

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Dr. Whitney R. Leeman (“Leeman”) and DPI, Inc. (“DPI”), with Leeman and DPI collectively referred to as the “Parties.” Leeman is an individual residing in the State of 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. DPI 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

Leeman alleges that DPI manufactures, imports, distributes, sells, and/or offers for sale vinyl/PVC cases for electronics containing di(2-ethylhexyl)phthalate (“DEHP”) in the State of California without the requisite Proposition 65 health hazard 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 vinyl/PVC cases for electronics containing DEHP including, but not limited to, the *Zeki Protective Case & Stand, TC73B, UPC # 0 47323 70046 0*, which were manufactured, imported, distributed sold and/or offered for sale in the State of California by DPI, hereinafter referred to as the “Products.”

### 1.4 Notice of Violation

On or about July 30, 2014, Leeman served DPI and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”), alleging that DPI was in violation of Proposition 65 for failing to warn its customers and consumers in the State of California that the Products 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**

DPI denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, sold and/or offered for sale 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 DPI 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 DPI of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by DPI. This Section shall not, however, diminish or otherwise affect DPI'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 March 15, 2015.

**2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

**2.1 Reformulation Commitment**

Commencing on the Effective Date, DPI shall only manufacture, cause to be manufactured, import, cause to be imported, distribute, or cause to be distributed for sale in the State of California Products that are Reformulated Products or Products that comply with the warning requirements found in Section 2.2 below. For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing less than or equal to 1,000 parts per million (0.1%) DEHP in each Accessible Component when analyzed pursuant to EPA testing methodologies 3580A and 8270C. For purposes of this Settlement Agreement, "Accessible Component" shall mean a component of a Product that can be touched by a person during normal, intended and foreseeable use of the Product. If DPI chooses to sell Reformulated Products rather than Products that comply with the warning requirements found in Section 2.2

below, DPI shall obtain written certification from the supplier and/or manufacturer of the Products verifying that the Products meet the reformulation standard listed above.

## **2.2 Warnings Commitment**

The Parties acknowledge and agree that DPI has already implemented a warning program for all non-Reformulated Products to be distributed, sold and/or offered for sale in the State of California, which provides as follows:

**WARNING:** This case contains chemicals, including lead, known to the state of California to cause birth defects or other reproductive harm. **Wash hands after handling.**

DPI shall continue to use the above warnings on all non-Reformulated Products distributed and/or shipped for sale in California on or before March 15, 2015. However, for any non-Reformulated Products distributed and/or shipped for sale in California by DPI after March 15, 2015, DPI shall provide clear and reasonable warnings as set forth below in subsections 2.2(a) and (b). 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* Product the warning applies, so as to minimize the risk of consumer confusion.

**(a) Product Labeling.** DPI shall affix a warning to the packaging, labeling, or directly on each Product shipped to and/or sold in retail outlets in California by any person selling the Products, that states:

**WARNING:** This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

**(b) Mail Order Catalog and Internet Sales.** In the event that DPI sells Products via mail order catalog and/or the internet to customers located in California, DPI shall provide warnings for such Products directly sold and/or offered for sale by DPI via mail order catalog or the internet to California resident. Warnings given in the mail order catalog or in the

internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

**WARNING:** This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, DPI may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front or back cover of the catalog or on the same page as any order form for the Product(s):

**WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, DPI must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following

the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

**WARNING:** This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

**WARNING:** Products identified on this page with the following symbol ▼ contain chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

### **2.3 Notice Regarding Violation**

Within 10 days of receiving a written notice of violation from Leeman (“NOV”) containing (a) a copy of the sales receipt showing the date and location from which the Product was purchased, and the identification of the Product, including the SKU and/or other identification number(s); and (b) all test data obtained by Leeman regarding the Product and supporting documentation sufficient for validation of the test results, including any laboratory reports, quality assurance reports and quality control reports associated with the testing of the Products demonstrating that an Accessible Component of a Product contains more than 1,000 ppm DEHP, DPI shall discontinue the distribution and sale of that item in California and provide a copy of the certification obtained from the supplier and/or manufacturer of the Product at issue, and shall have no further liability under this Settlement Agreement or Proposition 65 with respect to the Product and DEHP. An NOV shall be based upon testing from an independent laboratory pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal and state agencies for the purpose of determining DEHP content in a solid substance.

