distributed, or manufactured at various times armbands designed to hold electronic devices with clear plastic windows (for example Polaroid Armband and Earbud Combo) (referred to throughout as the "Covered Product").
- 1.3. Hammond alleges that the Covered Products contain Di(2-ethylhexyl)phthalate ("DEHP"). Also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate, and that Southern did not provide a required warning in compliance

with the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”)).

- 1.4. On January 1, 1988 the Governor of California added DEHP to the list of chemicals known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of chemicals known to the State to cause developmental male reproductive toxicity. These additions took place more than twenty (20) months before Hammond served her “Sixty-Day Notice Of Violation Sent in Compliance With California Health & Safety Code § 25249.7(d)” which is further described below.
- 1.5. DEHP is referred to hereafter as the “Listed Chemical”.
- 1.6. On or about December 31, 2015, and again on January 5, 2016 Hammond alleges she served Southern and certain relevant public enforcement agencies with documents entitled “Sixty-Day Notice Of Violation Sent in Compliance With California Health & Safety Code § 25249.7(d)” alleging the Covered Products contained the Listed Chemical (the “Notice”).
- 1.7. The Notice alleged that Southern violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposes persons to the Listed Chemical.
- 1.8. The Parties enter into this Settlement Agreement to settle disputed claims between them concerning the Parties’ and the Covered Products’ compliance with Proposition 65 (the “Dispute”).
- 1.9. Southern disputes Hammond’s allegations described in this Settlement Agreement and in the Notice.

1.10. By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by Southern, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, licensees, licensors, suppliers, distributors or retailers of its products, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that Hammond or Southern may have in any other legal proceeding as to allegations unrelated to the Dispute or claims released herein.

2. Release

2.1. This Settlement Agreement is a full, final, and binding resolution between Hammond, acting in her individual capacity, on the one hand, and (a) Southern, and its current owners, parents, subsidiaries, affiliates, sister and related companies, licensees, licensors, suppliers, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively “Releasees”) and (b) all entities to whom Releasees directly or indirectly provide, distribute, or sell the Covered Products, including but not limited to distributors,

wholesalers, customers, retailers, franchisees, and cooperative members (“Downstream Releasees”), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been or may in the future be asserted against the Releasees and Downstream Releasees regarding exposing persons to any Proposition 65 listed chemical or the failure to warn about exposure to any Proposition 65 listed chemical arising only in connection with the Covered Product sold, manufactured, shipped, and/or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date.

- 2.2. Hammond, on behalf of herself and her past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered Product all rights to institute or participate in, directly or indirectly, any form of legal action, 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) (collectively “Claims”), against Releasees and the Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in connection with the Covered Product sold up to the Effective Date, including without limitation to the extent that such claims relate to Releasees’ or Downstream Releasees’ alleged exposure of persons to any Proposition 65 listed chemicals contained in the Covered Product or any failure by Releasees or

Downstream Releasees to warn about exposures to any Proposition 65 listed chemical contained in the Covered Product.

- 2.3. Hammond acknowledges that she is familiar with Section 1542 of 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.

Hammond, on behalf of herself and 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 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. The release in this section shall have no force or effect until the full amount of payments set forth in Section 4. below are paid in full.

3. Southern's Duties

- 3.1. Southern agrees, promises, and represents that it will cease selling the Covered Product in California, and will not manufacture, import or distribute the Covered Product into California in the future without prior reformulation to eliminate DEHP. If Southern offers a Covered Product that is not reformulated, Southern shall provide a clear and reasonable warning for any non-reformulated Covered

Product that it ships, sells, or offers to ship or sell in California. Southern Telecom shall provide the warning affixed to the packaging or labeling with the following statement:

CALIFORNIA PROPOSITION 65 WARNING:

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

The 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 or use. Each warning shall be provided in a manner such that the consumer or user is reasonably likely to understand to which specific Covered Product the warning applies, so as to minimize the risk of consumer confusion. In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Southern shall be entitled to use, at their discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

4. Payments

4.1. Southern agrees to pay a total of twenty-six thousand five hundred dollars (\$26,500). Twenty Thousand dollars (\$20,000) shall be paid within one (1) day of the Effective Date by separate checks apportioned as follows:

4.1.1. Attorneys' Fees and Costs: Nineteen thousand dollars (\$19,000) shall be paid to Joe Aglizzo as Hammond's attorney, for reasonable investigation fees and costs, attorneys' fees, and other costs incurred as a result of investigating and bringing this matter to Southern's attention. The check shall be delivered to: Law Office of Joseph D. Aglizzo, PO Box 3582, Manhattan Beach, CA 90266.

4.1.2. Civil Penalty: Southern shall issue two separate checks for a total amount of one thousand dollars (\$1,000) as penalties pursuant to Health & Safety Code § 25249.12 as follows: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of seven hundred fifty dollars (\$750), representing 75% of the total penalty; and (b) one check to Sara Hammond in the amount of two hundred fifty dollars (\$250), representing 25% of the total penalty. Both checks shall be delivered to the Law Office of Joseph D. Aglizzo, PO Box 3582, Manhattan Beach, CA 90266. Additionally, two separate 1099's shall be issued for the above payments. The first 1099 shall be issued to OEHHA, PO Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$750. The second 1099 shall be issued in the amount of \$250 to Sara Hammond and shall be delivered to the Law Office of Joseph D. Aglizzo, PO Box 3582, Manhattan Beach, CA 90266. Hammond shall provide Southern with her Social Security Number for completion of the Form 1099.

