

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Dr. Richard F. Sowinski ("SOWINSKI"), on his own behalf and as a representative of the People of the State of California, is an unincorporated association.

1.2 Imperial Commercial Cooking Equipment (also known as Spenuzza, Inc.) and its affiliates (hereinafter referred to as "IMPERIAL" or "DEFENDANT") and its affiliates (hereinafter referred to collectively as "Imperial") manufactures, sells, distributes various kitchen appliances, some of which use propane for cooking purposes..

1.3 The State of California has officially listed various chemicals pursuant to Health and Safety Code section 25249.8 as chemicals known to the State of California to cause cancer and/or reproductive toxicity.

1.4 More than sixty (60) days prior to this agreement, on October 22, 2007, SOWINSKI sent the Sixty Day Notice to Imperial Commercial Cooking Equipment alleging violations of Proposition 65. SOWINSKI served IMPERIAL with a document entitled "60-Day Notice of Intent to Sue Pursuant to California Health & Safety Code sections 25249.5" (the "Notice"). The Notice stated, among other things, that SOWINSKI believed that IMPERIAL was in violation of California Health & Safety Code sections 25249.5, *et seq.* ("Proposition 65") for knowingly and intentionally exposing consumers, customers, and its employees, as well as the public, to various chemicals and substances, produced when propane is burned, which are known to cause cancer, birth defects and other reproductive harm (collectively the "Noticed Chemicals") without first providing a clear and reasonable warning to such individuals. SOWINSKI later learned that the correct name of the entity was Spenuzza, Inc., dba Imperial Commercial Cooking Equipment. At the time SOWINSKI served the Sixty Day Notice he did not know that he had incorrectly named the entity in the Sixty Day Notice.

1.5 IMPERIAL disputes that it has violated Proposition 65 as described in the 60 Day Notice. SOWINSKI disputes that IMPERIAL has complied with Proposition 65.

1.6 SOWINSKI and IMPERIAL wish to resolve the issues raised by the 60 Day Notice pursuant to the terms and conditions described herein. In entering into this Settlement Agreement, both SOWINSKI and IMPERIAL recognize that this Settlement Agreement is a full and final settlement of all claims that were raised or which could have been raised by SOWINSKI or his agents and attorneys in a lawsuit.

1.7 On July 15, 2008 SOWINSKI filed an action entitled *Richard F. Sowinski v. Amana Corporation, et al*, Los Angeles Superior Court Case # BC 393706, naming as one of the Defendants Imperial Commercial Cooking Equipment. Because DEFENDANT and SOWINSKI wished to engage in substantive settlement discussions without the need for expensive and time-consuming litigation which might prove unnecessary, and because SOWINSKI had discovered that he had both Noticed and filed against DEFENDANT in the wrong name, SOWINSKI filed a request for dismissal of IMPERIAL from the action on September 5, 2008 so that such

discussions could continue, with the understanding that a new and correct Sixty Day Notice and thereafter a new complaint would be filed should such discussions not yield a settlement.

1.8 Nothing contained in this Settlement Agreement shall be construed as an admission by any party or the "Released Parties," as defined in paragraph 3.2 below, that any action that IMPERIAL or the "Released Parties" may have taken, or failed to take, violates Proposition 65 or any other provision of any other statute, regulation or principal of common law, including without limitation Business & Professions Code §17200, *et seq.*

2. INJUNCTIVE RELIEF: CLEAR AND REASONABLE WARNINGS

2.1 If, within one year following execution of this document, SOWINSKI shall successfully gain a judgment in his favor in litigation against a non-settling entity which requires that a warning complying with Proposition 65 be provided on cooking appliances which use propane, IMPERIAL shall place a warning complying with that judgment within one hundred and twenty days on its cooking appliances which use propane which it manufactures, sells or distributes in California. The provision of said warning(s) shall be deemed to satisfy any and all obligations under Proposition 65 by any and all person(s) or entity(ies) with respect to any and all environmental exposures to the Noticed Chemicals.

