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19 Attorneys for Defendant
20 THUNDER GROUP, INC.

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 FOR THE COUNTY OF ALAMEDA
23 UNLIMITED CIVIL JURISDICTION

24 JOHN MOORE,

25 Plaintiff,

26 v.

27 THUNDER GROUP, INC.; *et al.*,

28 Defendants.

Case No. RG12619183

**STIPULATED SETTLEMENT
AGREEMENT**

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Stipulated Settlement is entered into by and between plaintiff, John Moore (“Moore”),
4 and defendant, Thunder Group, Inc. (“Thunder Group”), with Moore and Thunder Group collectively
5 referred to as the “Parties.”

6 **1.2 Plaintiff**

7 Moore is an individual residing in California who seeks to promote awareness of exposures to
8 toxic chemicals and improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Thunder Group employs ten or more persons and is a person in the course of doing business
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Thunder Group sold kitchen tools with grips containing the phthalate
16 chemicals di(2-ethylhexyl)phthalate (“DEHP”) and di-n-butyl phthalate (“DBP”) without first
17 providing the clear and reasonable warning required by Proposition 65. DEHP and DBP are each
18 listed pursuant to Proposition 65 as a chemical known to the state of California to cause birth defects
19 or other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Stipulated Settlement, and to which this Stipulated Settlement is
22 specifically limited, are the following kitchen tools with grips manufactured, distributed, sold, or
23 offered for sale in California by Thunder Group:

- 24 (a) Stainless Steel 18-8 Tong 16, SLTG816G
- 25 (b) Stainless Steel 18-8 Tong 16, SLTG816B;
- 26 (c) Stainless Steel 18-8 Tong 16, SLTG816K;
- 27 (d) Stainless Steel 18-8 Tong 16, SLTG816R;
- 28 (e) Stainless Steel 18-8 Tong 16, SLTG816Y;

- 1 (f) Stainless Steel 18-8 Tong 16, SLTG816G;
- 2 (g) Stainless Steel Fry Basket, SLFB004;
- 3 (h) Stainless Steel Fry Basket, SLFB005;
- 4 (i) Stainless Steel Fry Basket, SLFB007
- 5 (j) Stainless Steel 12 Tong SLTG812Y;
- 6 (k) Stainless Steel 12 Tong SLTG812R;
- 7 (l) Stainless Steel 12 Tong SLTG812K;
- 8 (m) Stainless Steel 12 Tong SLTG812G;
- 9 (n) Stainless Steel 12 Tong SLTG812B;
- 10 (o) Stainless Steel 10 Tong SLTG810Y;
- 11 (p) Stainless Steel 10 Tong SLTG810R;
- 12 (q) Stainless Steel 1 Tong SLTG810K;
- 13 (r) Stainless Steel 10 Tong SLTG810G; and
- 14 (s) Stainless Steel 10 Tong SLTG810B.

15 The above items shall be referred to collectively hereinafter as the “Products”. Moore and his
16 counsel represent and warrant that they know of no other products manufactured, distributed, sold, or
17 offered for sale in California by Thunder Group which potentially contain any listed chemical
18 pursuant to Proposition 65.

19 **1.6 Notice of Violation**

20 On or about December 13, 2011, Moore served Thunder Group and various public
21 enforcement agencies with a “60-Day Notice of Violation” (the “Notice”), a document that informed
22 the recipients of Moore’s allegation that Thunder Group was in violation of Proposition 65 for failing
23 to warn its customers and consumers in California that the Products expose users to DEHP and DBP.
24 Thunder Group contends that such Notice was defective.

25 **1.7 Complaint**

26 On February 29, 2012, Moore filed the instant action against Thunder Group (“Complaint”)
27 for the alleged violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

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1 **1.8 No Admission**

2 Thunder Group denies the material, factual, and legal allegations contained in the Notice and
3 Complaint, and maintains that all of the products it has sold in California, including the Products,
4 have been, and are, in compliance with all laws. Nothing in this Stipulated Settlement shall be
5 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law;
6 nor shall compliance with this Stipulated Settlement constitute or be construed as an admission of any
7 fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied
8 by Thunder Group. This section shall not, however, diminish or otherwise affect Thunder Group’s
9 obligations, responsibilities, and duties under this Stipulated Settlement.

10 **1.9 Consent to Jurisdiction**

11 For purposes of this Stipulated Settlement only, the Parties stipulate that the Court has
12 jurisdiction over Thunder Group as to the allegations in the Complaint, that venue is proper in
13 Alameda County, and that the Court has jurisdiction to enter and enforce the provisions of this
14 Stipulated Settlement.

