

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 The Parties**

This Settlement Agreement is hereby entered into by and between Maureen Parker (“Parker” or “Releasor”) and John Gibson Enterprises, Inc. (“Gibson”) and Ace Hardware Corporation (“Ace”), individually or hereinafter collectively referred to as “Releasees”, with Parker, Gibson and Ace collectively referred to as the “Parties” and each of them as a “Party.” Parker 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.

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

(a) Parker alleges that Releasees are persons in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code § 25249.6 et seq., and that Releasees distributed and sold in California a “Flame Fanner Lighter” that when used as intended allegedly causes combustion byproducts carbon monoxide and soot, and that such sales have not been accompanied by Proposition 65 warnings. Soot is listed under Proposition 65 as a chemical known to the State of California to cause cancer. Carbon Monoxide is listed under Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Parker has cited the Flame Fanner Lighter distributed by Gibson and sold by Ace as one specific example of the Gibson Lighters that are the subject of her allegations.

(c) Gibson and Ace do not admit and in fact deny the material, factual and legal allegations contained in the Notice, 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 pursuant to a full and final settlement of any and all claims between the Parties to resolve all Proposition 65 claims concerning products distributed by and sold by Releasees as set forth in Parker’s Notice,

including any and all claims against Releasee's customers, distributors and retailers, and independent dealers and franchisees including but not limited to Ace who received the Notice alleging violations of Proposition 65 resulting from their distribution and/or sale of Gibson's products in California.

### **1.3 Covered Products**

The product that is covered by this Settlement Agreement is defined as Gibson Flame Fanner Lighters, including but not limited to the items included as Exhibit "A" to this Settlement Agreement. All Gibson Lighters shall be referred to herein as the "Products."

### **1.4 Notice of Violation**

On or about September 17, 2019, Parker served Gibson, ACE Hardware, 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 Gibson, Ace and such public enforcers with notice that alleged that Gibson and Ace 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 Parker.

### **1.5 No Admission**

Releasees deny the material allegations contained in Parker's Notice and complaint and maintain that they have not violated Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Releasees of any fact, finding, issue of law, or violation of law, including without limitation, denying any admission concerning any violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, and/or denying any admission as to the meaning of the terms "knowingly and intentionally expose" or "clear and reasonable warning" as used in Health and Safety Code section 25249.6; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Releasees of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by

Releasees. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Releasees 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 The Products shall be deemed to comply with Proposition 65 with regard to soot and carbon monoxide if the Products from which exposures to soot and carbon monoxide are accompanied by a safe harbor warning in compliance with Proposition 65 regulations then in effect or one of the following Proposition 65 warnings:

- (a) “ **Warning:** Combustion (burning) of this product produces carbon monoxide, soot, and other substances known by the state of California to cause cancer, birth defects or reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”
- (b) “ **WARNING:** This product can expose you to chemicals including carbon monoxide and soot, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”
- (c) “ **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)” (on-product warning).

2.2 Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to carbon monoxide and soot from the Products.



**2.3** For Products sold in or into California, the warning provided pursuant to Section 2.1 shall, within 60 days of the Execution Date (“Effective Date”), be affixed to or prominently displayed on the Product or its packaging or labeling 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. The warning may be contained in the same section that states other safety warnings concerning the use of the product, if any, and shall be at least the same size as those other safety warnings. The above warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date or that Releasees place into the stream of commerce or display for sale within 60 days of the Effective Date.

**3. CIVIL PENALTY & REIMBURSEMENT OF FEES AND COSTS**

3.1 Payment Pursuant to Health & Safety Code Section 25249.7(b). Gibson Shall pay a Civil Penalty of \$500.00 to be apportioned in accordance with California Health & Safety Code Section 25192, with 75% of these funds remitted to the State of California’s Office of Environmental Health Hazard Assessment (CCR Title 11 Div 4-Proposition 65 Private Enforcement) and the remaining 25% of the penalty remitted to Parker, as provided by California Health & Safety Code Section 25249.7.

