

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Intel Corporation (“Intel”), with Vinocur and Intel each individually referred to as a “Party” and collectively as the “Parties.” Vinocur 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. Intel 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 § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Vinocur alleges that Intel manufactures, sells, and/or distributes for sale in California earphone buds with cords that contain the toxic chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause cancer and to cause birth defects or other reproductive harm. Vinocur alleges that Intel failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from earphone buds with cords containing DEHP.

### 1.3 Product Description

The “Products” that are covered by this Settlement Agreement are earphone buds with cords containing DEHP, including, but not limited to, *Intel Die’namix Earbuds, Item Number: INTC NT208700*, that are/were manufactured, sold and/or distributed for sale to consumers in California by Intel at or through the Intel Store or its on-line equivalent (“Intel Store”).

### 1.4 Notice of Violation

On or about July 11, 2014, Vinocur served Intel, Robertson Marketing Group, Inc. (“Robertson”) and various public enforcement agencies with a document entitled

“60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of Proposition 65 by Intel for failing to warn its customers and consumers in California that the Products it sold 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**

Intel denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed 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 Intel 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 Intel of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Intel. However, this Section shall not diminish or otherwise affect Intel’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 January 15, 2015.

**2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

**2.1 Reformulation Standard**

“Reformulated Products” are defined as those Products containing DEHP in concentrations 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 other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

## **2.2 Reformulation Commitment**

As of the Effective Date, all Products manufactured, imported, distributed, sold and/or offered for sale in the State of California by Intel shall be Products that qualify as Reformulated Products as defined in Section 2.1.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalties Pursuant To Health & Safety Code § 25249.7(B)**

In settlement of all the claims referred to in this Settlement Agreement, Intel has been assessed a total of \$11,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) by Vinocur. Intel shall issue the above payments as follows:

#### **3.1.1 Initial Civil Penalty**

On or before the January 30, 2015, Intel shall pay an initial civil penalty in the amount of \$3,000. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

#### **3.1.2 Final Civil Penalty**

On or before July 15, 2015, Intel shall pay a final civil penalty in the amount of \$8,000. The final civil penalty shall be waived in its entirety, however, if a duly authorized official of Intel provides Vinocur with written certification that as of the date of such certification and continuing into the future, all Products manufactured or imported for, or distributed to, Intel for sale in California at the Intel Store or its associated website will contain DEHP, butyl benzyl phthalate (“BBP”), di-n-butyl phthalate (“DBP”), di-isodecyl phthalate (“DIDP”), diisononyl phthalate (“DINP”) or di-n-hexyl phthalate (“DnHP”) in concentrations less than than 0.1 percent (1,000 parts per million) each when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining phthalate content in a solid

substance. Vinocur must receive any such certification on or before July 1, 2015, and time is of the essence. Unless waived, Intel shall issue a check for its final civil penalty payment to “Laurence Vinocur, Client Trust Account” in the amount of \$8,000. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

### **3.2 Reimbursement of Fees and Costs**

The parties acknowledge that Vinocur 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 reimbursement issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Intel expressed a desire to resolve the fee and cost issue. 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 section 1021.5 for all work performed through the mutual execution of this agreement. Intel shall pay \$28,500 for fees and costs incurred as a result of investigating, bringing this matter to Intel’s attention, and negotiating a settlement in the public interest. Intel shall make the check payable to “The Chanler Group” and shall deliver payment on or before January 30, 2015, to the address listed in Section 3.3 below.

### **3.3 Payment Procedures**

All payments owed to Vinocur, his counsel, and OEHHA pursuant to Sections 3.1 and 3.2 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. CLAIMS COVERED AND RELEASED**

##### **4.1 Vinocur's Release of Intel**

This Settlement Agreement is a full, final and binding resolution between Vinocur and Intel, of any violation of Proposition 65 that was or could have been asserted by Vinocur on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Intel, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity from whom Intel directly or indirectly has acquired the Products, including but not limited to Robertson, based on their failure to warn about alleged exposures to DEHP contained in the Products manufactured, distributed, sold or offered for sale by Intel in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Vinocur, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any right 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 and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees, but exclusive of fees and costs on appeal, if any, arising under Proposition 65 with respect to (a) exposures to DEHP from Products manufactured, distributed, sold and/or offered for sale by Intel before the Effective Date, and (b) to exposures to DEHP, DBP, BBP, DIDP, DINP, or DnHP from Products manufactured or imported for, or distributed to, Intel prior to July 15, 2015. The additional releases provided in this paragraph shall apply only to Intel and Robertson and shall not extend to other entities that manufactured or otherwise supplied Intel or Robertson with the Products.

**4.2 Intel's Release of Vinocur**

Intel, 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.

**5. 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.

**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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Intel may provide written notice to Vinocur 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.

**7. NOTICE**

Unless specified herein, all correspondence and notices 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 Intel:

General Counsel  
Intel Corporation  
2200 Mission College Blvd.  
Santa Clara, CA 95054

For Vinocur:

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

With a copy to:  
Robert Falk  
Morrison & Foerster LLP  
425 Market Street, 32<sup>nd</sup> Fl.  
San Francisco, CA 94105

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)**

Vinocur 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, understood, and agree to all of the terms and conditions of this Settlement Agreement.


AGREED TO:

Date: January 13, 2015

By:   
LAURENCE VINO CUR

AGREED TO:

Date: January 14, 2015

By:   
Title: V.P. Law & Policy Group  
INTEL CORPORATION