

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1. Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Cyber Acoustics, L.L.C. (“Cyber”), with Brimer and Cyber collectively referred to as the “Parties.” Brimer is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Cyber 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 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2. General Allegations

Brimer alleges that Cyber has manufactured, distributed, and/or sold in the State of California audio headsets with vinyl/PVC cords containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warning. 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 follows: audio headsets with vinyl/PVC cords containing DEHP that are manufactured, imported, distributed, and/or sold in California by Cyber, including, but not limited to, *Universal Stereo Headset, AC-204 (#6 46422 10235 1)* (hereinafter “Products”).

1.4. Notice of Violation

On or about August 1, 2012, Brimer served Cyber and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), alleging that Cyber was in violation of Proposition 65 for failing to warn its customers and consumers in California that audio headsets with vinyl/PVC cords containing DEHP that Cyber manufactured, imported, distributed, and/or sold in California exposed users to DEHP. 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

Cyber denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, and/or sold 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 Cyber 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 Cyber of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Cyber. This section shall not, however, diminish or otherwise affect Cyber'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 October 12, 2012.

2. INJUNCTIVE RELIEF

2.1. Reformulation

Commencing on the Effective Date and continuing thereafter, Cyber shall only manufacture, distribute, ship, sell, or offer to ship for sale in California Products that contain no more than 1,000 parts per million of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

2.2. Prohibition against Over-Warning

Cyber shall not provide, nor require or request that any other party provide, a warning pursuant to Proposition 65 for any product it knows, or should know, does not contain at least one chemical listed pursuant to Proposition 65.

3. MONETARY PAYMENTS

3.1. Payments Pursuant to Health and Safety Code Section 25249.7(b)

Pursuant to Health and Safety Code section 25249.7(b) Cyber shall pay \$9,500 in civil penalties on or before the Effective Date. This payment amount includes a credit of \$5,000 based on Cyber's prompt agreement to reformulate the Products. Civil penalties shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty amount paid to the California Office of Environmental Health Hazard Assessment and the remaining twenty-five percent (25%) remitted to Brimer.

Cyber shall issue two checks made payable as follows: (a) to "The Chanler Group in Trust for OEHHA" in the amount of \$7,125; and (b) to "The Chanler Group in Trust for Russell Brimer" in the amount of \$2,375. Two 1099 forms shall also be provided for the payments to: (a) the "Office of Environmental Health Hazard Assessment," P.O. Box 4010, Sacramento, CA 95812 (EIN: 68-0284486); and (b) "Russell Brimer," whose address and tax identification number shall be furnished upon request after this Settlement Agreement is fully executed by the Parties. Payment shall be delivered to Brimer's counsel upon execution and delivery of this Agreement at the Payment address provided in Section 3.3.

3.2. Reimbursement of Fees and Costs

The Parties reached an accord on the compensation due Brimer and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, on or before the Effective Date, Cyber shall pay \$25,500 for all fees and costs incurred investigating, bringing this matter to the attention of Cyber, and negotiating a settlement in the public interest. Cyber shall provide its payment in the form of a check payable to "The Chanler Group," issue a separate 1099 for fees and costs (EIN: 94-3171522), and deliver payment upon execution and delivery of this Agreement at the Payment Address provided in Section 3.3.

3.3. Payment Address

All payments and tax documentation required by this Section 3 shall be delivered to Brimer's counsel at the following address:

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

4. RELEASES

4.1. Brimer's Release of Cyber

This Settlement Agreement is a full, final, and binding resolution between Brimer and Cyber of any violation of Proposition 65 that was or could have been asserted by Brimer on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees against Cyber, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Cyber directly or indirectly distributes or sells the 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, distributed, sold, and/or offered for sale by Cyber in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Brimer on behalf of himself, 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 Brimer 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, but exclusive of fees and costs on appeal--limited to and arising under Proposition 65 with respect to DEHP in the Products manufactured, distributed,

sold, and/or offered for sale by Cyber before the Effective Date (collectively “claims”), against Cyber and Releasees.

4.2. Cyber’s Release of Brimer

Cyber on behalf of itself, its past and current agents, representatives, attorneys, 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 (or those that could have been taken or 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.

5. POST-EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Cyber may send Brimer a written request to draft and file a complaint, to incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, in furtherance of obtaining approval of the consent judgment, Brimer and Cyber and their respective counsel agree to mutually employ their best efforts to support the entry of the proposed consent judgment and obtain approval of the consent judgment by the Court in a timely manner. For purposes of this section, best efforts shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the required motion for judicial approval.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Cyber will reimburse Brimer and his counsel for their reasonable fees and costs incurred in drafting and filing the complaint, converting the Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the consent judgment, in an amount not to exceed \$15,000, exclusive of fees and costs incurred on appeal, if any. Cyber will remit payment to The Chanler Group, at the Payment Address provided in Section 3.3. Such additional fees shall be paid by Cyber within ten

days after its receipt of monthly invoices from Brimer's counsel for work performed under this Section.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision is held 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.

8. NOTICES

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

For Cyber:

David Dietz, President
Cyber Acoustics, L.L.C.
3109 Northeast 109th Avenue
Vancouver, WA 98682

For Brimer:

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

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

Brimer 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.

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: October 4, 2012

Date: _____

By:  _____
Russell Brimer

By: _____
David Dietz, President
Cyber Acoustics, L.L.C.

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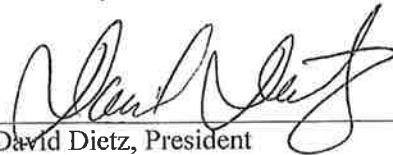
AGREED TO:

AGREED TO:

Date: _____

Date: 10/31/2012

By: _____
Russell Brimer

By: 
David Dietz, President
Cyber Acoustics, L.L.C.