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6 JOHN MOORE

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 IN AND FOR THE COUNTY OF MARIN

9 UNLIMITED CIVIL JURISDICTION

10  
11 JOHN MOORE,

12 Plaintiff,

13 v.

14 GIBSON GUITAR CORP. and DOES 1-150,

15 Defendants.  
16

Case No. CIV 1300076

**PROPOSITION 65 SETTLEMENT  
AGREEMENT BETWEEN PLAINTIFF JOHN  
MOORE AND DEFENDANTS GIBSON  
BRANDS, INC. AND ACE PRODUCT  
MANAGEMENT GROUP, INC.**

Action Filed: January 8, 2013  
Trial Date: Not Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Settlement Agreement (“Agreement”) is entered into by and between Plaintiff John  
4 Moore, (“Moore” or “Plaintiff”) and Defendant Gibson Brands, Inc., formerly known as Gibson  
5 Guitar Corp. (“Gibson”) and Defendant Ace Product Management Group, Inc. (“Ace”) with Ace  
6 and Gibson collectively referred to as “Settling Defendants” and Moore, Gibson and Ace  
7 collectively referred to as the “Parties.”

8 **1.2 Plaintiff**

9 Moore is an individual residing in the State of California who seeks to promote  
10 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating  
11 hazardous substances contained in consumer products.

12 **1.3 Defendant**

13 Gibson employs 10 or more persons and is a person in the course of doing business for  
14 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &  
15 Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

16 Ace employs 10 or more persons and is a person in the course of doing business for  
17 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &  
18 Safety Code §§ 25249.6 *et seq.*

19 **1.4 General Allegations**

20 Moore alleges that Gibson and Ace manufactured, distributed and/or sold, in the State of  
21 California, certain types of vinyl/PVC beverage mats including, as an example, such beverage  
22 mat in the Gibson Shot Glass Gift Set (#7 11106 56155 4)(“Covered Products”), that exposed users  
23 to DEHP without first providing “clear and reasonable warning” under Proposition 65. DEHP is  
24 listed as a reproductive and developmental toxicant pursuant to Proposition 65 and is referred to  
25 hereinafter as the “Listed Chemical.”

26 Gibson contends that it had no knowledge regarding the possible presence of the Listed  
27 Chemical prior to receipt of the Notice, as that term is defined in section 1.5 of this Agreement, as  
28 Gibson contends it played no role in the formulation of the Covered Products, which were

1 supplied to Gibson by Ace. Upon receipt of the Notice, Gibson contends it promptly halted all  
2 sales of the Covered Products in California and commenced an investigation regarding the  
3 possible presence of the Listed Chemical in the Covered Products. Before Gibson could  
4 complete that investigation, Plaintiff commenced this action. When Gibson's investigation  
5 revealed the possible presence of the Listed Chemical in the Covered Products, Gibson contends  
6 it immediately recalled all unsold Covered Products in the State of California. As a result of  
7 Gibson's immediate cessation of sales, investigation and recall, Gibson contends it has not  
8 knowingly exposed consumers in California to any Listed Chemical and Gibson further contends  
9 it has therefore not violated Proposition 65, irrespective of any warning.

10 **1.5 Notice of Violation**

11 On October 26, 2012, Moore served Gibson and various public enforcement agencies  
12 with a document entitled "60-Day Notice of Violation" ("Notice") that provided public  
13 enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6  
14 for failing to warn consumers of the presence of the Listed Chemical in and on the Covered  
15 Products sold in California. Gibson received such 60-Day Notice of Violation. Gibson  
16 represents that, as of the date it executes this Agreement, it believes that no public enforcer is  
17 diligently prosecuting a Proposition 65 enforcement action related to the Listed Chemical in the  
18 Covered Products, as identified in such Notice.

19 On July 11, 2014, Moore served Gibson, Ace and various public enforcement agencies  
20 with a document entitled "Supplemental 60-Day Notice of Violation" ("Supplemental Notice")  
21 that provided public enforcers and these entities with notice of alleged violations of Health &  
22 Safety Code § 25249.6 for failing to warn consumers of the presence of the Listed Chemical in  
23 and on the Covered Products sold in California. Gibson and Ace received such Supplemental  
24 60-Day Notice of Violation. Ace and Gibson each represent that, as of the date it executes this  
25 Agreement, it believes that no public enforcer is diligently prosecuting a Proposition 65  
26 enforcement action related to the Listed Chemical in the Covered Products, as identified in such  
27 Notice.

28

1 The October 26, 2012, Notice and the July 11, 2014, Supplemental Notice shall hereinafter  
2 be collectively referred to as "Notices".