2.2 IMPERIAL's compliance with paragraph 2.1 is deemed sufficient to satisfy IMPERIAL's obligations under Proposition 65 with respect to any exposures and potential exposures to the Noticed Chemicals, in all respects and to any and all person(s) and entity(ies), as well as the obligations, if any, of any of the "Released Parties," as defined at paragraph 3.2.

2.3 IMPERIAL will place within 120 days on its cooking appliances which use propane which it manufactures, sells or distributes in California the following warning:

WARNING

This equipment is equipped to operate on propane gas which contains the chemical Benzene, known to the State of California to cause cancer and birth defects and other reproductive harm.

2.4 In lieu of complying with the requirements of paragraph 2.1 – 2.3 hereof, if: (a) any future federal law or regulation which governs the warning provided for herein preempts state authority with respect to said warning; or (b) any future warning requirements with respect to the subject matter of said paragraphs is proposed by any industry association and approved by the State of California, IMPERIAL may comply with its obligation under the Settlement Agreement by complying with such future federal law or regulation or such future warning requirement.

3. RELEASE OF CLAIMS

3.1 This Agreement is intended to settle any and all claims that could have been raised in a Lawsuit with respect to any claims for violations of Proposition 65 asserted regarding the Noticed Chemicals, including, but not limited to: (a) claims for any violations of Proposition

65 by the Released Parties and each of them including, but not limited to, claims arising from consumer product, environmental and occupational exposures to the Noticed Chemicals, wherever occurring and to whomever occurring, whether known or unknown, claims for violation of the Unfair Competition Act (Cal. Bus. & Prof. Code §17200, et seq.) arising from the foregoing circumstances, including, but not limited to, SOWINSKI's asserted right to injunctive and monetary relief; and the Released Parties' continuing responsibility to provide the warnings mandated by Proposition 65.

3.2 Except for such rights and obligations as have been created under this Settlement Agreement, SOWINSKI, acting on his own behalf and on behalf of the interests of the People of the State of California with respect to the matters alleged in the Notice, does hereby fully, completely, finally and forever release, relinquish and discharge: (a) IMPERIAL, (b) the past, present, and future owners, lessors, sublessors, managers and operators of, and any others with any interest in, IMPERIAL, and (c) the respective officers, directors, shareholders, affiliates, agents, employees, attorneys, successors and assigns of the persons and entities described in (a) and (b) immediately above (all collectively the "Released Parties") of and from any and all claims, actions, causes of action, demands, rights, debts, agreements, promises, liabilities, damages, accountings, costs and expenses, whether known or unknown, suspected or unsuspected, of every nature whatsoever which SOWINSKI has or may have against the Released Parties, arising directly or indirectly out of any fact or circumstance occurring prior to the date hereof, or existing as of the date hereof, relating to claims under Proposition 65 or otherwise, including but not limited to those described in Section 3.1, including exposure to the Noticed Chemicals by IMPERIAL, its agents, servants and employees, and the exposure of any person, including but not limited to employees, guests, and customers of IMPERIAL, and the public at large, to the Noticed Chemicals, on or off the premises of the Facilities, being hereinafter referred to as the "Released Claims."

3.3 It is the intention of the Parties to this release that this Settlement Agreement shall be effective as a full and final accord and satisfaction and release of each and every Released Claim. In furtherance of this intention, the Parties to this release, and each of them, acknowledge that they are familiar with California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Parties to this release, and each of them, hereby waive and relinquish all of the rights and benefits which any of them has, or may have, under California Civil Code Section 1542 (as well as any similar rights and benefits which they may have by virtue of any statute or rule of law in any other state or territory of the United States). The Parties to this release, and each of them, hereby acknowledge that they may hereafter discover facts in addition to, or different from, those which they now know or believe to be true with respect to the subject matter of this Settlement Agreement and the Released Claims, but that notwithstanding the foregoing, it is their

intention hereby to fully, finally, completely and forever settle and release each, every and all Released Claims, and that in furtherance of such intention, the releases herein given shall be and remain in effect as full and complete general releases, notwithstanding the discovery or existence of any such additional or different facts.

