

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Laurence Vinocur and Absolute USA, Inc.**

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”), and Absolute USA, Inc. and its affiliate entities SOS & Associates, Electra Warehouse, Al & Ed’s, Cache, Cerwin Vega Mobile, Diamond Audio, American Terminal, and Mr. DJ (hereinafter referred to as “Absolute”), with Vinocur and Absolute collectively referred to as the “Parties.” Vinocur 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. Absolute has employed ten or more part and/or full time persons at one or more relevant time periods 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**

Vinocur alleges that Absolute imports, sells, or distributes for sale in California vinyl/PVC cables, cords, and wires that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

#### **1.3 Product Description**

The Products that are covered by this Settlement Agreement are vinyl/PVC cables, cords and wires containing DEHP including, but not limited to: *Absolute USA Portable 15” Amplified Speaker with MP# (Power Cord)*, *USPRO15BT*, *UPC #8 47169 01252 5*, *Absolute USA 8 Gauge 50 ft. Speaker Cable, S8-50*, *UPC #8 47169 00542 8*, *Absolute USA RCA Cable, ABHP3*, *UPC #8 11234 01131 7*, and the *Absolute USA Fuse Holder (Wires)*, *ARSPACK-2*, *UPC #8 47169 01355 3*, that are imported, sold, or distributed for sale in California by Absolute. This Settlement Agreement also covers “Additional Products” that are imported, sold, or distributed

for sale in California by Absolute: (a) alleged to contain lead including, but not limited to, *Mr. DJ USA Dragon 900 Dragon Series Fog Machine*, UPC No. 8 47169 00142 0; the *Absolute USA Pro Edition Portable 12" Amplified Speaker*, UPC No. 8 47169 01834 3; the *Mr. DJ USA Microphone Stand*, UPC No. 8 47169 01607 3; and the *Mr. DJ USA AD-IO 4CH USB Soundcard with Asio*, UPC No. 8 47169 01105 4; and (b) alleged to contain DEHP, defined as vinyl/PVC electrical tape including, but not limited to, *Absolute USA Electrical Tape, BT1700*, UPC #8 47169 01661 5. This Settlement Agreement also covers the products specified in Exhibit A attached hereto.

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

On January 18, 2017, Vinocur served Absolute and the requisite public enforcement agencies with a Notice alleging DEHP in the vinyl/PVC cable, cord and wire Products ("Notice"). No public enforcer has diligently prosecuted the allegations set forth in the Notice.

#### **1.5 No Admission**

Absolute denies the material, factual and legal allegations contained in Vinocur's Notice and maintains that all products that it has sold and distributed in California, including the Products and Additional Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Absolute 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 Absolute 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 March 20, 2017.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

Commencing on April 30, 2017, and continuing thereafter, Absolute shall only manufacture for sale, import for sale, or purchase for sale in California, Products and Additional

Products that are either: (i) Reformulated Products as defined in Section 2.1; or (ii) contain the health hazard warnings specified in Section 2.2 below. This paragraph provides Absolute with the express option of selling Reformulated Products or providing the requisite warning for the Products sold in California.

## **2.1 Reformulation Standards**

With respect to Products and Additional DEHP Products, “Reformulated Products” are defined as Products containing DEHP in a maximum concentration of 1,000 parts per million (0.1%) in any accessible component (i.e., any component that may be touched during a reasonably foreseeable use) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance. Absolute represents that it has reformulated the Product *Absolute USA Electrical Tape, BT1700, UPC #8 47169 01661 5*.


With respect to Additional Lead Products, “Reformulated Products” are defined as Additional Products that yield a maximum result of 1.0 microgram (“µg”) residual lead content by weight on any surface sampled pursuant to the NIOSH 9100 sampling protocol *and* analyzed pursuant to EPA Analytical Methods 3050B and/or 6010B, and that contain a maximum of 100 parts per million (“ppm”) (0.01%) lead by weight.