3 **1.6 Complaint and Cross-Complaint**

4 On January 8, 2013, Moore, acting in the interest of the general public in California, filed a  
5 Complaint in the Superior Court of the State of California for the County of Marin, alleging  
6 violations by Gibson of Health & Safety Code § 25249.6 based, *inter alia*, on the alleged exposures  
7 to the Listed Chemical contained in the Covered Products (the "Action").

8 On August 22, 2013, Gibson filed a Cross-Complaint ("Cross-Complaint") against Ace  
9 asserting causes of action sounding in negligence, breach of implied warranty and indemnity,  
10 seeking, *inter alia*, indemnity against the Complaint based on the allegations of Moore against  
11 Gibson and against Gibson's attorneys' fees incurred in defending against the Complaint.

12 As part of, and upon execution of, this Agreement, the Parties stipulate and agree that the  
13 Complaint shall and will be amended to include the Parties, recitals, and allegations against both  
14 Gibson and Ace of Moore's claims relating to the Listed Chemical in the Covered Products as  
15 identified in the Supplemental Notice served upon both Ace and Gibson.

16 The Parties agree that this stipulated First Amended Complaint ("FAC") shall be  
17 presented for approval to the Court as part of and in conjunction with the motion to approve this  
18 Agreement. Settling Defendants stipulate and agree to waive service of the FAC except as part  
19 of the anticipated motion to approve this settlement and approve the Amendment. Settling  
20 Defendants further stipulate to waive any response to such FAC and stipulate that the FAC shall  
21 be deemed at issue as to Settling Defendants upon approval of the FAC.

22 The Parties stipulate that without further action on their part upon approval by the Court  
23 of the FAC, the Cross-Complaint shall be deemed to be amended in any and all necessary  
24 respects to apply to the FAC instead of to the Complaint, that no amended cross-complaint need  
25 be filed or served, that the general denial and affirmative defenses asserted by Ace in its Answer  
26 to the Cross-Complaint shall be deemed to be asserted against the Cross-Complaint as so  
27 amended and that the Cross-Complaint, as deemed amended, shall be deemed at issue as to Ace  
28 upon approval of the FAC.

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**1.7 No Admission**

This Agreement resolves claims that are denied and disputed by Settling Defendants. The Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between Moore, as plaintiff both individually and in his representative capacity, on the one hand and Gibson as current defendant and Ace as cross-defendant pursuant to the Cross-Complaint and defendant pursuant to the FAC, on the other hand for the purpose of avoiding further litigation with Plaintiff. Each Settling Defendant denies the material factual and legal allegations contained in the Notice, the Supplemental Notice and the Action, maintains that it did not knowingly or intentionally expose California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered Products and otherwise contends that all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Agreement shall be construed as an admission by either Settling Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by either Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by each Settling Defendant. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Ace’s or Gibson’s obligations, responsibilities, and duties under this Agreement.

**1.8 Consent to Jurisdiction**

For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction over Ace and Gibson as to the allegations contained in the Complaint, the FAC and the Cross-Complaint, that venue is proper in County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Agreement. As an express part of this Agreement, pursuant to C.C.P. §664.6 the Court in which this action was filed shall retain jurisdiction over the Parties to enforce the settlement until performance in full of the terms of the settlement.

**2. DEFINITIONS**

2.1 The term “Complaint” shall mean the Complaint and First Amended Complaint.

1           2.2     The term “Covered Products” means any vinyl/PVC bar mat containing DEHP,  
2 including, but not limited to the mats included within the Gibson Shot Glass Gift Set (#7 11106  
3 56155 4), as specified in the Notice and the Supplemental Notice.

4           2.3     The term “Effective Date” shall mean February 15, 2015.

5           2.4     “Accessible Component” means a metal or a poly vinyl chloride or other soft  
6 plastic, vinyl, or synthetic leather component of a Covered Product that could be touched by a  
7 person during reasonably foreseeable use.

8           2.5     The term “DEHP Free” Covered Products shall mean Covered Products  
9 containing Accessible Components, materials or other components that may be handled,  
10 touched or mouthed by a consumer, and which components contain less than or equal to 1,000  
11 parts per million (“ppm”) of DEHP as determined by a minimum of duplicate, quality controlled  
12 test results using Environmental Protection Agency (“EPA”) testing methodologies 3580A and  
13 8270C or any other methodology utilized by federal or state agencies for the purpose of  
14 determining the DEHP content in a consumer product.

15           2.6     “Manufactured” and “Manufactures” have the meaning defined in Section  
16 3(a)(10) of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)], as amended  
17 from time to time.