15 **1.10 Effective Date**

16 For purposes of this Stipulated Settlement, the term “Effective Date” shall mean October 1,
17 2012.

18 **2. INJUNCTIVE RELIEF: REFORMULATION**

19 **2.1 Reformulated Products**

20 Commencing on the January 1, 2013, and continuing thereafter, Thunder Group shall only
21 manufacture, import, sell or distribute for sale in California, Products that contain a maximum of
22 1,000 parts per million (0.1%) of either DEHP or DBP in any accessible component (i.e., any
23 component that can be handled or touched during reasonably foreseeable use) when analyzed
24 pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by
25 state or federal agencies for the purpose of determining DEHP and/or DBP content in a solid
26 substance.

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1 **2.2 Product Warnings**

2 For any Product Thunder Group sells or distributes for sale in California after the Effective
3 Date that is not a Reformulated Product, Thunder Group shall provide a clear and reasonable warning
4 affixed to the packaging or labeling, or directly to the Product, with a statement substantially in the
5 following form:

6 **WARNING:** The plastic handle of this [insert product]
7 contains chemicals known to the State of
 California to cause birth defects or other
 reproductive harm.

8 Each warning shall be prominently placed with such conspicuousness as compared with other words,
9 statements, designs, or devices as to render it likely to be read and understood by an ordinary
10 individual under customary conditions before purchase or use. Each warning shall also be provided
11 in a manner such that the consumer or user understands to which specific Product the warning
12 applies, so as to minimize the risk of consumer confusion.

13 **3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

14 **3.1 Initial Civil Penalty Payment**

15 Within five (5) days of the Effective Date, Thunder Group shall pay an initial civil penalty of
16 \$3,500, which shall be held in trust pursuant to section 3.3 below.

17 The penalty payment will be allocated according to Health & Safety Code § 25249.12 (c)(1)
18 & (d), with seventy-five percent (75%) of the penalty amount earmarked for the California Office of
19 Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%)
20 of the penalty amount earmarked for Moore.

21 **3.2 Final Civil Penalty Payment; Waiver on Certification**

22 Pursuant to Health & Safety Code § 25249.7(b), on or before January 1, 2013, Thunder Group
23 shall pay a final civil penalty of \$21,500 (the “Final Civil Penalty”). The Final Civil Penalty shall be
24 waived in its entirety, if, by the latter of thirty (30) days after the Court’s entry of an order approving
25 this Stipulated Settlement or January 2, 2013, an officer of Thunder Group certifies to Moore’s
26 counsel in writing that, as of such date one hundred percent of the Products it sells or distributes for
27 sale in California are Reformulated Products as defined by this Stipulated Settlement and that it will
28 continue to only offer Reformulated Products in California in the future.

1 Unless waived as provided in this section 3.2, the Final Civil Penalty payment shall be
2 allocated according to Health & Safety Code § 25249.12(c)(1) and (d), with seventy-five percent
3 (75%) of the penalty amount earmarked for OEHHA and the remaining twenty-five percent (25%) of
4 the penalty amount earmarked for Moore.

5 **3.3 Reimbursement of Moore's Fees and Costs**

6 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
7 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
8 to be resolved after the material terms of the agreement had been settled. Shortly after all other
9 settlement terms had been finalized, Thunder Group expressed a desire to resolve the fee and costs
10 issue. The Parties then attempted to (and did) reach an accord on the compensation due Moore and
11 his counsel under general contract principles and the private attorney general doctrine codified at
12 California Code of Civil Procedure § 1021.5 for all work performed in this matter exclusive of fees
13 and costs that may be incurred on appeal, if any. Under these legal principles, upon the earlier of
14 sixty (60) days after the Effective Date or within five (5) days of the Court's approval of this
15 Stipulated Settlement, Thunder Group shall pay \$30,500 for fees and costs incurred investigating,
16 litigating, and enforcing this matter, including the fees and costs incurred (and yet to be incurred)
17 drafting, negotiating, and obtaining the Court's approval of this Stipulated Settlement in the public
18 interest, which shall be held in trust pursuant to section 3.3 below.