3.4 SOWINSKI hereby warrants and represents to IMPERIAL and the Released Parties that, as to any Released Claim: (a) SOWINSKI is the sole and absolute owner thereof, (b) SOWINSKI has not previously assigned any Released Claim, and (c) SOWINSKI has the right, ability and sole power to release each Released Claim and to thereby bind all parties to such release.

4. RESTITUTION AND RELIEF

4.1 No later than September 25, 2008, IMPERIAL shall pay to SOWINSKI the sum of \$10,000 in a check made payable to "Graham & Martin, LLP Trust Account" ("the Settlement Sum"). The Settlement Sum is inclusive of all attorney's fees and costs pursuant to the provisions of California Code of Civil Procedure Code Section 1021.5.

4.2 SOWINSKI hereby waives his right to seek civil penalties in consideration for IMPERIAL's settlement of this potential action, and its ongoing compliance with Proposition 65.

4.3 SOWINSKI expressly represents and warrants that he has acted for the specific purpose of: (a) protecting and educating the public as to the dangerous and harmful products and activities of different companies, (b) encouraging members of the public to become involved in issues effecting the environment and the enforcement of environmental statutes and regulations including, but not limited to, Proposition 65 and (c) instituting litigation to enforce the provisions of Proposition 65.

5. ATTORNEY'S FEES AND COSTS

5.1 All attorneys fees and costs are included in the Settlement Sum.

6. CONFIDENTIALITY

6.1 The Parties agree that the terms of this Settlement Agreement shall to the greatest extent possible be confidential and maintained in the strictest confidence, and that no Party hereto shall in the future disclose, to anyone not a Party to this Settlement Agreement whether orally or in writing, the terms or existence of this Settlement Agreement, provided that such restrictions shall not apply to (i) the Parties' disclosure to their attorneys, advisors or accountants; (ii) the Parties' disclosure as may be required by law (e.g. tax reporting, regulatory requirements, securities laws) or as may be necessary to enforce this Settlement Agreement; and, (iii) required statutory disclosure to the Office of the California Attorney general (Proposition 65 Enforcement). Any Party, if asked about the Settlement Agreement or the matters giving rise to it, shall state, in substance, the following:

"The case has been settled and the Parties have agreed that the terms of the settlement are confidential."

By their signature approving this Settlement Agreement, the respective attorneys for the Parties agree that the terms of this Settlement Agreement shall be confidential and maintained in the strictest confidence. Notwithstanding anything to the contrary herein, SOWINSKI agrees that it shall at its own expense take all actions necessary to comply with California health & Safety Code §25249.5, et seq., specifically including California health & Safety Code § 25249.7, and similar statutes and regulations, with respect to this Settlement Agreement.

7. **DISPUTES UNDER THE SETTLEMENT AGREEMENT**

7.1 In the event that a dispute arises with respect to either party's compliance with the terms of this Settlement Agreement, the Parties shall meet, either in person or by telephone, and endeavor to resolve the dispute in an amicable manner. No action may be taken to enforce the provisions of the Settlement Agreement in the absence of such a good faith effort to resolve the dispute prior to the taking of such action. In the event that legal proceedings are initiated to enforce the provisions of the Settlement Agreement, however, the prevailing party in such proceeding may seek to recover its costs and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party who is successful in obtaining relief more favorable to it than the relief that the other party was amenable to providing during the parties' good faith attempt to resolve the dispute that is the subject of such enforcement action.

8. **Notices**

8.1 Any and all notices between the parties provided for or permitted under this Settlement Agreement, or by law, shall be in writing and shall be deemed duly served:

- (i) When personally delivered to a party, on the date of such delivery; or
- (ii) When deposited in the United States mail, certified, postage prepaid, addressed to such party at the address set forth below, or to such other or further address provided in a notice sent under the terms of this paragraph, three days following the deposit of such notice in the mails.

Notices pursuant to this paragraph shall be sent to the parties as follows:

- (a) If to IMPERIAL:

Ed Blahut, Controller
Imperial Commercial Cooking Equipment
1128 Sherborn Street
Corona, California 92879

(b) If to SOWINSKI:

Anthony G. Graham
Graham & Martin LLP
950 South Coast Drive, Suite 220
Costa Mesa, California 92626

or to such other place as may from time to time be specified in a notice to each of the parties hereto given pursuant to this paragraph as the address for service of notice on such party.

