

# SETTLEMENT AGREEMENT

## **1. INTRODUCTION**

### **1.1 Russell Brimer and Osram Sylvania, Inc.**

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”), and Osram Sylvania, Inc. (“Osram”), with Brimer and Osram collectively referred to as the “Parties.” Brimer is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Osram 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 §§ 25249.5 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

Brimer alleges that Osram has manufactured, licensed its trademark to other manufacturers including Curtis International, Ltd., imported, distributed and/or sold in the State of California vinyl/PVC headphone cords and safety bands containing di(2-ethylhexyl)phthalate (“DEHP”). 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 vinyl/PVC headphone cords that contain DEHP including those used in the *Sylvania 7” Portable DVD Player (Headphones), SDVD7060-COMBO-BLUE, UPC #0 58465 79529 0*; and safety bands with vinyl/PVC components containing DEHP including the *Sylvania Safety Band, E10905, UPC #0 46135 72054 3*; which are manufactured, imported, distributed, sold and/or offered for sale by Osram or by or on the behalf of Curtis International, Ltd. and sold under the Sylvania trademark in the State of California, hereinafter the “Products.”

#### **1.4 Notice of Violation**

On January 29, 2016, Brimer served Osram and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Osram was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers that the Products exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

#### **1.5 No Admission**

Osram denies the material, factual and legal allegations contained in Brimer’s Notice and maintains that all products that it has sold and distributed in California, or products sold under a Sylvania trademark license agreement, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Osram 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 Osram of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

#### **1.6 Effective Date**

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

### **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

#### **2.1 Reformulated Products**

Commencing on November 1, 2016, and continuing thereafter, Osram shall only manufacture or cause to be manufactured under the Sylvania trademark, Products as defined in Section 1.3 above that are “Reformulated Products,” or Products that are sold with a clear and reasonable warning pursuant to Section 2.2 below. For purposes of this Settlement Agreement, “Reformulated Products” are products that contain DEHP in concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection

Agency testing methodologies 3580A and 8270C, or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

## **2.2 Product Warnings**

Commencing on November 1, 2016, Osram, or any Sylvania trademark licensee, shall provide clear and reasonable warnings for all Products, as set forth in subsections 2.2(a) and (b), for all products that do not currently have warnings and that do not qualify as Reformulated Products. 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 or use. 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) Retail Store Sales.**

**(i) Product Labeling.** Osram, or any Sylvania trademark licensee, shall affix a warning to the packaging, labeling, or directly on each Product for sale in retail outlets in California that states:

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

**(ii) Point-of-Sale Warnings.** Alternatively, Osram, or any Sylvania trademark licensee, may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to Osram customers shall be sent by certified mail, return receipt requested.

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

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (e.g., Reformulated Products as defined in Section 2.1), the following statement shall be used:<sup>1</sup>

**WARNING:** The following products contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harms:

*[list products for which warning is required]*

**(b) Mail Order Catalog and Internet Sales.** In the event that Osram, or any Sylvania trademark licensee, sells Products via mail order catalog and/or the internet, to customers located in California, that are not Reformulated Products, Osram, or any Sylvania trademark licensee, 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(b)(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 harms.

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, Osram, or any Sylvania trademark licensee, may utilize a designated symbol to cross reference the applicable warning and shall

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<sup>1</sup>For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

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 harms.

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, Osram, or any Sylvania trademark licensee, 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 harms.

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

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

**3.1 Civil Penalty Payments**

Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred to in the Notice, Osram shall pay \$9,000 in civil penalties. Payment shall be in settlement of all the claims referred to in this Settlement Agreement. Each civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and twenty-five percent (25%) of the funds allocated to Brimer.

**3.1.1 Initial Civil Penalty**

Within eleven (11) days of the Effective Date, Osram shall issue and deliver a check for its initial civil penalty payment in the amount of \$3,000 to “Russell Brimer, Client Trust Account.” Brimer subsequently will direct 75% of the initial civil penalty to OEHHA.

**3.1.2 Final Civil Penalty**

On or before June 30, 2017, Osram shall make a final civil penalty payment of \$6,000. Brimer agrees that the final civil penalty payment shall be waived in its entirety if, no later than June 15, 2017, an officer of Osram provides Brimer with written certification that it, or its trademark licensees, are no longer offering or distributing for sale in California the Products, or is only offering for sale and distributing for sale in California, Reformulated Products as defined in section 2.1, above. The option to certify 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 Payment Procedures**

**3.2.1. Issuance of Payments.** Payments shall be delivered as follows:

- (a) All payments owed to Brimer, pursuant to Section 3.1, shall be delivered to the following payment 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 Brimer 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. Osram 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 Brimer 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. Osram shall pay \$18,600 for fees and costs incurred as a result of investigating, bringing this matter to Osram's attention, and negotiating a settlement in the public interest. Osram shall make the check payable to "The Chanler Group" and shall deliver payment within eleven (11) days of the Effective Date, to the address listed in Section 3.1.1 above.

5. **RELEASES**

5.1 **Brimer's Release of Osram**

This Settlement Agreement is a full, final and binding resolution between Brimer and Osram of any violation of Proposition 65 that was or could have been asserted by Brimer on behalf of himself and *not* on behalf of the public, and on behalf of his past and current agents, representatives, attorneys, successors and/or assignees, against Osram, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, Sylvania trademark licensees and each entity to whom Osram 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 Osram or its Sylvania trademark licensees in California before November 1, 2016.

In further consideration of the promises and agreements herein contained, Brimer on behalf of himself and *not* on behalf of the public, his past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all of 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 -- limited to and arising under Proposition 65 with respect to DEHP in the products manufactured, imported distributed, sold and/or offered for sale by Osram or its Sylvania trademark licensees before November 1, 2016 (collectively "claims"), against Osram and Releasees, as set forth in the Notice.

#### **5.2 Osram's Release of Brimer**

Osram, on behalf of itself, its past and current agents, representatives, attorneys, licensees, successors and/or 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.

#### **6. 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.

#### **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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then

Osram shall provide written notice to Brimer 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. Nothing in this Settlement Agreement shall be interpreted to relieve Osram from any obligation to comply with any state or federal toxics control law.

**8. NOTICES**

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

For Osram:

Wendy A. Lynn, Esq.  
Glynn & Finley, LLP  
One Walnut Creek Center  
100 Pringle Avenue, Suite 500  
Walnut Creek, CA 94596

For Brimer:

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

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.

**10. COUNTERPARTS; FACSIMILE AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

12. **MODIFICATION**

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

13. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: July 21, 2016

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

By:  \_\_\_\_\_  
RUSSELL BRIMER

By: \_\_\_\_\_  
Rick Leaman, President  
Osram Sylvania, Inc.

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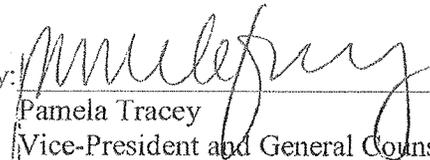
**AGREED TO:**

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

By: \_\_\_\_\_  
RUSSELL BRIMER

**AGREED TO:**

Date: July 22, 2016

By:   
Pamela Tracey  
Vice-President and General Counsel  
Osram Sylvania, Inc.