### 18 **3.     NON-MONETARY RELIEF**

#### 19 **3.1     Formulation Commitment**

20           **3.1.1**   No later than the Effective Date, Settling Defendants shall provide the DEHP Free  
21 phthalate concentration standard of Section 2.5 to each of its then-current vendors of Covered  
22 Products and instruct its vendors not to incorporate any raw or component materials that do not  
23 meet or exceed the DEHP Free concentration standard of Section 2.5 into Covered Products. To  
24 the extent any Settling Defendant changes vendors of Covered Products after the Effective Date,  
25 Settling Defendants shall immediately provide the DEHP Free phthalate concentration standard  
26 of Section 2.5 to each of its new vendors of Covered Products and instruct each such new vendor  
27 not to incorporate any raw or component materials that do not meet or exceed the DEHP Free  
28 concentration standard of Section 2.5 into Covered Products.

1           **3.1.2** Commencing on the Effective Date, Gibson and Ace shall not order, cause to be  
2 ordered, manufacture or cause to be manufactured any Covered Product that is not DEHP Free.

3           **3.1.3** For every Covered Product ordered, caused to be ordered, manufactured or  
4 caused to be manufactured for distribution to or sale after the Effective Date, Gibson and Ace  
5 shall each maintain copies of all testing of such products demonstrating compliance with this  
6 section, shall maintain copies of all vendor correspondence relating to the DEHP concentration  
7 standard and shall produce such copies to Moore within fifteen (15) days of receipt of written  
8 request from Moore.

9           **3.2 Previously Obtained or Distributed Covered Products.**

10           **3.2.1 Product Warnings**

11           Gibson represents that, after receipt of the Notice from Plaintiff, it has sourced its  
12 Covered Products from an alternate supplier and has independently tested the Covered  
13 Products from this alternative source and they have met the DEHP Free standard. Gibson also  
14 represents that it has maintained a limited inventory of previously obtained Covered Products  
15 that are not known to be DEHP Free. Gibson hereby agrees not to sell any such inventory of  
16 previously obtained Covered Products. Gibson further agrees that, no later than July 1, 2015, or  
17 thirty (30) days after the final resolution of the Action as between Gibson and Ace, whichever is  
18 later, it shall destroy all such Covered Products in an environmentally appropriate manner.

19           Ace represents that it has already worked with its vendors to reformulate all Covered  
20 Products to meet the DEHP Free standard. Ace represents it has completed a recall effort for  
21 Covered Products and implemented a warning program for any Covered Products that were not  
22 reformulated to be DEHP Free. Ace does not currently believe that it has any inventory of  
23 previously obtained Covered Products that are not DEHP Free. However, to the extent Ace has  
24 or discovers any previously obtained inventory of Covered Products that may not be DEHP  
25 Free, commencing on the Effective Date, and until such date six (6) months thereafter, Ace shall  
26 not sell, ship, or offer to be sold or shipped for sale any such Covered Products unless such  
27 Covered Products are DEHP Free under Section 2.5 or are sold or shipped with one of the clear  
28 and reasonable warnings set forth hereafter.

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

6 (a) **Retail Store Sales.**

7 (i) **Product Labeling.** Ace may affix a warning to the packaging,  
8 labeling, or directly on any Covered Products sold at a retail outlet in California that states:

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

11 (ii) **Point-of-Sale Warnings.** Alternatively, Ace may provide  
12 warning signs in the form below to retail outlets in California, which stores it is reasonably  
13 aware of having sold the Covered Products or having inventory or orders of the Covered  
14 Products, with instructions to post the signs *in immediate proximity* to the point of display of  
15 any and all such Covered Products for the benefit of its customers.

16 **WARNING:** This product contains DEHP, a chemical  
17 known to the State of California to cause birth  
18 defects and other reproductive harm.

19 (b) **Mail Order Catalog and Internet Sales.** In the event that Ace sells any  
20 Covered Products via mail order catalog or the Internet to customers located in California any  
21 such catalog or Internet site offering any Covered Product for sale shall include a warning in the  
22 catalog or within the website, identifying the specific Covered Product to which the warning  
23 applies, as specified in Sections 3.2.2(b)(i) and (ii).

24 (i) **Mail Order Catalog Warning.** Any warning provided in a mail  
25 order catalog must be in the same type size or larger than the Covered Product description text  
26 within the catalog. The following warning shall be provided on the same page and in the same  
27 location as the display and/or description of the Covered Product:  
28





1  
2 Alternatively, the designated symbol may appear adjacent to or immediately following  
3 the display, description, or price of the Covered Product for which a warning is being given,  
4 provided that the following warning statement also appears elsewhere on the same web page, as  
5 follows:

6  
7 **WARNING:** Products identified on this page with the  
8 following symbol ▼ contain DEHP, a  
9 chemical known to the State of California  
10 to cause birth defects and other  
11 reproductive harm.

