

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Michael DiPirro, on the one hand, ("DiPirro") and Radio Systems Corporation ("Radio Systems"), on the other hand, with DiPirro and Radio Systems individually referred to as a "Party" and collectively as the "Parties." Radio Systems and any other noticed violators are collectively referred to as the "Noticed Parties." DiPirro is an individual residing in California who seeks to promote awareness of exposures to toxic Chemical and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Radio Systems employs ten or more persons and is a person alleged to be in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* ("Proposition 65").

### 1.2 General Allegations

DiPirro alleges that the Noticed Parties manufacture, import, sell, or distribute for sale, in the State of California Replacement Flaps containing Diethylhexylphthalate ("DEHP") without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP (hereinafter the "Listed Chemical") is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer and reproductive harm (male).

### 1.3 Products Description

The Products covered by this Settlement Agreement are Replacement Flaps allegedly containing the Listed Chemical that are manufactured, sold, or distributed for sale in California by the Noticed Parties, including, but not limited to *Replacement Flap small one piece; Model #M402-19784-17; 4-0110-11* (the "Products").

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

On or about December 13, 2022, DiPirro served Radio Systems and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (the “Notice”), a document that informed the recipients of DiPirro’s allegation that it had violated Proposition 65 by failing to warn its customers and consumers in California the Products expose users to the Listed Chemical. 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**

The Noticed Parties deny the material, factual, and legal allegations contained in the Notice and maintain that all of the products they have manufactured, sold, or distributed for sale in 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 the Noticed Parties 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 the Noticed Parties of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by the Noticed Parties. This section shall not, however, diminish or otherwise affect the Noticed Parties’ obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean 14 days after the final signature to this agreement.

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

**2.1 Products Warnings.** Within 60 days of the Effective Date, for all Products that contain the Listed Chemical, and are shipped to a California address for sale by the Noticed Parties, or any agent, distributor, or affiliated company working on behalf of the Noticed Parties,

the Noticed Parties shall provide a clear and reasonable warning on each Products as set forth below in Section 2.3. 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 Products the warning applies, so as to minimize the risk of consumer confusion.

**2.2 Grace Period for Existing Inventory of Products.**

The injunctive requirements of Section 2 shall not apply to Products that are already in the stream of commerce as of the Effective Date, which Products are expressly subject to the releases provided in this Agreement.

**2.3 Internet Warnings.** For all Products that the Noticed Parties offer for sale directly to consumers in California via the internet, they shall provide a warning for such Products by including the warning set forth below in Section 2.4 on the Products display page AND one or more of the following: a) on the Products packaging box, or b) by including a warning in the shipment to the California consumer.

**2.4 Text of the Warning.** The text of the warning shall be printed in black ink on a light background, in a font that is easy to read and legible, but in no case less than a size 6 font. The Noticed Parties shall use the warning language as set forth below:

**WARNING: This Product can expose you to DEHP, a chemical known to the State of California to cause cancer and reproductive harm (male). For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).**

**2.5 Reformulation of Products.**

In lieu of the warnings required in Section 2 of this Agreement, Noticed Parties have the option of reformulating the Products such that they do not contain levels of Diethylhexylphthalate ("DEHP") that would require a Proposition 65 warning.

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

**3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).** The Noticed Parties shall make a civil penalty payment of \$1,000.00 , in accordance with this section, within ten (10) business days of the Effective Date. 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 DiPirro in accordance with Section 3.2 below. The penalty payment shall be remitted in accordance with the procedure set out in Section 3.2.

**3.2 Payments.** All payments shall be delivered within ten (10) business days of the Effective Date to the bank account of Jeremy Fietz, Attorney at Law (via Zelle, wire transfer, or ACH payment; number provided upon settlement) OR to the office of Jeremy Fietz, Attorney at Law, 1510 Fourth Street, Santa Rosa CA 95404. For the latter option, payment shall be in the form of three checks for the following amounts made payable to:

- (a) “Jeremy Fietz, Attorney at Law” in the amount of \$750.00 for payment of 75% of the civil penalty to OEHHA. Counsel for DiPirro agree to forward such funds to OEHHA in a timely manner. Alternatively, at Defendant’s option, it can choose to deliver a certified or cashier’s check made payable to “Office of Environmental Health Hazard Assessment.”
- (b) “Jeremy Fietz, Attorney at Law ” in the amount of \$250 as payment of 25% of the civil penalty to Michael DiPirro. Counsel for DiPirro agree to forward such funds in a timely manner. Alternatively, at Defendant’s option, it can choose to deliver a certified or cashier’s check made payable to “Michael DiPirro.”
- (c) “Jeremy Fietz, Attorney at Law ” in the amount of \$45,250.00 as payment for attorneys’ fees and costs pursuant to Section 4 below.

