

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Big Green Egg (“Green Egg”), with Moore and Green Egg each individually referred to as a “Party” and collectively as the “Parties.” Moore is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Moore alleges that Green Egg employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Moore alleges that Green Egg manufactures, sells, and/or distributes for sale in California, vertical poultry roasters containing Lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Moore alleges that Green Egg failed to provide the health hazard warning allegedly required by Proposition 65 for exposure to Lead from vertical poultry roasters.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are vertical poultry roasters containing Lead, including, but not limited to the *Big Green Egg Sittin’ Chicken Ceramic Vertical Chicken Roaster, Item Code: SC/201249, (UPC#0 665719 202149)*, manufactured, sold or distributed for sale in California by Green Egg (“Products”).

### 1.4 Notice of Violation

On or about June 14, 2016, Moore served Green Egg and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Green Egg violated Proposition 65 when it failed to warn its customers and consumers in

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California that its Products expose users to Lead. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

Green Egg denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in California, including the Products subject to Mr. Moore's Notice, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Green Egg of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Green Egg of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Green Egg. However, this Section shall not diminish or otherwise affect Green Egg's obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean February 1, 2017.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

### **Reformulated Products**

Commencing on the Effective Date, and continuing thereafter, Green Egg shall only purchase for sale, manufacture for sale, import, sell, or distribute for sale in California "Reformulated Products,". For purposes of this Settlement Agreement, "Reformulated Products" are products containing no more than to 90 parts per million ("ppm") lead when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; and (b) yield no more than 1.0 microgram ("ug") of lead when a wipe is applied to all surfaces according

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to NIOSH Test Method No. 9100.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Green Egg agrees to pay \$2,500.00 in civil penalties. On or before December 31, 2016, Green Egg shall pay the civil penalty in the amount of \$2,500.00. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount paid to Moore, and delivered to the address in Section 3.3 herein. Moore will provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of (\$1,875.00) and (b) "John Moore, Client Trust Account" in the amount of (\$625.00).

#### **3.2 Attorneys' Fees and Costs**

The Parties reached an accord on the compensation due to Moore and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Green Egg agrees to pay (\$24,500.00) to Moore and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Green Egg's management, and negotiating a settlement that provides a significant public benefit. Green Egg's payment shall be due on December 31, 2016, and delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group."

#### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to the following address:

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The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

**4. CLAIMS COVERED AND RELEASED**

**4.1 Moore's Release of Green Egg** This Settlement Agreement is a full, final and binding resolution between Moore, as an individual and not on behalf of the public, and Green Egg, of any violation of Proposition 65 that was or could have been asserted by Moore, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees ("Releasers"), and Releasers hereby release any such claims, against Green Egg, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Green Egg directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the failure to warn about alleged exposures to Lead contained in Products manufactured, distributed, sold or offered for sale by Green Egg in California before the date that this Settlement Agreement is fully executed by the Parties.

In further consideration of the promises and agreements herein contained, Moore, as an individual and not on behalf of the public, on his own behalf, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby covenants not to sue and waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including, without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to Lead contained in the Products manufactured, distributed, sold and/or offered for sale by Green Egg before the date that this Settlement



Agreement is fully executed by the Parties. The releases provided by Moore under this Settlement Agreement are provided solely on Moore's behalf and are not releases on behalf of the public.

**4.2 Green Egg's Release of Moore**

Green Egg, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Moore and his attorneys and other representatives, for any and all actions taken or statements made by Moore and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

**5. SEVERABILITY**

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

**6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or otherwise rendered inapplicable by reason of law generally, as to Green Egg specifically as a result of a statutory exemption, or as to the Products, then Green Egg may provide written notice to Moore of any asserted change in the law, or its applicability to Green Egg or the Products, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Green Egg or the Products are so affected.

**7. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a



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recognized overnight courier on any Party by the other at the following addresses:

**Green Egg**  
Andy Arani, President  
The Big Green Egg, Inc  
3786 Dekalb Technology Parkway  
Atlanta, GA 30340

Bruce Nye, Esq.  
ADAMS NYE BRECHT, LLP  
222 Kearny Street, 7<sup>th</sup> Floor  
San Francisco, CA 94108

**Moore**

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

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

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

Moore and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**10. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

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**11. AUTHORIZATION**

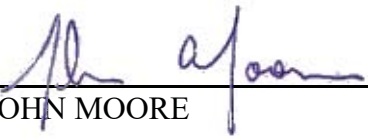
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 12/23/2016

Date: \_\_\_\_\_

By:  \_\_\_\_\_  
JOHN MOORE

By: \_\_\_\_\_  
ANDY ARANI, PRESIDENT  
BIG GREEN EGG, INC.

11. **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 Settlement Agreement.

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
JOHN MOORE

**AGREED TO:**

Date: 29 DECEMBER 2016

By: ARDY   
ANDY ARANI, PRESIDENT  
BIG GREEN EGG, INC.

  
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