

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Midland Radio Corporation (“Midland”) and Laurence Vinocur (“Vinocur”), with Midland and Vinocur 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. Vinocur alleges that Midland 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 Midland manufactures (or causes to be manufactured), imports, sells for sale and/or distributes for sale in California headset cords containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Vinocur alleges that Midland failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from headset cords.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are headset cords containing DEHP including, but not limited to, the *Midland 2-Way Radio Headsets with Boom Mic, AVP1, UPC #0 46014 29871 2*, manufactured (or caused to be manufactured), imported, sold for sale or distributed for sale in California by Midland (the “Products”).

### 1.4 Notice of Violation

On or about March 13, 2015, Vinocur served Midland and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Midland violated Proposition 65 when it failed to warn its customers and consumers in California that its

headset cords expose 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**

Midland 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 the State of 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 Midland 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 Midland of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Midland. However, this Section shall not diminish or otherwise affect Midland'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 July 30, 2015.

## **2. INJUNCTIVE RELIEF: REFORMULATION COMMITMENT**

On or before December 15, 2015, and continuing thereafter, Midland agrees to only manufacture (or caused to be manufactured) for sale or purchase for sale in or into California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" are Products containing DEHP in concentrations of 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.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payments**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Midland agrees to pay \$8,500

in civil penalties. Each penalty payment will be allocated by Vinocur in accordance with Health and Safety Code § 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by Vinocur.

**3.1.1 Initial Civil Penalty.** On or before the Effective Date, Midland shall pay an initial civil penalty in the amount of \$2,000 in one check made payable to: “Laurence Vinocur, Client Trust Account.”

**3.1.2 Final Civil Penalty.** On or before October 15, 2015, Midland shall pay a final civil penalty of \$6,500. Pursuant to title 11 California Code of Regulations, section 3203(c), Vinocur agrees that the final civil penalty shall be waived in its entirety, however, if, no later than October 1, 2015, an officer for Midland provides Vinocur’s counsel with a signed declaration certifying that all of the Products Midland ships for sale or distributes for sale in California as of the date if the declaration are Reformulated Products, and that Midland will continue to offer only Reformulated Products for sale or distribution in or into California in the future. The option to certify to expedited reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and time is of the essence.

To obtain a waiver of the final civil penalty, Midland must deliver the declaration on its behalf certifying to expedited reformulation to Vinocur’s counsel at the address provided in Section 3.3, below. In the event that Midland does not timely certify to its expedited compliance or make the final civil penalty payment required by this Section, the Parties agree that Vinocur may seek relief under any available legal remedy. If successful, the Parties further agree that Vinocur shall be entitled to his reasonable attorneys’ fees and costs pursuant to general contract principles and Code of Civil Procedure § 1021.5.

### **3.2 Reimbursement of Attorneys’ 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 the issue to be resolved after the material terms of the agreement had been settled.

Shortly after the other settlement terms had been finalized, Midland expressed a desire to resolve Vinocur's fees and costs. The Parties then negotiated a resolution of the compensation due to Vinocur and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure § 1021.5 for all work performed in this matter. Under these legal principles, Midland agrees to pay \$24,500 to Vinocur and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Midland's management, and negotiating a settlement in the public interest. Midland's payment shall be due on the Effective Date in the form of a check payable to "The Chanler Group."

### **3.3 Payment Address**

All payments required by this Sections 3.1 and 3.2, above, shall be delivered to the following 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 Midland**

This Settlement Agreement is a full, final and binding resolution between Vinocur, as an individual and not on behalf of the public or in his representative capacity, and Midland, of any violation of Proposition 65 or any claim in any way arising out of or relating to DEHP in the Products, that was or could have been asserted by Vinocur, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees ("Releasors"), and Releasors hereby release any such claims, against Midland, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Midland directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the failure to warn about alleged exposures to DEHP contained in Products manufactured, distributed, sold or

offered for sale by Midland in California before the date that this Settlement Agreement is fully executed by the Parties.

In further consideration of the promises and agreements herein contained, Vinocur, on his own behalf, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, and not in his representative capacity, hereby covenants not to sue and 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 arising under Proposition 65 with respect to DEHP contained in the Products manufactured, distributed, sold and/or offered for sale by Midland before the date that this Settlement Agreement is fully executed by the Parties.

#### **4.2 Midland's Release of Vinocur**

Midland, on its own behalf, and on behalf of 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 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 otherwise rendered inapplicable by reason of law generally, as to Midland specifically as a

result of a statutory exemption, or as to the Products, then Midland may provide written notice to Vinocur of any asserted change in the law, or its applicability to Midland or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Midland or 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:

**To Midland:**

Daniel Devling, President  
Midland Radio Corporation  
5900 Parretta Drive  
Kansas City, MO 64120

**To Vinocur:**

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

With a copy on behalf of Midland to:

Carolina A. Latour, Esquire  
Isicoff, Ragatz & Koenigsberg  
1200 Brickell Avenue, Suite 1900  
Miami, Florida 33131

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 Health and Safety Code section 25249.7(f).

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**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:**

**AGREED TO:**

Date: July 20, 2015

Date: July 22 2015

By: 

Laurence Vinocur

By: 

Daniel Devling, President  
Midland Radio Corporation