

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) and SIIG, Inc. (“SIIG”), with Leeman and SIIG each individually referred to as a “Party” and collectively as the “Parties.” Leeman 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. SIIG employs ten or more individuals 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

Leeman alleges that SIIG manufactures, sells, and distributes for sale in California, vinyl/PVC audio cables containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are vinyl/PVC audio cables containing DEHP that are sold or distributed for sale in California by SIIG including, but not limited to, the *SIIG 3.5mm Stereo Audio Cable, ATH1505X, CB0AU01120S1, #06-0702B, UPC #6 62774 00591 1* (“Products”).

### 1.4 Notice of Violation

On September 15, 2015, Leeman served SIIG, the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that SIIG violated Proposition 65 when it failed to warn its customers and

consumers in California of the health risks associated with exposures to DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

### **1.5 No Admission**

SIIG denies the material, factual, and legal allegations in the Notice, and maintains that based on representations from its manufacturers, it reasonably believes all of the products that it has sold and 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 SIIG 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 SIIG of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by SIIG. This Section shall not, however, diminish or otherwise affect SIIG'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 1, 2016.

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

### **2.1 Commitment to Reformulate or Provide Warnings**

Commencing on the Effective Date and continuing thereafter, SIIG agrees to only manufacture for sale or purchase for sale in California (a) "Reformulated Products;" or (b) Products sold with a clear and reasonable warning pursuant to Section 2.2, below. For purposes of this Settlement Agreement, Reformulated Products are defined as Products containing DEHP in a maximum concentration of 1,000 parts per million (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

## 2.2 Clear and Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, for all Products other than Reformulated Products that are sold directly by SIIG to consumers or end users within California or distributed for sale in or into California by SIIG, SIIG agrees to only offer such Products with a clear and reasonable warning in accordance with this Section. SIIG further agrees that any warning used will be prominently placed in relation to the Product with such conspicuousness when 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 of purchase or use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed directly to a Product or its accompanying labeling or packaging sold in California containing the following statement:

**WARNING:** This product contains DEHP, a chemical known to the State of California to birth defects or other reproductive harm.

or

**WARNING:** This product contains a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm).<sup>1</sup>

In the event that SIIG sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process.

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<sup>1</sup> For either of the two warning options set forth in this Settlement Agreement, when it reasonably believes that a Product contains more than one Proposition 65-listed chemical, SIIG may substitute the word “chemicals” for “DEHP, a chemical” or “a chemical” in the above warning statements.

Alternatively, a symbol may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, provided that the warning statement also appears elsewhere on the same web page.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payments**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, SIIG agrees to pay \$7,500 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by Leeman. Leeman’s counsel shall be responsible for delivering any penalty payment(s) made under this Settlement Agreement to OEHHA.

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

Within ten days of the date that this Settlement Agreement is fully executed by the Parties, SIIG shall make an initial civil penalty payment of \$2,500. SIIG shall provide its payment in a single check made payable to “Whitney R. Leeman, Client Trust Account.”

##### **3.1.2 Final Civil Penalty; Waiver for Complete Reformulation**

On October 15, 2016, SIIG will make a final civil penalty payment of \$5,000. Pursuant to title 11 Cal. Code Regs. section 3203(c), the final civil penalty will be waived in its entirety if, by October 1, 2016, an officer of SIIG provides Leeman’s counsel with a signed declaration certifying that, as of the date of the declaration, all Products sold or distributed for sale in California by SIIG are Reformulated Products, and that SIIG will continue to offer only Reformulated Products in California in the future. The option to provide a declaration certifying complete reformulation in lieu of making the final civil

penalty payment otherwise required by this Section is a material term, and time is of the essence.

### **3.2 Attorneys' Fees and Costs**

The Parties reached an accord on the compensation due to Leeman and her 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, within ten days of the date that this Settlement Agreement is fully executed by the Parties, SIIG agrees to pay \$19,750 to Leeman and her counsel for all fees and costs incurred investigating, bringing this matter to the attention of SIIG's management, and negotiating this Settlement Agreement. SIIG's payment shall be in the form of a check payable to "The Chanler Group."

### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to:

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

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Leeman's Release of SIIG**

This Settlement Agreement is a full, final, and binding resolution between Leeman and SIIG, of any violation of Proposition 65 that was or could have been asserted by Leeman on her own behalf or on behalf of her past and current agents, representatives, attorneys, successors, and assignees, against SIIG, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom SIIG directly or indirectly distributes or sells Products, including, but not limited, to its downstream distributors, wholesalers, customers (including, without limitation, Fry's Electronics), retailers, franchisees, cooperative members, and licensees ("Releasees"), based on the failure to warn about exposures to DEHP in the Products

manufactured, sold, or distributed for sale in California by SIIG before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Leeman on her own behalf and on behalf of her past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all rights that she may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against SIIG and Releasees including, without limitation, all actions and causes of action, 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 Products manufactured, distributed, sold or offered for sale by SIIG, before the Effective Date.

The releases provided by Leeman under this Settlement Agreement are provided solely on Leeman's behalf and are not releases on behalf of the public.

#### **4.2 SIIG's Release of Leeman**

SIIG, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Leeman and her attorneys and other representatives, for any and all actions taken or statements 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.

#### **5. 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.

#### **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, or as to the Products, then SIIG may provide written notice to Leeman of any asserted change in the law, and shall have no further injunctive 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 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:

For SIIG:

Frank Liu, Chief Executive Officer  
SIIG, Inc.  
6078 Stewart Avenue  
Fremont, CA 94538

with a copy to:

Adron Beene  
1754 Technology Drive, Suite 228  
San Jose, CA 95110

For Leeman:

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

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)**

Leeman and her 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:**

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Date: 2/4/16

Date: February 3, 2016

By: Whitney Leeman  
WHITNEY R. LEEMAN, PH.D.

By: Andrew Gong  
Andrew Gong, Director of Compliance &  
Operations Control  
SIIG, INC.