

1 LAW OFFICE OF ABRAHAM TANG  
2 ABRAHAM H. TANG (Bar No. 186334)  
3 500 North State College Blvd., Suite 1100  
4 Orange, CA 92868  
5 Telephone: (714) 919-4411  
6 Facsimile: (714) 364-8104  
7 [abetanglaw@gmail.com](mailto:abetanglaw@gmail.com)

8 Attorney for Plaintiff Reina Garcia

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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FOR THE COUNTY OF ORANGE, COMPLEX

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14 REINA GARCIA, individually, and on  
15 behalf of all class members as defined  
16 herein,

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Plaintiff,

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vs.

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TARGET, a Minnesota corporation, W.C.  
Bradley, a business entity of unknown form,  
BASE4 Group, Inc., a Texas corporation,  
and DOES 1 through 75, inclusive,

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Defendants.

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Case No. 30-2012-00557880-CU-BC-CXC

[PROPOSED] CONSENT JUDGMENT

1 1. INTRODUCTION

2 1.1 On March 29, 2012, Plaintiff Reina Garcia (“Garcia”) filed a complaint in Orange  
3 County Superior Court, entitled *Reina Garcia v. Target et al.*, Case Number 30-2012-00557880-  
4 CU-BC-CXC, for civil penalties and injunctive relief pursuant to the provisions of California  
5 Health & Safety Code section 25249.5 *et seq.* (“Proposition 65”). On October 9, 2012, Garcia  
6 filed a First Amended Complaint (“Complaint”) for civil penalties and injunctive relief pursuant  
7 to Proposition 65.

8 1.2 The parties to this Consent Judgment (“Parties”) are Garcia and Defendants  
9 BASE4 Group, Inc., a Delaware corporation, and Char-Broil, LLC (erroneously sued as W.C.  
10 Bradley) (collectively, “Defendants”).

11 1.3 Prior to the lawsuit, Garcia served the appropriate public enforcement agencies  
12 with a pre-suit notice pursuant to Health and Safety Code section 25249.7(d), alleging that  
13 Defendants were in violation of Proposition 65. Defendants’ notice and the Complaint in this  
14 Action allege that Defendants expose individuals who use or otherwise handle CharBroil BBQ  
15 Grill Brushes and Grill Brush Heads bearing model numbers 08116, 08117, and 08118, to lead,  
16 a chemical known to the State of California to cause cancer, birth defects and other reproductive  
17 harm, without first providing clear and reasonable warning to such persons. The notice and  
18 Complaint allege that Defendants’ conduct violates Health & Safety Code section 25249.6, the  
19 warning provision of Proposition 65.

20 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court  
21 has jurisdiction over the subject matter of the violations alleged in the Complaint and personal  
22 jurisdiction over Defendants as to the acts alleged in the Complaint, that venue is proper in the  
23 County of Orange, and that this Court has jurisdiction to enter this Consent Judgment as a full  
24 and final resolution of all claims which were or could have been raised in the Complaint based  
25 on the facts alleged therein.

26 1.5 The Parties enter into this Consent Judgment pursuant to a settlement of certain  
27 disputed claims between the Parties as alleged in the Complaint. By executing this Consent  
28 Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties’ intent that

1 nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact,  
2 conclusion of law, issue of law, or violation of law, nor shall compliance with the Consent  
3 Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of  
4 law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive  
5 or impair any right, remedy, argument, or defense the Parties may have in this or any other or  
6 future legal proceeding.

7 2. DEFINITIONS

8 2.1 The term “Covered Products” means CharBroil BBQ Grill Brushes and Grill  
9 Brush Heads bearing model numbers 08116, 08117, and 08118, that Defendants distribute,  
10 market, and/or sell within the State of California.

11 2.2 The term “Effective Date” means the date on which this Consent Judgment is  
12 entered by the Court.

13 3. INJUNCTIVE RELIEF

14 3.1 A Covered Product that is manufactured on or after 90 days after the Effective  
15 Date for sale in California shall contain a warning affixed to or printed on the Covered  
16 Product’s packaging or labeling. The warning shall be displayed with such conspicuousness, as  
17 compared with other words, statements, designs, or devices on the Covered Product, or its  
18 packaging or labeling as to render it likely to be read and understood by an ordinary individual  
19 under customary conditions of purchase or use. The warning shall include the following  
20 statement:

21 “WARNING: This product contains one or more chemicals known to the State of  
22 California to cause cancer and birth defects or other reproductive harm.”