4.2. Southern agrees to deliver an affidavit to Plaintiff's counsel within 90 days of the Effective date stating that (a) the Covered Product in its current formulation is no longer available for sale in the State of California and (b) any replacement product has been reformulated to eliminate DEHP or contains a warning label in compliance with Section 3.1 above. If Southern fails to produce reasonable evidence satisfactory to Plaintiff within 90 days of the Effective Date, Southern agrees to continue to be bound to insure the Product is no longer available for sale in California unless reformulated to eliminate DEHP and also agrees to pay within 5 days after the 90 day period expires an additional six thousand five dollars (\$6,500) as follows:

4.2.1. Attorneys' Fees and Costs: Four thousand five hundred dollars (\$4,500) shall be paid to Joe Agliozzo as Hammond's attorney, for reasonable investigation fees and costs, attorneys' fees, and other costs incurred as a result of investigating and bringing this matter to Southern's attention. The check shall be delivered to: Law Office of Joseph D. Agliozzo, PO Box 3582, Manhattan Beach, CA 90266.

4.2.2. Civil Penalty: Southern shall issue two separate checks for a total amount of two thousand dollars (\$2,000) as penalties pursuant to Health & Safety Code § 25249.12 as follows: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of one thousand five hundred dollars (\$1,500), representing 75% of the total penalty; and (b) one check to Sara Hammond in the amount of five hundred dollars (\$500), representing 25% of the total

penalty. Both checks shall be delivered to the Law Office of Joseph D. Aglizzo, PO Box 3582, Manhattan Beach, CA 90266. Additionally, two separate 1099's shall be issued for the above payments. The first 1099 shall be issued to OEHHA, PO Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$1,500. The second 1099 shall be issued in the amount of \$500 to Sara Hammond and shall be delivered to the Law Office of Joseph D. Aglizzo, PO Box 3582, Manhattan Beach, CA 90266. Hammond shall provide Southern with her Social Security Number for completion of the Form 1099.

5. Authority to Enter Into Settlement Agreement

- 5.1. Hammond represents that she has full authority to enter into and legally bind Hammond to this Settlement Agreement.
- 5.2. The person signing this Settlement Agreement on behalf of Southern represents and warrants that he/she has been granted full authority to enter into and legally bind Southern to this Settlement Agreement.

6. Report of the Settlement Agreement to the Office of the Attorney General of California

- 6.1. Hammond shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

7. Execution in Counterparts and Facsimile

- 7.1. This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or portable document format (PDF) signature shall be as valid as the original as an electronic

record executed and adopted by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1-1633.17.

8. Entire Agreement

8.1. This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other promises or agreements, oral or otherwise, exist to bind any of the Parties or are being relied on by any of the Parties in connection with the execution of this Settlement Agreement.

9. Modification of Settlement Agreement

9.1. Any modification to this Settlement Agreement shall be in writing and signed by the Parties.

10. Application of Settlement Agreement

10.1. This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, Hammond and the Releasees and Downstream Releasees identified in Section 2 above.

11. Enforcement of Settlement Agreement

11.1. Any party may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

12. Notification Requirements

Any notice required or permitted hereunder shall be effective only if given in writing and delivered in person, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For Hammond:

Joseph D. Aglizzo.
Law Office of Joseph D. Aglizzo
PO Box 3582
Manhattan Beach, CA 90266

For Southern:

Southern Telecom, Inc.
Attn: Sam Ayal or Ezra Hedaya
14-C 53rd Street
Brooklyn, NY 11232

With a copy to:

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

Any party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

13. Severability

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

14. Governing Law

14.1. 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, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Listed Chemical and/or the Covered Product, then Southern shall provide written notice to Hammond 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 Covered Product is so affected.

SARA HAMMOND

Date: _____

By: _____
Printed Name: Sara Hammond

SOUTHERN TELCOM, INC.

Date: _____

By: _____
Printed Name: _____
Title: _____

14. Governing Law

14.1. 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, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Listed Chemical and/or the Covered Product, then Southern shall provide written notice to Hammond 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 Covered Product is so affected.

SARA HAMMOND

Date: 8-24-16

By: Sara Hammond
Printed Name: Sara Hammond

SOUTHERN TELCOM, INC.

Date: _____

By: _____

Printed Name: _____

Title: _____

14. Governing Law

14.1. 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, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Listed Chemical and/or the Covered Product, then Southern shall provide written notice to Hammond 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 Covered Product is so affected.

SARA HAMMOND

Date: 8-24-16

By: 
Printed Name: Sara Hammond

Date: 8/26/16

SOUTHERN TELCOM, INC.

By: 

Printed Name: Kobey C

Title: C. P.O.