19 **3.3 Payment Procedures**

20 **3.3.1 Payments Held in Trust**

21 All payments made under this Stipulated Settlement shall be held in trust until the
22 Court approves the settlement. The Parties acknowledge that Moore's counsel gave Thunder Group
23 the option of depositing the funds into its attorney's trust account, but that Thunder Group elected to
24 have The Chanler Group hold the settlement funds in trust until such time as this Stipulated
25 Settlement is approved by the Court. Settlement funds delivered to The Chanler Group shall be in
26 the form of three checks for the following amounts, made payable to:

- 27 (a) "The Chanler Group in Trust for OEHHA" in the amount of \$2,625;
28 (b) "The Chanler Group in Trust for John Moore" in the amount of \$875; and

1 (c) "The Chanler Group in Trust" in the amount of \$30,500.

2 If this Stipulated Settlement is not approved by the Court, the settlement funds shall be returned to
3 the Thunder Group as required by section 5.

4 **3.3.2 Issuance of 1099 Forms**

5 After the Stipulated Settlement has been approved by the Court, Thunder Group shall
6 provide Moore's counsel with three U.S. IRS 1099 forms for its payments to:

7 (a) "Office of Environmental Health Hazard Assessment", P.O. Box 4010,
8 Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid in the amount of
9 \$2,625;

10 (b) "John Moore", whose address and tax identification number shall be furnished
11 upon request after this Stipulated Settlement has been fully executed by the Parties,
12 for civil penalties paid in the amount of \$875; and

13 (c) "The Chanler Group" (EIN: 94-3171522) for the reimbursement of Moore's
14 fees and costs in the amount of \$30,500.

15 Unless waived, upon receiving the necessary W9 forms from Moore's counsel,
16 Thunder Group shall provide a 1099 form for each of its 2013 payments to Moore and OEHHA.

17 **3.3.3 Payment Delivery**

18 All payments and tax documentation required by this section 3 shall be delivered to
19 the following address:

20 The Chanler Group
21 Attn: Proposition 65 Controller
22 2560 Ninth Street
23 Parker Plaza, Suite 214
24 Berkeley, CA 94710

23 **4. CLAIMS COVERED AND RELEASED**

24 **4.1 Moore's Public Release of Proposition 65 Claims**

25 Moore, acting on his own behalf and in the public interest, releases Thunder Group, its
26 directors, employees, agents, representatives, subsidiaries, attorneys, successors, and assignees from
27 all claims for violations of Proposition 65 up through the Effective Date based on exposures to
28 DEHP and DBP from the Products, as set forth in the Notice and defined in section 1.5.

1 Compliance with the terms of this Stipulated Settlement constitutes compliance with Proposition 65
2 with respect to exposures to DEHP and/or DBP from the Products, as set forth in the Notice and as
3 defined in section 1.5.

4 **4.2 Moore's Individual Release of Claims**

5 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
6 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
7 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
8 liabilities and demands of Moore of any nature, character, or kind, whether known or unknown,
9 suspected or unsuspected, arising out of alleged or actual exposures to DEHP and/or DBP in the
10 Products imported, manufactured, sold or distributed for sale by Thunder Group in California.

11 **4.3 Thunder Group's Release of Moore**

12 Thunder Group, on behalf of itself and its past and current agents, representatives, attorneys,
13 successors, and/or assignees, hereby waives any and all known or unknown claims against Moore
14 and his attorneys and other representatives, for any and all actions taken or statements made (or
15 those that could have been taken or made) by Moore and his attorneys and other representatives,
16 whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it
17 in this matter, or with respect to the Products.

18 **4.4. Mutual Limited Section 1542 Waiver**

19 In the releases provided in sections 4.2 and 4.3, both Parties expressly waive any "unknown"
20 claims with respect to the released matters. Each Party expressly waives any and all rights and
21 benefits conferred upon such Party by the provisions of Section 1542 of the California Civil Code with
22 respect to the foregoing released claims, which provides as follows:

23 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
24 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**
25 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
26 **THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST**
27 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
28 **WITH THE DEBTOR."**

Each Party expressly acknowledges the foregoing waiver of the provisions of Section 1542 of the
California Civil Code.

1 **4.5 Attorneys' Fees**

2 Except as otherwise provided herein, each Party fully releases any claim for and shall bear its
3 own attorneys' fees and costs incurred as a result of the claims alleged by Moore against Thunder
4 Group or any alleged violation of Proposition 65 by Thunder Group. Notwithstanding the foregoing,
5 the prevailing party to any action arising from an alleged breach of the terms of this Stipulated
6 Settlement shall be entitled to an award of his/its reasonable attorneys' fees and costs.