23 3.2 Direct to Consumer Sales. If Defendants sell or offer for sale any Covered  
24 Product direct to consumers through internet websites or catalogs, it shall provide a warning  
25 pursuant to Section 3.1 to the consumer at or prior to completion of the purchase transaction.

26 4. SETTLEMENT PAYMENTS

27 4.1 Defendants shall pay a settlement amount of \$8,000 to Garcia, to be allocated by  
28 Garcia as follows:

1                   4.1.1 Civil Penalty: \$3,000 as a civil penalty pursuant to Health and Safety  
2 Code section 25249.7(b). Garcia shall remit 75% of the civil penalty to the California  
3 Office of Environmental Health Hazard Assessment (“OEHHA”), pursuant to Health and  
4 Safety Code section 25192.

5                   4.1.2 Attorneys’ Fees and Costs: \$5,000 to reimburse Garcia and her attorneys  
6 for their reasonable investigation fees and costs, attorneys’ fees, and any other costs  
7 incurred as a result of investigating, bringing this matter to Defendants’ attention,  
8 litigating, negotiating a settlement in the public interest, and obtaining judicial approval  
9 thereof, pursuant to Code of Civil Procedure section 1021.5.

10               4.2 Timing of payments. Defendants shall deliver to Garcia the payments required  
11 under this section to the address set forth in Section 12 below within 10 days of the Effective  
12 Date.

13 5. CLAIMS COVERED AND RELEASED

14               5.1 This Consent Judgment is a full, final, and binding resolution between Garcia on  
15 behalf of herself and the public interest and Defendants, and their parents, shareholders,  
16 divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
17 successors and assigns (“Defendant Releasees”), and all entities to whom they directly or  
18 indirectly distribute or sell Covered Products, including but not limited to distributors,  
19 wholesalers, customers, retailers, franchisees, cooperative members, and Defendant Releasees’  
20 licensors and licensees, including but not limited to Target Corporation (“Downstream  
21 Defendant Releasees”) of any violation of Proposition 65 that was or could have been asserted in  
22 the Complaint against Defendants, Defendant Releasees, and Downstream Defendant Releasees,  
23 based on failure to warn about alleged exposure to lead contained in Covered Products, with  
24 respect to any Covered Products manufactured, shipped, or sold by Defendants prior to the  
25 Effective Date. The Parties further understand and agree that this release shall not extend  
26 upstream to any entities that manufactured the Covered Products for Defendants or any  
27 component parts thereof or to any distributors or suppliers who sold the Covered Products or any  
28 component parts thereof to Defendants. Upon approval of this Consent Judgment, Garcia shall

1 file a request for dismissal of defendant Target Corporation with prejudice.

2           5.2     In further consideration of the promises and agreements herein contained, the  
3 injunctive relief commitments set forth in Section 3, and for the payments to be made pursuant to  
4 Section 4, Garcia, on behalf of herself, her past and current agents, representatives, attorneys,  
5 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to  
6 institute or participate in, directly or indirectly, any form of legal action and release all claims,  
7 including, without limitation, all actions, and causes of action, in law or in equity, suits,  
8 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including,  
9 but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever,  
10 whether known or unknown, fixed, or contingent (collectively "claims"), against Defendants,  
11 Defendant Releasees, and Downstream Defendant Releasees. This release is limited to those  
12 claims that arise under Proposition 65 with respect to lead in the Covered Products, as such  
13 claims relate to the alleged failure to warn under Health & Safety Code section 25249.6.

14           5.3     Compliance with the terms of this Consent Judgment by Defendants shall  
15 constitute compliance with Proposition 65 with respect to lead in any Covered Products that are  
16 manufactured, shipped, or sold by Defendants following the Effective Date.

17 6.     COURT APPROVAL

18           6.1     This Consent Judgment is not effective until it is approved and entered by the  
19 Court and shall be null and void if, for any reason, it is not approved and entered by the Court  
20 within one year after it has been fully executed by all Parties.

21           6.2     If the Court does not approve the Consent Judgment, the Parties shall meet and  
22 confer as to whether to modify the terms of this Consent Judgment or appeal the ruling. If the  
23 Parties do not jointly agree on a course of action to take, the case shall proceed on its normal  
24 course on the Court's calendar.