12  
13 **3.2.2** Commencing six (6) months after the Effective Date, Ace shall either discontinue  
14 all California sales of any Covered Products that are not DEHP Free, regardless of compliance  
15 with Section 3.2.1, or shall destroy all such Covered Products in an environmentally appropriate  
16 manner.

17  
18 **3.2.3** Settling Defendants shall maintain records of compliance correspondence,  
19 inventory reports, product destruction correspondence or other communications confirming  
20 compliance with §§ 3.2.1 through 3.2.2 for three (3) years from the Effective Date and shall  
21 produce copies of such records upon written request by Moore.

#### 22 **4. MONETARY PAYMENTS**

##### 23 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

24 Ace shall make a civil penalty payment on account of its non-Gibson Shot Glass Set sales  
25 of Covered Products in California of \$4,000.00 to be apportioned in accordance with Health &  
26 Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for  
27 the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and  
28 the remaining 25% of these penalty monies earmarked for Moore.

Ace, subject to adjustment pursuant to any Gibson-Ace Agreement as that term is  
defined in Section 13 of this Agreement, shall make a civil penalty payment on account of its  
Gibson Shot Glass Set sales of Covered Products in California of \$10,500.00 to be apportioned in  
accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of

1 these funds earmarked for the State of California’s Office of Environmental Health Hazard  
2 Assessment (“OEHHA”) and the remaining 25% of these penalty monies earmarked for Moore.

3 Ace shall therefore issue two separate checks for each penalty payment: (a) one check  
4 made payable to “OEHHA” in the amount of 75% of the each penalty; and (b) one check made  
5 payable to “John Moore, Client Trust” in the amount of 25% of each penalty. Two separate  
6 1099s shall be issued for each of the above payments. The checks and 1099s shall be delivered  
7 to the addressees identified in Section 4.4 below. All civil penalty amounts due and owing  
8 under this Section shall be delivered on or before the Effective Date. Ace shall be liable for  
9 payment of interest, at a rate of 10% simple interest, for all amounts due and owing from it  
10 under this Section that are not received within two business days of the due date.

#### 11 **4.2 Augmentation of Penalty Payments**

12 During the applicable portion of the period covered by the Notices, February 2011 to  
13 December 2012, Gibson contends it sold approximately 91 units of the Covered Product to retail  
14 locations in California, including independents, such as Monroe Music, The Music Zoo,  
15 Instrumental Music and Sam Ash. As a result of the recall initiated by Gibson in February 2013,  
16 Gibson received 12 unsold units back from these independent California retailers.

17 Gibson contends an additional 1,979 units were sold to Guitar Center and Musicians’  
18 Friend, retailers who have stores in California, but these units were shipped to locations outside  
19 of California (in the case of Guitar Center to a warehouse in Brownsburg, Indiana). Gibson does  
20 not know precisely how many of these units were ultimately sold in California.

21 In addition to the Gibson Shot Glass Gift Sets, Ace contends it sold 2118 Harley-Davidson  
22 gift sets which contained a vinyl/PVC bar mat in California between 2009 and October 31, 2013.  
23 Ace cannot confirm whether these bar mats were or were not DEHP free. Ace contends there  
24 were 255 sales in 2009, 356 sales in 2010, 471 sales in 2011, 558 sales in 2012 and 478 sales through  
25 October 31, 2013. It is unknown how many of the 478 sales in 2013 involved the reformulated  
26 bar mat which was instituted when Ace became aware of the allegations of a Proposition 65  
27 violation. It is believed a substantial portion of those sales contained the reformulated bar mat.  
28 Ace initiated a recall for any bar mats still on shelves of California retailers. Since the age and

1 thus formulation of the bar mats could not be verified, Ace exchanged the bar mats for correctly  
2 labeled stock or returned and credited back to the retailers 119 bar mats.

3 For purposes of the penalty assessment under this Agreement, Plaintiff is relying entirely  
4 upon Settling Defendants and their counsel for accurate, good faith reporting to Plaintiff of the  
5 nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date,  
6 Plaintiff discovers and presents to Ace or Gibson evidence that the Covered Products have been  
7 distributed by either Ace or Gibson in sales volumes materially different than those identified by  
8 such Settling Defendant prior to execution of this Agreement, then such misrepresenting Settling  
9 Defendant shall be liable for an additional penalty amount of \$150 per unit of Covered Product  
10 sold prior to execution of this Agreement but not identified by that Settling Defendant to  
11 Plaintiff. The misrepresenting Settling Defendant shall also be liable for any reasonable,  
12 additional attorney fees expended by Plaintiff in discovering applicable additional retailers or  
13 sales for such misrepresenting Settling Defendant. Plaintiff agrees to provide such  
14 misrepresenting Settling Defendant with a written demand for all such additional penalties and  
15 attorney fees under this Section. After service of such demand, such misrepresenting Settling  
16 Defendant shall have thirty (30) days to agree to the amount of fees and penalties owing and  
17 submit such payment to Plaintiff in accordance with the method of payment of penalties and  
18 fees identified in Sections 4.4. Should this thirty (30) day period pass without any such  
19 resolution between Plaintiff and such misrepresenting Settling Defendant and payment of such  
20 additional penalties and fees, Plaintiff shall be entitled to file a formal legal claim against such  
21 misrepresenting Settling Defendant for damages for breach of this contract and shall be entitled  
22 to all reasonable attorney fees and costs relating to such claim.

