

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 The Parties**

This Settlement Agreement is hereby entered into by and between Evelyn Wimberley acting on behalf of the public interest (hereinafter “Wimberley”) and A&J Manufacturing, LLC (hereinafter “A&J”), with Wimberley and A&J collectively referred to as the “Parties” and each of them as a “Party.” Wimberley is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. A&J employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

#### **1.2 Allegations and Representations**

(a) Wimberley alleges that A&J has offered for sale in the State of California and that A&J’s customers, Sport Chalet, Inc (“Sport Chalet”) among others, have sold in California, Char-Grillers that when used as intended produce combustion byproducts carbon monoxide and soot, and that such sales have not been accompanied by Proposition 65 warnings. Carbon monoxide and soot are listed under Proposition 65 as chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. Wimberley has cited UPC3077251000 as a specific example of the Char-Griller portable charcoal grills that are the subject of her allegations.

(b) For purposes of this Settlement Agreement only, Char Griller represents that: 1) UPC3077251000 is marketed as a portable charcoal grill item manufactured by A&J Manufacturing, LLC. (“Producers”) and distributed to Sport Chalet and others; and 2) Producers had no reason to believe that the item required warnings under Prop 65 for carbon monoxide and soot until receiving Wimberley’s Notice June 30, 2015 and Amended Notice September 4, 2015.

(c) Producers deny the material, factual and legal allegations contained in the Notices, and maintain that all products sold, distributed or offered for sale in California have been and are

in compliance with all laws, including, without limitation, Proposition 65.

(d) The Parties enter into this Settlement Agreement to resolve all Proposition 65 claims concerning Producers' products set forth in Wimberley's Notice, including claims against Producers' customers, including Sport Chalet who received the Notice alleging violations of Proposition 65 resulting from their distribution and/or sale of Producers' products in California.

### **1.3 Covered Items**

The products that are covered by this Settlement Agreement are defined Char-Griller portable charcoal grills, UPC3077251000. All such portable charcoal grills shall be referred to herein as the "Products."

### **1.4 Notice of Violation**

On or about June 30, 2015 (amended September 4, 2015), Wimberley served Producers, Sport Chalet, and all public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Producers, Sport Chalet, and such public enforcers with notice that alleged that Producers and Sport Chalet were in alleged violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to Carbon monoxide and soot. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time relative to the provision of the Notice to them by Wimberley.

### **1.5 No Admission**

Producers deny the material allegations contained in Wimberley's Notice and complaint and maintain that it has not violated Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Producers of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Producers of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Producers. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Producers under this Settlement Agreement.

## **1.6 Execution Date**

1.6.1 For purposes of this Settlement Agreement, the term "Execution Date" shall mean the date this Settlement Agreement is fully executed.

1.6.2 For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date that Prop 65 warnings shall be implemented pursuant to Article 2.

## **2. COMPLIANCE**

**2.1 Warning Option.** The Products shall be deemed to comply with Proposition 65 with regard to carbon monoxide and soot and be exempt from any Proposition 65 warning requirements for carbon monoxide and soot if the Products are labeled with the following: "WARNING: Chemicals known to the state of California to cause cancer, birth defects or other reproductive harm are created by the combustion of propane, charcoal, or other wood products."

**2.2** No later than 60 days after the Execution Date, Products shipped by Producers for sale in California shall display the warning provided pursuant to Section 2.1 on the packaging for the Products with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual prior to sale. ("Effective Date"). A warning shall not be required on Products shipped by Producers before the Effective Date.

## **3. REIMBURSEMENT OF FEES AND COSTS**

3.1 The Parties reached an accord on the compensation due to Wimberley and her counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Producers shall reimburse Wimberley's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Producers's attention, and negotiating a settlement in the public interest. Producers shall pay Wimberley's counsel \$20,000.00 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. Producers shall provide said monies to the "Law Offices of Stephen Ure, PC" (tax identification number 42-1641673) no later than five (5) days following the Execution Date. The payment shall be delivered by overnight delivery service. The Law Offices of Stephen Ure, PC will provide

Producers with tax identification information for itself and Wimberley prior to the Execution Date. Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

3.2 Time is of the essence with regard to the receipt of payments specified in Article 3 and 4 herein. If payments are not made as agreed this agreement shall, in its entirety, be null and void.