25           6.3     If the Court approves this Consent Judgment and is reversed or vacated by an  
26 appellate court, the Parties shall meet and confer as to whether to modify the terms of this  
27 Consent Judgment.

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1 7. ENFORCEMENT

2 7.1 Any Party may, by motion or application for an order to show cause before this  
3 Court, enforce the terms and conditions contained in this Consent Judgment. A Party may  
4 enforce any of the terms and conditions of this Consent Judgment only after that Party first  
5 provides 30 days' notice to the Party allegedly failing to comply with the terms and conditions of  
6 this Consent Judgment and attempts to resolve such Party's failure to comply in an open and  
7 good faith manner.

8 8. MODIFICATION

9 8.1 This Consent Judgment may be modified from time to time by express written  
10 agreement of the Parties, with the approval of the Court, or by an order of this Court upon motion  
11 and in accordance with law. A Party seeking to modify this Consent Judgment shall attempt in  
12 good faith to meet and confer with all affected Parties prior to filing a motion to modify the  
13 Consent Judgment.

14 9. ENTIRE AGREEMENT

15 9.1 This Consent Judgment contains the sole and entire agreement and understanding  
16 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
17 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
18 and therein. No representations, oral or otherwise, express or implied, other than those  
19 specifically referred to in this Consent Judgment have been made by any Party hereto. No  
20 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding  
21 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions  
22 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
23 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

24 10. GOVERNING LAW AND APPLICATION

25 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
26 California and shall apply only to Covered Products that are sold or offered for sale in the State  
27 of California.

28 10.2 This Consent Judgment shall apply to and be binding upon Garcia and Defendants

1 and their divisions, subdivisions, and subsidiaries, and the Parties' successors and assigns.

2 10.3 The Parties, including their counsel, have participated in the preparation of this  
3 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
4 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
5 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
6 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
7 of the manner of the preparation of this Consent Judgment.

8 11. RETENTION OF JURISDICTION

9 11.1 This Court shall retain jurisdiction of this matter to implement, modify, and  
10 enforce the terms this Consent Judgment.

11 12. PROVISION OF NOTICE

12 12.1 All notices required pursuant to this Consent Judgment and correspondence shall  
13 be sent to the following:

14 For Garcia:  
15 Law Office of Abraham Tang  
16 500 North State College Blvd., Suite 1100  
17 Orange, CA 92868

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19 For Defendants:  
20 James M. Hanlon, Jr.  
21 Glynn & Finley, LLP  
22 100 Pringle Ave., Suite 500  
23 Walnut Creek, CA 94596

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25 13. COURT APPROVAL

26 13.1 This Consent Judgment shall become effective upon entry by the Court. Garcia  
27 shall prepare and file a Motion for Approval of this Consent Judgment pursuant to Health and  
28 Safety Code section 25249.7(f).

1 14. ATTORNEY'S FEES

2 14.1 A party who unsuccessfully brings or contests an action arising out of this  
3 Consent Judgment shall be required to pay the prevailing party's reasonable attorney's fees and  
4 costs unless the unsuccessful party has acted with substantial justification. For purposes of this  
5 Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
6 Civil Discovery Act of 1986, Code of Civil Procedure section 2016 *et seq.*

7 14.2 Nothing in this Section 15 shall preclude a Party from seeking an award of  
8 sanctions pursuant to law.

9 15. EXECUTION AND COUNTERPARTS

10 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
11 means of facsimile and/or portable document format (.pdf), which taken together shall be deemed  
12 to constitute one document.

13 16. AUTHORIZATION

14 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
15 by the party he or she represents to stipulate to this Consent Judgment and to enter into and  
16 execute the Consent Judgment on behalf of the party represented and legally bind that party. The  
17 undersigned have read, understand and agree to all of the terms and conditions of this Consent  
18 Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

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20 AGREED TO:

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22 Dated: \_\_\_\_\_

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Reina Garcia

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1 Dated: July 15, 2013

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BASE4 Group, Inc.

By Byron Nowell

Name: Byron Nowell

Title: CFO/Treasurer

Char Broil, LLC

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

1 Dated: \_\_\_\_\_

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BASE4 Group, Inc.

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: July 22, 2013

Char Broil, LLC

By 

Name: Gray Butler

Title: VP, Sales 