#### 23 **4.3 Reimbursement of Plaintiff's Fees and Costs**

24 The Parties acknowledge that Moore and his counsel offered to resolve this dispute  
25 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
26 leaving this fee issue to be resolved after the material terms of the Agreement had been settled.  
27 Settling Defendants then expressed a desire to resolve the fee and cost issue shortly after the  
28 other settlement terms had been finalized. The Parties then attempted to (and did) reach an

1 accord on the compensation due to Moore and his counsel under general contract principles  
2 and the private attorney general doctrine codified at California Code of Civil Procedure section  
3 1021.5, for all work performed in this matter, except fees that may be incurred on appeal.

4 Under these legal principles, Ace, subject to potential reimbursement directly from Gibson  
5 pursuant to any Gibson-Ace Agreement as that term is defined in Section 13 of this Agreement,  
6 shall pay the amount of \$68,000.00 for fees and costs incurred investigating, litigating and  
7 enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating,  
8 drafting, and obtaining the Court's approval of this Settlement Agreement in the public interest.

9 Under these legal principles, Gibson, subject to potential reimbursement directly from Ace  
10 pursuant to any Gibson-Ace Agreement as that term is defined in Section 13 of this Agreement,  
11 shall pay the amount of \$12,500.00 for fees and costs incurred investigating, litigating and  
12 enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating,  
13 drafting, and obtaining the Court's approval of this Settlement Agreement in the public interest.

14 All payments under this Section shall be delivered to the addressee identified in Section 4.4  
15 below. All payments due and owing under this Section shall be made payable to "The Chanler  
16 Group" and shall be delivered on or before the Effective Date. Ace and Gibson shall be liable  
17 for payment of interest, at a rate of 10% simple interest, for all amounts due and owing from it  
18 under this Section that are not received within two business days of the due date.

19 **4.4 Payment Procedures**

20 **4.4.1. Issuance of Payments.** Payments shall be delivered as follows:

21 All payments owed to Moore, OEHHA and The Chanler Group pursuant to  
22 Sections 4.1 through 4.3, shall each be delivered to the following payment address:

23 The Chanler Group  
24 Attn: Proposition 65 Controller  
25 2560 Ninth Street  
26 Parker Plaza, Suite 214  
27 Berkeley, CA 94710

28 All payments made by defendants to Moore, OEHHA and The Chanler Group shall each be  
held in trust by The Chanler Group until Court approval of this Agreement when such funds

1 shall be released to the respective recipients.

2                   **4.4.2 Issuance of 1099 Forms.** After any penalty payment, Gibson and/or Ace  
3 shall issue separate 1099 forms, as applicable, for any payment to Moore, whose address and tax  
4 identification number shall be furnished upon request after this Agreement has been fully  
5 executed by the Parties. After any penalty payment, Gibson and/or Ace shall also issue  
6 separate 1099 forms, as applicable, for any payment to OEHHA (EIN: 68-0284486) at the  
7 following addresses:

8                   For United States Postal Service Delivery:

9                                 Mike Gyurics  
10                                 Fiscal Operations Branch Chief  
11                                 Office of Environmental Health Hazard Assessment  
12                                 P.O. Box 4010  
13                                 Sacramento, CA 95812-4010

14                   For Non-United States Postal Service Delivery:

15                                 Mike Gyurics  
16                                 Fiscal Operations Branch Chief  
17                                 Office of Environmental Health Hazard Assessment  
18                                 1001 I Street  
19                                 Sacramento, CA 95814

## 20 **5. CLAIMS COVERED AND RELEASED**

### 21 **5.1 Moore's Releases of Settling Defendants**

22                   5.1.1 This Agreement is a full, final, and binding resolution between Moore, on behalf  
23 of himself, his past and current agents, representatives, attorneys, successors, and/or assignees,  
24 and in the interest of the general public, and Ace and Gibson and each of their attorneys,  
25 successors, licensors and assigns ("Defendant Releasees"), and all entities to whom Ace or  
26 Gibson directly or indirectly distribute or sell Covered Products, including but not limited to  
27 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees  
28 ("Downstream Defendant Releasees") of any violation of Proposition 65 that has been or could  
have been asserted against Defendant Releasees and Downstream Defendant Releasees  
regarding the failure to warn about exposure to the Listed Chemical arising in connection with  
Covered Products manufactured, sourced, distributed, or sold by Defendant Releasees prior to

1 the Effective Date. Settling Defendants' compliance with this Agreement shall constitute  
2 compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products  
3 after the Effective Date.