9. **INTEGRATION**

9.1 This Settlement Agreement constitutes the final and complete agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous negotiations, promises, covenants, agreements or representations concerning any matters directly, indirectly or collaterally related to the subject matter of this Settlement Agreement. The Parties hereto have expressly and intentionally included in this Settlement Agreement all collateral or additional agreements which may, in any manner, touch or relate to any of the subject matter of this Settlement Agreement and, therefore, all promises, covenants and agreements, collateral or otherwise, are included herein and therein. It is the intention of the parties to this Settlement Agreement that it shall constitute an integration of all their agreements, and each understands that in the event of any subsequent litigation, controversy or dispute concerning any of its terms, conditions or provisions, no party hereto shall be permitted to offer or introduce any oral or extrinsic evidence concerning any other collateral or oral agreement between the parties not included herein.

10. **TIME**

10.1 Time is of the essence in the performance of the terms hereof.

11. **COUNTERPARTS**

11.1 This Settlement Agreement may be signed in counterparts and shall be binding upon the parties hereto as if all of said parties executed the original hereof.

12. **WAIVER**

12.1 No waiver by any party hereto of any provision hereof shall be deemed to be a waiver of any other provision hereof or of any subsequent breach of the same or any other provision hereof.

13. **AMENDMENT**

13.1 This Settlement Agreement cannot be amended or modified except by a writing executed by the parties hereto which expresses, by its terms, an intention to modify this Settlement Agreement.

14. SUCCESSORS

14.1 This Settlement Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their respective administrators, trustees, executors, personal representatives, successors and permitted assigns.

15. CHOICE OF LAWS

15.1 Any dispute regarding the interpretation of this Settlement Agreement, the performance of the parties pursuant to the terms of this Settlement Agreement, or the damages accruing to a party by reason of any breach of this Settlement Agreement shall be determined under the laws of the State of California, without reference to principles of choice of laws.

16. NO ADMISSIONS

16.1 This Settlement Agreement has been reached by the parties to avoid the costs of prolonged litigation and to ensure that the objectives of Proposition 65 are expeditiously carried out. By entering into this Settlement Agreement, no party admits any issue of fact or law, including any violations of Proposition 65 or the Unfair Competition Act. The settlement of claims herein shall not be deemed to be an admission or concession of liability or culpability by any party, at any time, for any purpose. Neither this Settlement Agreement, nor any document referred to herein, nor any action taken to carry out this Settlement Agreement, shall be construed as giving rise to any presumption or inference of admission or concession by IMPERIAL as to any fault, wrongdoing or liability whatsoever. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or other proceedings connected with it, nor any other action taken to carry out this Settlement Agreement, by any of the parties hereto, shall be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce this Settlement Agreement, to defend against the assertion of the Released Claims or as otherwise required by law.

17. REPRESENTATION

17.1 SOWINSKI and IMPERIAL each acknowledge and warrant that they have been represented by independent counsel of their own selection in connection with the prosecution and defense of the Notice, the negotiations leading to this Settlement Agreement and the drafting of this Settlement Agreement; and that in interpreting this Settlement Agreement, the terms of this Settlement Agreement will not be construed either in favor of or against any party hereto.

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18. AUTHORIZATION

18.1 Each of the signatories hereto certifies that he or she is authorized by the party he or she represents to enter into this Settlement Agreement, and to execute and approve the Settlement Agreement on behalf of the party represented.

Dated: September 26, 2008

GRAHAM & MARTIN LLP

By Anthony Graham
Anthony G. Graham
Attorneys for Richard F. Sowinski

Dated: September 26 2008

By Richard F. Sowinski
Richard F. Sowinski

Dated: September 25, 2008

SPENUZZA, INC., DBA IMPERIAL COMMERCIAL COOKING

By Ed Blahut
Edward Blahut, Controller
Spenuzza, Inc., dba Imperial Commercial Cooking Equipment