## **2.2 Health Hazard Warnings**


No later than April 30, 2017, Absolute shall provide clear and reasonable warnings as set forth in this section for all Products and Additional Products sold in California 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 (A representative copy of the health hazard warning if the Products are not reformulated was provided to Vinocur and determined to be in compliance with this paragraph). 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. For purposes of this Settlement Agreement, a clear and reasonable warning satisfying these criteria shall consist of a warning affixed directly to the packaging, labeling, or directly on each Product provided for sale in California that states:

For DEHP Products:

 **WARNING:** This product can expose you to chemicals, including DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

For Additional Lead Products:

 **WARNING:** This product can expose you to chemicals, including lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

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

#### **3.1 Civil Penalties**

In settlement of all the claims referred to in the Notice, Absolute shall pay a total of \$4,000 in civil penalties in accordance with this Section. The 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 Vinocur. Vinocur and his counsel will then ensure the proper portion of the payment is made to OEHHA.

#### **3.2 Payment Procedures**

On March 20, 2017, Absolute shall pay a civil penalty in the amount of \$4,000, as noted above. Absolute shall provide its payment in two checks as follows: (i) “Laurence Vinocur, Client Trust Account” in the amount of \$1,000 and (ii) “OEHHA” in the amount of \$3,000. All penalty payments shall be delivered to the address listed in Section 3.3 below.

### **3.3 Payment Address**

All payments owed to Vinocur, shall be delivered via USPS overnight mail or overnight FedEx 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 Vincour 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. Absolute 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 Vinocur 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. Absolute shall pay \$26,000 for fees and costs incurred as a result of investigating, bringing this matter to Absolute's attention, and negotiating a settlement in the public interest. Absolute shall make the check payable to "The Chanler Group" and shall deliver payment on March 20, 2017, via overnight mail or FedEx overnight to the address listed in Section 3.3 above.

## **5. RELEASES**

### **5.1 Vinocur's Release of Absolute**

This Settlement Agreement is a full, final and binding resolution between Vinocur and Absolute of any violation of Proposition 65 that was or could have been asserted by Vinocur 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 Absolute, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each

entity to whom Absolute directly or indirectly distributes or sells Products and Additional Products including, but not limited to, downstream distributors, wholesalers, customers, vendors, retailers including, but not limited to, Fry's Electronics, Inc., franchisees, cooperative members and licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Products and lead or DEHP in the Additional Products that were manufactured, imported, distributed, sold and/or offered for sale by Absolute in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Vinocur 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 and lead in the Additional Products manufactured, imported distributed, sold and/or offered for sale by Absolute before the Effective Date (collectively "claims"), against Absolute and Releasees.

## **5.2 Absolute's Release of Vinocur**

Absolute, 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 or Additional 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 or Additional Products, then Absolute shall provide written notice to Vinocur of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products or Additional Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Absolute from any obligation to comply with any state or federal toxics control law.

**8. NOTICE**

Unless specified herein, all correspondence and notice 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 Absolute:

Perry Roshan-Zamir  
Law Offices of Perry Roshan-Zamir  
2530 Wilshire Blvd., Third Floor  
Santa Monica, CA 90403

Copy to:

Olivia Palmieri  
Corporate Counsel  
Absolute USA, Inc.  
2530 Wilshire Blvd., Third Floor  
Santa Monica, California 90403

For Vinocur:

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)**

Vinocur 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**

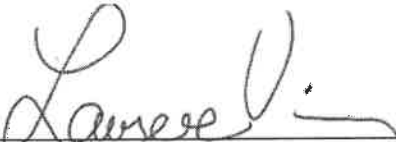
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.


**AGREED TO:**

**AGREED TO:**

Date: March 18, 2017

Date: March 17, 2017

By:   
Laurence Vinocur

By:   
Mohammed Razipour, CEO  
Absolute USA, Inc.