4 5.1.2 Moore on behalf of himself, his past and current agents, representatives,  
5 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives  
6 with respect to Covered Products all rights to institute or participate in, directly or indirectly,  
7 any form of legal action and releases all claims, including, without limitation, all actions, and  
8 causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,  
9 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and  
10 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
11 (collectively "claims"), against Defendant Releasees and Downstream Defendant Releasees that  
12 arise under Proposition 65 or any other statutory or common law claims that were or could have  
13 been asserted in the public interest, as such claims relate to Defendant Releasees' and  
14 Downstream Defendant Releasees' alleged failure to warn about exposures to the Listed  
15 Chemical contained in the Covered Products.

16 5.1.3 Moore also, in his individual capacity only and *not* in his representative capacity,  
17 provides a general release herein which shall be effective as a full and final accord and  
18 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,  
19 damages, losses, claims, liabilities and demands of Moore of any nature, character or kind,  
20 known or unknown, suspected or unsuspected, arising out of the subject matter of the  
21 Complaint as to Covered Products manufactured, distributed or sold by Defendant Releasees.  
22 Moore acknowledges that he is familiar with Section 1542 of the California Civil Code, which  
23 provides as follows:

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

27 Moore, in his individual capacity only and *not* in his representative capacity, expressly  
28 waives and relinquishes any and all rights and benefits which he may have under, or which may

1 be conferred on him by the provisions of Section 1542 of the California Civil Code as well as  
2 under any other state or federal statute or common law principle of similar effect, to the fullest  
3 extent that he may lawfully waive such rights or benefits pertaining to the released matters. In  
4 furtherance of such intention, the release hereby given shall be and remain in effect as a full and  
5 complete release notwithstanding the discovery or existence of any such additional or different  
6 claims or facts arising out of the released matters.

7 This Section 5.1 release is expressly limited to those claims that arise under Proposition  
8 65, as such claims relate to Settling Defendants' alleged failure to warn about exposures to or  
9 identification of the Listed Chemical contained in the Covered Products and as such claims are  
10 identified in the Notices.

11 This Section 5.1 release is expressly limited to any alleged violations that occur prior to  
12 six months after the Effective Date and does not release any person, party or entity from any  
13 liability for any violation of Proposition 65 regarding the Covered Products that occurs more  
14 than six months after the Effective Date.

15 The Parties further understand and agree that this Section 5.1 release shall not extend  
16 upstream to any entities, other than Ace, that manufactured the Covered Products or any  
17 component parts thereof, or any distributors or suppliers who sold the Covered Products or any  
18 component parts thereof, other than Ace.

19 5.1.4 Upon court approval of the Agreement, the Parties waive their respective rights to  
20 a hearing or trial on the allegations of the Complaint, but Settling Defendants reserve all of their  
21 respective rights to a hearing or trial, including but not limited to the right to a jury trial, with  
22 regard to the issues presented by the Cross-Complaint of Gibson and Ace's Answer to the Cross-  
23 Complaint of Gibson as they are deemed modified by this Agreement.

## 24 5.2 Settling Defendants' Release of Moore

25 5.2.1 Each of Ace and Gibson waive any and all claims against Moore, his attorneys,  
26 and other representatives for any and all actions taken or statements made (or those that could  
27 have been taken or made) by Moore and his attorneys and other representatives, whether in the  
28



1 course of investigating claims or otherwise seeking enforcement of Proposition 65 against them  
2 in this matter, and/or with respect to the Covered Products.

3           5.2.2 Each of Ace and Gibson also provide a general release herein which shall be  
4 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,  
5 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of  
6 both Ace and Gibson against Moore of any nature, character or kind, known or unknown,  
7 suspected or unsuspected, arising out of the subject matter of the Action. Each of Ace and  
8 Gibson acknowledge that they are familiar with Section 1542 of the California Civil Code, which  
9 provides as follows:

10           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
11           CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR  
12           AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM  
          OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
          WITH THE DEBTOR.

13           Each of Ace and Gibson expressly waive and relinquish any and all rights and  
14 benefits against Moore that they may have under, or which may be conferred on them by  
15 the provisions of Section 1542 of the California Civil Code as well as under any other  
16 state or federal statute or common law principle of similar effect, to the fullest extent that  
17 they may lawfully waive such rights or benefits pertaining to the released matters. In  
18 furtherance of such intention, the release hereby given shall be and remain in effect as a  
19 full and complete release notwithstanding the discovery or existence of any such  
20 additional or different claims or facts arising out of the released matters.