3.2 Gibson shall pay Parker’s counsel \$17,500.00 on or before December 20, 2019, for attorneys’ fees, expert and investigation fees, and related costs associated with this matter and the Notice and incurred as a result of investigating, bringing this matter to Releasee’s attention, and negotiating a settlement. Gibson shall provide said monies via bank wire to the “Law Offices of Stephen Ure, PC” (tax identification number 42-1641673). The Law Offices of Stephen Ure, PC will provide Gibson with tax identification and bank wire information on the Execution Date. Other than the payment specified hereunder, each side is to bear its own attorneys’ fees and costs.

3.3 Other than payment specified hereunder, each side is to bear its own attorney’s fees or costs. Time is of the essence with regard to the receipt of payments specified in Article 3. 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 Gibson, Ace and Downstream Customers**

Parker, on behalf of herself, releases Gibson, and all entities and persons from whom they obtain and to whom they directly or indirectly distribute or sell the Products, including but not limited to Ace, each of its manufacturers, distributors, marketplace hosts, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, independent dealers, and users, and their respective parent companies, corporate affiliates, subsidiaries, officers, directors, attorneys, representatives, shareholders, agents, successors, and employees, and sister entities (collectively "Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on exposure to soot and carbon monoxide from the Products as set forth herein and in her Notice of Violation.

In addition to the foregoing, Parker, 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, actions, causes of action, demands, rights, suits, liabilities, damages, losses, costs, expenses, and attorney's fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future that she could make against Gibson or the other Releasees relating to the alleged violations of Proposition 65 related to or arising from the Products. With respect to the foregoing waiver and release in this paragraph, Parker hereby specifically waives any and all rights and benefits which she now has, or in the future may have, conferred by virtue of Section 1542 of the California Civil Code, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR 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.**



Parker understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is that even if Parker suffers future damages or claims arising out of or resulting from, or related directly or indirectly to, in whole or in part, claims arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about alleged exposure to carbon monoxide and/or soot from Gibson products, Parker will not be able to make any claims for those damages or injunctive relief against the Releasees. Furthermore, Parker acknowledges that she intends these consequences for any such claims arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about alleged exposure to carbon monoxide and/or soot from Gibson Products as may exist as of the date of this release but which Parker does not know exist, and which, if known, would materially affect her decision to enter into this settlement, regardless of whether her lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

#### **4.2 GIBSON's Release of Parker**

Gibson waives any and all claims against Parker, her attorneys and other representatives, for any and all actions taken or statements made by Parker and her attorneys and other representatives in the course of investigating the claims or otherwise seeking enforcement of Proposition 65 against it in this matter 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.

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## **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. This Settlement Agreement resolves any issue, now or in the future, with the requirements of Proposition 65 with respect to alleged exposures to soot arising from 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, Gibson 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 Parker, Gibson, and Ace, their 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 Gibson:

Thomas J. Norby

Brownson Norby PLLC  
4800Capella Tower  
225 South 6<sup>th</sup> Street  
Minneapolis, MN 55402

and

For Parker:

Stephen Ure, Esq.  
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)**

Parker agrees to promptly 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 written agreement of the Parties.

**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 may be ordered by the court to pay the prevailing Party's reasonable attorney's fees and costs unless the unsuccessful Party has acted with substantial justification. For the purpose 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. 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.

**13. 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 18, 2019

BROWNSON NORBY

By: \_\_\_\_\_  
Thomas J. Norby  
Attorneys for John Gibson Enterprises, Inc

Dated: December 18, 2019

LAW OFFICES OF STEPHEN URE, PC

By: \_\_\_\_\_  
Stephen Ure  
Attorneys for Evelyn Wimberley

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**APPROVED AS TO FORM:**

Dated: December 18, 2019

BROWNSON NORBY

By: \_\_\_\_\_

Thomas J. Norby

Attorneys for John Gibson Enterprises, Inc

*[Handwritten signature]* 12/30/19

Dated: December 18, 2019

LAW OFFICES OF STEPHEN URE, PC

By: \_\_\_\_\_

Stephen Ure

Attorneys for Evelyn Wimberley

**AGREED TO:**

Date: December 18, 2019

Date: December 18, 2019

By: \_\_\_\_\_

By:   
John Gibson  
John Gibson Enterprises, Inc.



**AGREED TO:**

Date: December 18, 2019

By: Maureen Parker  
MAUREEN PARKER

Date: December 18, 2019

By: \_\_\_\_\_  
John Gibson  
John Gibson Enterprises, Inc.