For any payment that is returned for any reason, including insufficient funds, a payment for the entire amount and service fee must be made by Radio Systems in form of a cashier's check within three (3) calendar days of notification of insufficient funds. The service fee shall be 10% of the delinquent amount and paid as a service fee paid to DiPirro's attorneys.

**3.3 Issuance of 1099 Forms.** The Noticed Parties shall provide DiPirro's counsel with a separate 1099 form for each of its payments under this Agreement, and DiPirro agrees to provide IRS W-9 forms, for:

- (a) "Office of Environmental Health Hazard Assessment", P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid;
- (b) "Michael DiPirro," for his portion of the civil penalties paid; and
- (c) "Jeremy Fietz, Attorney at Law" for fees and costs reimbursed pursuant to Section 4.

The parties acknowledge that Noticed Parties cannot issue any settlement payments pursuant to Section 3 until after Noticed Parties receive the requisite W-9 forms from DiPirro's counsel.

#### **4. REIMBURSEMENT OF FEES AND COSTS**

The parties reached an accord on the compensation due to DiPirro 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. The Noticed Parties shall together pay a total of \$45,250 (forty-two thousand two hundred fifty) for fees and costs incurred as a result of investigating, bringing this matter to the Noticed Parties' attention, and negotiating a settlement in the public interest. DiPirro's counsel shall issue a separate 1099 for fees and costs, shall make the check payable to "Jeremy Fietz, Attorney at Law" and shall deliver payment within ten (10) business days of the Effective Date to the address listed in Section 3.2 above.

## **5. CLAIMS COVERED AND RELEASED**

### **5.1 DiPirro's Release of Radio Systems**

This Settlement Agreement is a full, final, and binding resolution between DiPirro and the Noticed Parties of any violation of Proposition 65 that was or could have been asserted by DiPirro, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against either of the Noticed Parties, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom either Noticed Party directly or indirectly distributes or sells the Products ("Releasees"), including its downstream distributors and retailers for unwarned exposures to the Listed Chemical from the Products manufactured, distributed, sold or distributed for sale in California prior to the Effective Date.

In further consideration of the promises and agreements herein contained, DiPirro, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against the Noticed Parties and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for exposures to the Listed Chemical from Products distributed, sold, or distributed for sale in California by the Noticed Parties prior to the Effective Date.

### **5.2 Noticed Parties Release of DiPirro**

Each Noticed Party, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against DiPirro 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 DiPirro 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.

### **5.3 California Civil Code Section 1542- Waiver**

It is possible that other claims not known to the parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. The parties acknowledge this settlement is expressly intended to cover and include all such claims up through the Effective Date. The parties acknowledge the claims released in this Agreement may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims.

### **6. SEVERABILITY**

If, subsequent to 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.

### **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 as to the Products, then the Noticed Parties may provide written notice to DiPirro of any asserted change in the law, and 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 Consent Judgment shall be interpreted to relieve Defendant from any obligation to comply with any pertinent state or federal toxics control laws.

### **8. NOTICES**

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

For Radio Systems:

Sam Felker, Esq.  
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
Broadwest Center  
1600 West End Avenue, Suite 2000  
Nashville, TN 37203  
samfelker@bakerconelson.com

For DiPirro:

Jeremy Fietz, Attorney at Law  
1510 Fourth Street  
Santa Rosa CA 95404  
jeremy@superawesomelawyer.com

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**

DiPirro agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

**11. MODIFICATION**

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

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**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.

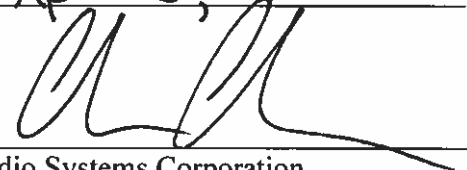
AGREED TO:

AGREED TO:

Date: April 06, 2023

Date: April 13, 2023

By:   
Michael DiPirro

By:   
Radio Systems Corporation  
Print Name: Chris Chandler  
Title: COO