21           **5.3 Exceptions to Scope of Releases**

22  
23           Notwithstanding any provision of this Agreement herein to the contrary, nothing in this  
24 Agreement, including but not limited to this Section 5 and Section 14 below, shall waive, limit,  
25 release or adversely affect in any way any of Gibson's claims against Ace pursuant to the Cross-  
26 Complaint, as filed or as deemed amended pursuant to this Agreement.

1 **6. SEVERABILITY**

2 If, subsequent to court approval of this Agreement, any of the provisions of this  
3 Agreement are finally determined by a court of competent jurisdiction to be unenforceable, the  
4 validity of the enforceable provisions remaining shall not be adversely affected, unless the Court  
5 finds that any unenforceable provision is not severable from the remainder of the Agreement.

6 **7. COURT APPROVAL**

7 This Agreement is effective upon execution but must also be approved by the Court. If  
8 this Agreement is not approved by the Court in its entirety, the Parties shall meet and confer to  
9 determine whether to modify the terms of the Agreement and to resubmit it for approval. In  
10 meeting and conferring, the Parties agree to undertake any actions reasonably necessary to  
11 amend and/or modify this Agreement in order to further the mutual intention of the Parties in  
12 entering into this Agreement.

13 The Agreement shall become null and void if, for any reason, it is not approved and  
14 entered by the Court, as it is executed, within one year after it has been fully executed by all  
15 Parties. If the Agreement becomes null and void after any payment of monies under this  
16 Agreement to The Chanler Group in trust, such monies shall be returned to the defendant who  
17 originally made such payment by payment of such monies to counsel for such defendant in trust  
18 for that defendant.

19 If this Agreement is not entered by the Court, and the Parties have exhausted their meet  
20 and confer efforts pursuant to this Section 7, upon 15 days written notice, the law firm holding  
21 Defendant's funds in trust shall refund any and all payments made into its trust account by  
22 either Settling Defendant as requested.

23 **8. GOVERNING LAW**

24 The terms of this Agreement shall be governed by the laws of the State of California,  
25 exclusive of principles of conflict of laws.

26 **9. NOTICES**

27 When any Party is entitled to receive any notice under this Agreement, the notice shall be  
28 sent by certified mail and electronic mail to the following:

1 For Ace Product Management Group, Inc. to:

2 Ron Bloom  
3 rbloom@apmgi.com  
4 Ace Product Management Group, Inc.  
5 21801 W. Silver Spring Road  
6 Butler, WI 53007

7 With copy to their counsel at

8 Keith D. Chidlaw  
9 KDC@SZS.COM  
10 Schuering Zimmerman & Doyle, LLP  
11 400 University Avenue  
12 Sacramento, CA 95825-6502

13 For Gibson Guitar Corp. to:

14 Bruce Mitchell, General Counsel  
15 Bruce.Mitchell@gibson.com  
16 Gibson Brands, Inc.  
17 309 Plus Park Road  
18 Nashville, TN 37217

19 With copy to their counsel at

20 David H. Bate  
21 dbate@yzblaw.com  
22 Young, Zinn & Bate LLP  
23 888 South Figueroa Street, Fifteenth Floor  
24 Los Angeles, CA 90017

25 For Moore to:

26 Proposition 65 Coordinator  
27 The Chanler Group  
28 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by certified mail and/or other verifiable form of written communication.

**10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

Moore agrees to comply with the reporting form requirements referenced in California Health & Safety Code §25249.7(f) and to file a motion for approval of this Agreement.

1 **11. MODIFICATION**

2 This Agreement may be modified only: (1) by written agreement of the Parties; or (2)  
3 upon a successful motion of any Party and entry of a modified agreement by the Court.

4 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

5 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed  
6 motion is required to obtain judicial approval of this Agreement. In furtherance of obtaining  
7 such approval, Moore, Ace and Gibson, and their respective counsel, agree to mutually employ  
8 their best efforts to support the entry of this Agreement as a settlement agreement and obtain  
9 approval of the Agreement - sufficient to render a formal order approving this Agreement - by  
10 the Court in a timely manner. Any effort by either Settling Defendant to impede judicial  
11 approval of this Agreement shall subject such impeding party to liability for attorney fees and  
12 costs incurred by Plaintiff or his counsel in their efforts to meet or oppose such Settling  
13 Defendant's impeding conduct.