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

##### **4.1 Release of Producers and Downstream Customers**

Wimberley, on behalf of herself, releases Producers and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Sport Chalet), franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on exposure to Carbon monoxide and soot from use of the Products as set forth in her Notice of Violation. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to Carbon monoxide and soot from use of the Products.

In addition to the foregoing, Wimberley, on behalf of herself, her past and current agents, representatives, attorneys, and successors and/or assignees, and not in her representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases any other Claims that she could make against Producers or its Releasees arising up to the Effective Date as such claims relate to the alleged failure to warn with respect to the Products under Health & Safety Code Section 25249.6.

##### **4.2 A&J's Release of Wimberley**

Producers waive any and all claims against Wimberley, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been

taken or made) by Wimberley and her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

## **5. SEVERABILITY AND MERGER**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this document are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

## **6. GOVERNING LAW**

6.1 This Settlement Agreement shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws in force in the State of California, USA without regard to conflicts of law principles and Producers hereby irrevocably consent to personal jurisdiction and exclusive venue in San Diego Superior Court to resolve any disputes hereunder; and hereby appointing the pertinent Secretary of State or other applicable government authority as agent for receiving service of process. This Settlement Agreement resolves any issue, now or in the future, with the requirements of Proposition 65 with respect to alleged exposures to carbon monoxide and soot arising from use of the Products. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Producers shall provide written notice to Wimberley of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

6.2 This Settlement Agreement shall apply to and be binding upon Wimberley and Producers, its divisions, subdivisions, and subsidiaries, if any, and the Parties' successors and assigns.

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

## 7. **NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the other Party at the following addresses:

For Char-Griller:  
Mr. John Simms, Owner  
PO Box 30864  
Sea Island, GA 31561

For:  
A&J Manufacturing LLC  
2465 Demere Road # 210  
Saint Simons Island, GA 31522

With a copy to:

Gary J. Smith  
Beveridge & Diamond PC  
456 Montgomery Street, Suite 1800  
San Francisco, CA 94104

and

For Wimberley:

Stephen Ure  
Law Offices of Stephen Ure, PC.  
11622 El Camino Real, Suite 100  
San Diego, California 92130

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

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

The stipulations to this Settlement Agreement may be executed in counterparts and by means of facsimile and/or portable document format (pdf), which taken together shall be deemed to constitute one document

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Wimberley agrees to comply with the requirements set forth in California Health & Safety Code §25249.7(f).

**10. MODIFICATION**

This Settlement Agreement may be modified only by further stipulation of the Parties and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

**11. ENFORCEMENT OF SETTLEMENT AGREEMENT**

Either Party may bring an action to enforce the terms of this Settlement Agreement. A Party who unsuccessfully brings or contests an action arising out of this Settlement Agreement shall be required to pay the prevailing Party's reasonable attorney's fees and costs unless the unsuccessful Party has acted with substantial justification. For purposes of this Settlement Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

**12. CONVERSION TO JUDICIAL SETTLEMENT**

This is a private settlement that will not be submitted to a court for approval. Should Producers elect to seek judicial approval of the settlement within 10 years of the Execution Date, the Parties agree to execute a Proposed Consent Judgment with substantially the same terms and to submit the Proposed Consent Judgment to the San Diego Superior Court for approval. The parties agree to negotiate in good faith should the Court require changes to the terms of the Proposed Consent Judgment. If Producers elect to invoke this provision, Producers agree to pay

Wimberley's counsel \$10,000.00 to compensate Wimberley's counsel for the reasonable fees and costs associated with the preparation of a complaint, the Proposed Consent Judgment, a Motion for Approval of Proposed Consent Judgment, and any other papers necessary to support the Court's approval of the Proposed Consent Judgment, and for all other work required to obtain approval of the Court of the Proposed Consent Judgment.

**15. ENTIRE AGREEMENT**

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

**16. AUTHORIZATION**

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

**APPROVED AS TO FORM:**



Dated: December 15, 2015

BEVERIDGE & DIAMOND, PC

By: [Signature]

Gary J. Smith

Attorneys for Defendants,

A&J MANUFACTURING, LLC.

Dated: December 11, 2015

LAW OFFICES OF STEPHEN URE, PC

By: [Signature]

Stephen Ure

Attorneys for Plaintiff,

EVELYN WIMBERLEY

**AGREED TO:**

Date: 12/11/15

Date: 12-15-15

By: [Signature]  
EVELYN WIMBERLEY

By: [Signature]  
A&J Manufacturing, LLC