7 **5. COURT APPROVAL**

8 This Stipulated Settlement is not effective until it is approved and entered by the Court and
9 shall be null and void if, for any reason, it is not approved and entered by the Court within eight
10 months after it has been fully executed by all Parties. In such case, this Stipulated Settlement may
11 not be used for any purpose in this or any other litigation. The Court's order approving this Stipulated
12 Settlement shall act as a Judgment and full adjudication of this action ("Judgment"), which may be
13 enforced pursuant to the terms of section 10 herein below. No Party shall record the Stipulated
14 Settlement, the Judgment, or any order thereon unless enforcement of the terms hereof is required
15 pursuant to section 10 herein below.

16 **6. SEVERABILITY**

17 If, subsequent to the execution of this Stipulated Settlement, any provision is held by a court
18 to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

19 **7. GOVERNING LAW**

20 The terms of this Stipulated Settlement shall be governed by the laws of the state of California
21 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
22 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Thunder
23 Group may provide written notice to Moore of any asserted change in the law, and shall have no
24 further obligations pursuant to this Stipulated Settlement with respect to, and to the extent that, the
25 Products are so affected. Nothing in this Stipulated Settlement shall be interpreted to relieve Thunder
26 Group from any obligation to comply with any pertinent state or federal toxics control laws.

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1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required by this Stipulated Settlement
3 shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail,
4 return receipt requested; or (c) a recognized overnight courier to the following addresses:
5 For Thunder Group:

6 Chun Chieh Liu, President
7 Thunder Group, Inc.
8 780 Nogales Street, Suite C
9 City of Industry, CA 91748

10 with a copy to:

11 Timothy J. Gorry, Esq.
12 Eisner, Kahan & Gorry
13 9601 Wilshire Boulevard, Suite 700
14 Beverly Hills, Ca 90210

15 For Moore:

16 Proposition 65 Coordinator
17 The Chanler Group
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710

21 Any party may, from time to time, specify in writing to the other party, a change of address to which
22 all notices and other communications shall be sent.

23 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

24 This Stipulated Settlement may be executed in counterparts and by facsimile or portable
25 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
26 taken together, shall constitute one and the same document.

27 **10. POST EXECUTION ACTIVITIES**

28 Moore agrees to comply with the reporting form requirements referenced in California Health
& Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to California Health &
Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of the
settlement. In furtherance of obtaining such approval, Moore and Thunder Group and their
respective counsel agree to mutually employ their best efforts to support the entry of this agreement
as a Stipulated Settlement and to obtain judicial approval of the same in a timely manner. Moore's

1 counsel shall be responsible for drafting the Motion and any papers in support of the Court's approval
2 of his Stipulated Settlement (the "Approval Motion"). Moore's counsel shall cause the Approval
3 Motion to be filed within fifteen (15) business days of receipt of Thunder's execution of this
4 Stipulated Settlement. For purposes of this section, "best efforts" shall include, at a minimum,
5 providing cooperation with respect to the drafting of any declaration(s) required from Thunder Group
6 or Thunder Group's counsel and the filing of the Approval Motion.

7 The Court shall retain jurisdiction, pursuant to Cal. Code Civ. Proc. § 664.6 to enforce the
8 terms and conditions of this Stipulated Settlement as a judgment. The prevailing party to any motion
9 or proceeding held to enforce the terms of this Stipulated Settlement shall be entitled to, in addition to
10 any other relief awarded by the Court, his/its reasonable attorneys' fees and costs incurred by such
11 party by reason of his/its preparation for and attendance at such proceeding.

12 **11. MODIFICATION**

13 This Stipulated Settlement may be modified only by: (a) a written agreement of the Parties
14 and upon entry of a modified Stipulated Settlement by the Court thereon; or (b) upon a successful
15 motion or application of any Party and the entry of a modified Stipulated Settlement by the Court.

16 **12. AUTHORIZATION**

17 The undersigned are authorized to execute this Stipulated Settlement and have read,
18 understood, and agree to all of the terms and conditions contained herein. The Parties acknowledge
19 that this Stipulated Settlement is entered into by their own free will without duress, undue influence,
20 fraud, or mistake, and agree that there currently is no basis to rescind this Stipulated Settlement, and
21 the Parties further agree never to assert, in any form or forum, that there is any basis whatsoever to
22 rescind or nullify this Stipulated Settlement at any time in the future, and that each Party is hereby
23 estopped from trying to do so, unless the other Party first tries to repudiate the Stipulated Settlement
24 or is deemed to have entered into this Stipulated Settlement with intent to breach or engage in fraud,
25 in which case, the other Party shall have available all arguments and defenses.