In the event that Leeman provides a NOV to DPI for a Product purchased in California that contains more than 1,000 ppm and does not contain the proper warnings pursuant to Section

2.2 above after the Effective Date, DPI shall pay \$3,000 in civil penalties. The civil penalty shall be apportioned in accordance with Section 3 below. In addition, DPI shall reimburse Leeman and her counsel \$5,000 for fees and costs incurred as a result of investigating and identifying the violation. Payment shall be made in accordance with Section 4 below. Any payments stemming from this section shall be delivered to Leeman's counsel at the address found in Section 3.3 below no later than 30 days after the NOV is served on DPI.

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

In settlement of all the claims referred to in this Settlement Agreement, DPI shall pay a total of \$6,500 in civil penalties in accordance with this Section. Each 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 Leeman. Leeman's counsel shall be responsible for remitting DPI's penalty payment(s) under this Settlement Agreement to OEHHA.

#### **3.1 Initial Civil Penalty**

DPI shall pay an initial civil penalty in the amount of \$2,000 on or before the Effective Date.

#### **3.2 Final Civil Penalty**

DPI shall pay a final civil penalty of \$4,500 on or before January 15, 2016, the final civil penalty shall be waived in its entirety, however, if, no later than January 1, 2016, an officer of DPI provides Leeman with written certification that, as of the date of such certification and continuing into the future, DPI has met the reformulation standard specified in Section 2.1 above, such that all Products manufactured, cause to be manufactured, imported, cause to be imported, distributed, or cause to be distributed for sale in California by DPI are Reformulated Products. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence.

### **3.3 Payment Address**

All payments required by this Settlement Agreement 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. REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that Leeman and her 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 issue to be resolved after the material terms of the agreement had been settled. DPI then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Leeman and her 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. DPI shall pay \$20,000 for fees and costs incurred as a result of investigating, bringing this matter to DPI's attention, and negotiating a settlement in the public interest. DPI shall issue a check payable to "The Chanler Group" and shall deliver payment on or before the Effective Date to the address listed in Section 3.3 above.

### **5. RELEASES**

#### **5.1 Leeman's Release of DPI**

This Settlement Agreement is a full, final and binding resolution between Leeman, in her individual capacity only and not on behalf of the public, and DPI, of any violation of Proposition 65 that was or could have been asserted by Leeman on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, against DPI, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom DPI directly or indirectly distributes or sells 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, imported, distributed, sold, and/or offered for sale by DPI in the State of California before the Effective Date.

In further consideration of the promises and agreements herein contained, Leeman, in her individual capacity only, on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all her rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that she 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, imported, distributed, sold and/or offered for sale by DPI before the Effective Date, against DPI and Releasees.

**5.2 DPI’s Release of Leeman**

DPI, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Leeman and her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Leeman and her 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.

**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:

To DPI:

William Fetter, President  
DPI, Inc.  
900 North 23<sup>rd</sup> Street  
Saint Louis, MO 63106

To Leeman:

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**

Leeman agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7, subdivision (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: 3/4/15

Date: \_\_\_\_\_

By: *Whitney R. Leeman*  
Dr. Whitney R. Leeman

By: \_\_\_\_\_  
William Fetter, President  
DPI, Inc.

**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.

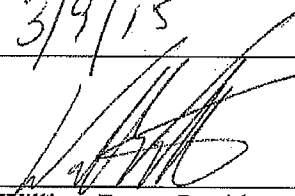
**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Dr. Whitney R. Leeman

**AGREED TO:**

Date: 3/9/15 \_\_\_\_\_

By:  \_\_\_\_\_  
William Fetter, President  
DPI, Inc.