## EXHIBIT A

<b>RCA Cables</b>	RCABK25	SWH16500	ANLPKG00R	US15MP3
ABC12	RCABK2F1M	AS18G1000C	ANLPKG0RD	USPRO15M
ABC15	RCABK6	MKASW181000	ANLPKG0SL	PM4015AMP
ABC17	RCABS12	PROS181000	ATCFH10	PLBAT10
ABC1F2M	RCABS6	S18100	ATCFH10-10	PLS1000BB
ABC20	RCACG12	S181000	ATCFH10-2	DJ12BTA
ABC25	RCAVD03B	S1840	ATCFH10-5	PLBAT12
ABC2F1M	RCAVD06B	SWH18100	ATCFH12-10	PXBAT12
ABC3	RCAVD12B	SWH1825	ATCFH8	PLS5500BA
ABC6	RCAVD17B	SWH18250	ATCFH8-10	USPROBAT12
ABCO12		SWH1850	ATCFH8-2	ASBATY15
ABCO17	<b>Speaker Wires</b>	SWH18500	ATCFH8-5	DJ15BTA
ABCO1F2M	PROS10100	PROS8100	ATFH10	PBX4000 BAT
ABCO20	S10100	S850	FHATC	PBX4500BAT
ABCO2F1M	SWH10100	SWH825	<b>Plastic DJ Speakers</b>	PLBAT15
ABCO3	SWH1025	SWH850	PBX1859LB	PM2880BAT
ABCO6	SWH1050	<b>Electrical Tapes</b>	PBX2159LB	PPBAT3000
ABCOVD12	PROS12250	BT1700	DJBT115	PPBAT3500
ABCOVD17	S12100	AT1700	DJBT215	PXBAT15
ABCOVD3	S1225	<b>Fuse Holders</b>	PBX15KAR	PROBAT4000
ABCOVD6	S12550	AFSH110	PBX2659LB	USBAT3000
ABHP12	S1240	AFS110	PBX295OWIFI	USPROBAT15
ABHP17	S1250	AGH1	PLED4000BT	DJ18BTA
ABHP20	S12500	AGH1B	PM2800PKG	DJ21 5BTA
ABHP2F1M	SWH12100	AGH1R	PM4015BT	PBX6500BAT
ABHP3	SWH1225	AGH2	PP3000BT	PSBAT6200
ABHP6	SWH1250	AGH3	PP3500BT	6.5" :PPS65LED
ABHPVD12	MKASW14250	AGH3R	PP3500LED	8": PLBAT8
ABHPVD17	PROS14250	AGH4	PP3500NFC	8': PXBAT8
ABHPVD3	S14100	AGH4B	PS3000BT	DSP4000
ABHPVD6	S1425	AGH4BK	PSH3200BT	STAGE
ABPR12	S14250	AGH4G	PSH3250PKG	PLS6000BK
ABPR20	S1440	AGH4R	PSM3500BT	PBX1559S
ABPRVD12	S1450	AGHFU-100	RAZPRS5000B	PBX1859S
ABPRVD17	S14500	AGHFU-60	RAZPRS5000W	PBX2159S
ABPRVD3	SWH14100	AGHFU-80	US15BT	PBX2659S
ABPRVD6	SWH1425	AGHLB	US2500PKG	PBX6000S
COMR12	SWH1450	AGHPKG4BK	US3000BT	PBX6100S
COMR15	MKASW16500	AGHPKG4BL	USPRO15BT	PP3000S
COMR17	PROS161000	AGHPKG4GR	PBX5000BT	PBX210COMBO
COMR1F2M	PROS16500	AGHPKG4RD	PBX5200BT	PBX2110PKG
COMR20	S16-40	AGHPKG4SL	PBX5500LED	PBX230BTPK
COMR2F1M	S16100	ANH0	PBX6000BT	PBX2610PKG
COMR3	S161000	ANH0B	PBX6059LB	PP3510PKG
COMR6	S1640	ANH2	PBX6100LED	PP3530BTPK
RCABK12	S16500	ANH3	PSLED6050	PROSUB12AMP
RCABK17	SWH16100	ANH4	PBX1559LB	PROSUB15
RCABK1F2M	SWH1625	ANLPKG0BK	PBS1 609MP3	PROSUB15AMP
RCABK1MMR	SWH16250	ANLPKG0BL	PBX2109MP3	PROSUB18
RCABK20	SWH1650	ANLPKG0GR	PBX2609MP3	PROSUB1 8AMP