26 **13. INTEGRATION**

27 This Stipulated Settlement memorializes the entire agreement between the Parties and replaces
28 all prior negotiations and proposed agreements, whether written or oral. The Parties represent and

1 acknowledge that no other Party, nor any agent or attorney of any other Party, has made any promise,
2 representation or warranty whatsoever, express or implied, not contained in this Stipulated Settlement,
3 concerning the subject matter of this Stipulated Settlement, to induce any Party to execute this Stipulated
4 Settlement.

5 **14. MISCELLANEOUS**

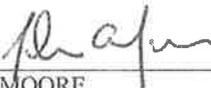
6 This Stipulated Settlement shall be binding upon and shall inure to the benefit of the successors,
7 assigns, heirs, executors, administrators, etc., of each of the Parties. Each Party represents and warrants
8 that the signatories identified below have full and complete authority to execute this Stipulated
9 Settlement and, notwithstanding any contractual or statutory requirement to the contrary, have full
10 authority to bind each of the respective Parties for which each signatory purports to sign.

11 The Parties warrant and acknowledge that each has been represented by legal counsel throughout
12 the action and the formation of this Stipulated Settlement and that he, she, or it has executed this
13 Stipulated Settlement with the consent and advice of such legal counsel.

14 This Stipulated Settlement and each of its material terms are the product of an arms' length
15 negotiation between the Parties, each of whom is represented by counsel. In the event any ambiguity is
16 found to exist in the interpretation of this Stipulated Settlement, or any of its provisions, the Parties, and
17 each of them, explicitly reject the application of any legal or equitable rule of interpretation which would
18 lead to a construction either "for" or "against" a particular party based upon their status as the drafter of a
19 specific term, language, or provision giving rise to such ambiguity. Accordingly, the Parties specifically
20 reject the application of Cal. Civ. Code §1654 to this Stipulated Settlement, as well as any other statute
21 or common law principles of similar effect.

22 **AGREED TO:**

23 Date: 9/24/12

24
25 By: 
26 JOHN MOORE

AGREED TO:

Date: _____

27 By: _____
28 Chun Chieh Liu, President
THUNDER GROUP, INC.

1 acknowledge that no other Party, nor any agent or attorney of any other Party, has made any promise,
2 representation or warranty whatsoever, express or implied, not contained in this Stipulated Settlement,
3 concerning the subject matter of this Stipulated Settlement, to induce any Party to execute this Stipulated
4 Settlement.

5 **14. MISCELLANEOUS**

6 This Stipulated Settlement shall be binding upon and shall inure to the benefit of the successors,
7 assigns, heirs, executors, administrators, etc., of each of the Parties. Each Party represents and warrants
8 that the signatories identified below have full and complete authority to execute this Stipulated
9 Settlement and, notwithstanding any contractual or statutory requirement to the contrary, have full
10 authority to bind each of the respective Parties for which each signatory purports to sign.

11 The Parties warrant and acknowledge that each has been represented by legal counsel throughout
12 the action and the formation of this Stipulated Settlement and that he, she, or it has executed this
13 Stipulated Settlement with the consent and advice of such legal counsel.

14 This Stipulated Settlement and each of its material terms are the product of an arms' length
15 negotiation between the Parties, each of whom is represented by counsel. In the event any ambiguity is
16 found to exist in the interpretation of this Stipulated Settlement, or any of its provisions, the Parties, and
17 each of them, explicitly reject the application of any legal or equitable rule of interpretation which would
18 lead to a construction either "for" or "against" a particular party based upon their status as the drafter of a
19 specific term, language, or provision giving rise to such ambiguity. Accordingly, the Parties specifically
20 reject the application of Cal. Civ. Code §1654 to this Stipulated Settlement, as well as any other statute
21 or common law principles of similar effect.

22 **AGREED TO:**

23 Date: _____

24

25 By: _____

26 JOHN MOORE

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AGREED TO:

Date: 9-26-12

By: Chun Chieh Liu

Chun Chieh Liu, President
THUNDER GROUP, INC.

1 **APPROVED AS TO FORM AND CONTENT:**

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Date: 9/24/12

By: 
Brian Johnson
THE CHANLER GROUP
Attorneys for Plaintiff John Moore

Date: 9/28/12

By: 
Timothy J. Gorry
EISNER, KAHAN & GORRY PC
Attorneys for Defendant Thunder Group, Inc.