

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered by and between John Moore (Moore) and Southern Telecom Inc. (STI), with Moore and STI each individually referred to as a “Party” and collectively as the “Parties.” Moore 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. STI employs ten or more individuals 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 and Safety Code section 25249.5 *et seq.* (Proposition 65).

### 1.2 General Allegations

Moore alleges that STI sells and distributes for sale in California, vinyl/PVC tablet computer covers that contain and expose individuals to di(2-ethylhexyl) phthalate (DEHP), and that it does so without first providing a warning in violation of 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

For purposes of this Settlement Agreement, “Products” are defined as PVC tablet-computer covers containing DEHP that are sold or distributed for sale in California by STI including, but not limited to, the *Polaroid Reversible Universal Folio*, *PAC7110ORWH*, *UPC No. 6 80079 77115 7*, identified in Moore’s Notice.

### 1.4 Notice of Violation

On September 28, 2017, Moore served STI, the California Attorney General, and all other requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). The Notice alleges that STI violated Proposition 65 by failing to warn its customers and consumers in California of the health hazards associated with exposures to

DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations made in the Notice.

### **1.5 No Admission**

STI denies the material, factual, and legal allegations contained in the Notice, and maintains that all of the products that it has sold and distributed for sale in California, including the Products, comply with all laws. Nothing in this Settlement Agreement shall be construed as an admission by STI 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 STI of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by STI. This Section shall not, however, diminish, or otherwise affect STI'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 25, 2018.

## **2. INJUNCTIVE RELIEF**

### **2.1 Commitment to Reformulate or Warn**

Commencing on the Effective Date and continuing thereafter, STI agrees that all Products it purchases for sale, manufactures for sale, or causes to be manufactured for sale in California will be Reformulated Products, as defined by Section 2.2, below or to transmit requisite health hazard warnings as per Section 2.3 below.


### **2.2 Reformulated Products Defined**

For purposes of this Settlement Agreement, "Reformulated Products" are defined as Products that contain DEHP in concentrations of less than 0.1 percent (1,000 parts per million) in each accessible component when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. For purposes of compliance with this reformulation standard,

testing samples shall be prepared and extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency (EPA) methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

### **2.3 Clear and Reasonable Warnings**

Commencing on the Effective Date and continuing thereafter, for any Products sold or offered for sale in California by STI that are not Reformulated Products, STI agrees to only offer such Products with a clear and reasonable warning in accordance with this Section 2.3 or Title 27 California Code of Regulations section 25601, *et seq.* STI further agrees that any warning used will be prominently placed in relation to the Products 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 purchase or use. For purposes of this Settlement Agreement, a warning containing the following statement that is affixed directly to a Product, or its accompanying packaging or labeling that satisfies the above criteria, and contains the following statement shall be deemed clear and reasonable:

 **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.

## **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, STI agrees to pay \$1,000 in civil penalties on or before June 6, 2018. 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 paid to the California Office of Environmental Health Hazard Assessment (OEHHA) and the remaining 25% of the penalty retained by Moore. STI shall issue its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$750; and (b) “John Moore, Client Trust Account” in the amount of \$250. Moore’s counsel shall be responsible for delivering OEHHA’s portion of the civil penalty payment.

### **3.2 Attorneys’ Fees and Costs**

After the Parties resolved all the other terms contained in this Settlement Agreement, they negotiated STI’s reimbursement of Moore’s fees and costs under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in and related to this matter. Under these legal principles, STI agrees to pay \$18,000 in three equal monthly installments of \$6,000 on the following dates: June 6, 2018; July 6, 2018; and August 6, 2018 in checks payable to “The Chanler Group.” STI’s payment under this Section shall cover all amounts incurred investigating, bringing this matter to the attention of STI’s management, and negotiating a settlement that provides a significant public benefit.

### **3.3 Payment Terms**

All payments due under this Settlement Agreement shall delivered to:

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

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

### **4.1 Moore’s Release of STI**

This Settlement Agreement is a full, final, and binding resolution between Moore and STI of any violation of Proposition 65 that was or could have been asserted by Moore on his own behalf, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against STI or its parents, subsidiaries, affiliated entities under

common ownership, directors, officers, employees, and attorneys (collectively, the “Releasees”), and each downstream entity to whom STI directly or indirectly distributes, ships, or sells the Products. Such downstream entities include, without limitation, STI’s distributors, wholesalers, customers (including, without limitation, Burlington Coat Factory), retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, representatives, and assignees (collectively, “Downstream Releasees”), for any and all claims based on the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale by STI before the Effective Date, as alleged in the Notice. Moore agrees that compliance with this Settlement Agreement constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP in Products sold after the Effective Date.

In further consideration of the promises and agreements herein contained, Moore, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all rights he may have 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, expenses, investigation fees, expert fees, and attorneys’ fees, arising under Proposition 65 with respect to DEHP in Products sold or distributed for sale by STI before the Effective Date, as alleged in the Notice.

The releases by Moore under this Settlement Agreement are provided in Moore’s individual capacity only, and are not releases by or on behalf of the public in California.

#### **4.2 STI’s Release of Moore**

STI, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives all claims against Moore and his attorneys and other representatives, for any action taken or statement

made, whether while investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

**5. SEVERABILITY**

If, after the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions 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. If Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then STI may provide written notice to Moore 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 are so affected.

**7. NOTICE**

Unless specified herein, all correspondence and notice 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 STI:

Sammy Ayal, Chief Executive Officer  
Southern Telecom Inc.  
5601 1st Avenue  
Brooklyn, NY 11220

with a copy to:

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

For Moore:

The Chanler Group  
Attn: Proposition 65 Coordinator  
2560 Ninth Street  
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)

Moore 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

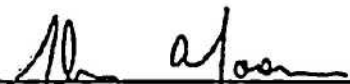
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Dated: May 25, 2018

Dated: May 25, 2018

By:   
JOHN MOORE

By:   
Sammy Ayal, Chief Executive Officer  
SOUTHERN TELECOM INC.