14 **13. ENTIRE AGREEMENT**

15 With the exception of any agreement between Ace and Gibson resolving the issues  
16 pending in the Cross-Complaint ("Ace-Gibson Agreement"), this Agreement contains the sole  
17 and entire agreement and understanding of the three Parties to this Agreement with respect to  
18 the entire subject matter hereof, and any and all prior discussions, negotiations, commitments,  
19 and understandings related hereto. No representations, oral or otherwise, express or implied,  
20 other than those contained herein are being relied upon by any Party hereto. Other than any  
21 Ace-Gibson Agreement, no other agreements not specifically referred to herein, oral or  
22 otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation,  
23 modification, waiver, or termination of this Agreement shall be binding unless executed in  
24 writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be  
25 deemed or shall constitute a waiver of any of the other provisions whether or not similar, nor  
26 shall such waiver constitute a continuing waiver

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1 **14. ATTORNEY'S FEES**

2 14.1 Should Moore prevail on any motion, application for order to show cause or other  
3 proceeding to enforce a violation of this Agreement, Moore shall be entitled to his reasonable  
4 attorney fees and costs incurred as a result of such motion, order or application, consistent with  
5 C.C.P. §1021.5. Should a Settling Defendant prevail on any motion, application for order to  
6 show cause or other proceeding to enforce a violation of this Agreement, a Settling Defendant  
7 may be entitled to its reasonable attorney fees and costs incurred as a result of such motion,  
8 order or application upon a finding that Moore's prosecution of the motion or application lacked  
9 substantial justification. For purposes of this Agreement, the term substantial justification shall  
10 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§  
11 2016, et seq.

12 14.2 Except as specifically provided in the above paragraph and in Sections 4.3 and 5.3,  
13 each Party shall bear its own costs and attorney's fees in connection with this action.

14 14.3 Nothing in this Section 14 shall preclude a Party from seeking an award of  
15 sanctions pursuant to law.

16 **15. NEUTRAL CONSTRUCTION**

17 All Parties and their counsel have participated in the preparation of this Agreement and  
18 this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to  
19 revision and modification by the Parties and has been accepted and approved as to its final  
20 form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in  
21 this Agreement shall not be interpreted against any Party as a result of the manner of the  
22 preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of  
23 construction providing that ambiguities are to be resolved against the drafting Party should not  
24 be employed in the interpretation of this Agreement and, in this regard, the Parties hereby  
25 waive California Civil Code Section 1654.  
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1 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

2 This Agreement may be executed in counterparts and by facsimile or portable document  
3 format (PDF), each of which shall be deemed an original, and all of which, when taken together,  
4 shall constitute one and the same document.

5 **17. AUTHORIZATION**

6 The undersigned Parties and their counsel are authorized to execute this Agreement on  
7 behalf of their respective Parties and have read, understood, and agree to all of the terms and  
8 conditions of this Agreement.

9 **IT IS SO AGREED**

<p>10 Dated: January __, 2015</p> <p>11 _____</p> <p>12 Plaintiff John Moore</p>	<p>10 Dated: January <u>28</u>, 2015</p> <p>11 </p> <p>12 Ron Bloom</p> <p>13 Ace Product Management Group, Inc.</p>
<p>14 Dated: January __, 2015</p> <p>15 _____</p> <p>16 Bruce Mitchell, General Counsel</p> <p>17 Gibson Brands, Inc. fka Gibson</p> <p>18 Guitar Corp.</p>	

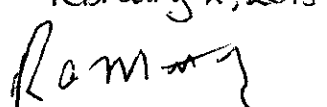
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8 conditions of this Agreement.

9 **IT IS SO AGREED**

<p>10 Dated: January __, 2015</p> <p>11</p> <p>12 _____</p> <p>13 Plaintiff John Moore</p>	<p>Dated: January __, 2015</p> <p>14</p> <p>15 _____</p> <p>16 Ron Bloom Ace Product Management Group, Inc.</p>
<p>17 Dated: February 2, 2015</p> <p>18 </p> <p>19 _____</p> <p>20 Bruce Mitchell, General Counsel Gibson Brands, Inc. fka Gibson Guitar Corp.</p>	

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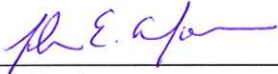
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7 behalf of their respective Parties and have read, understood, and agree to all of the terms and  
8 conditions of this Agreement.

9 **IT IS SO AGREED**

<p>10 Dated: <del>January</del> <u>4</u>, 2015 <i>FEBRUARY</i></p> <p>11 </p> <p>12 _____ 13 Plaintiff John Moore</p>	<p>Dated: January __, 2015</p> <p>_____</p> <p>Ron Bloom Ace Product Management Group, Inc.</p>
<p>14</p> <p>15 Dated: January __, 2015</p> <p>16 _____</p> <p>17 Bruce Mitchell, General Counsel 18 Gibson Brands, Inc. fka Gibson Guitar Corp.</p>	

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