

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is hereby entered into by and between Evelyn Wimberley (“Wimberley”) and Imperial International (“Imperial”). Wimberley and Imperial are collectively referred to as the “Parties” and each of them as a “Party.” Wimberley is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances used in consumer products. Imperial is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”)

1.2 General Allegations

(a) Wimberley alleges that Imperial manufactures, sells, and distributes for sale in the State of California, the “Pittsburgh Steelers Bucket Grill” that when used as intended produces combustion byproducts carbon monoxide and soot, and that such sales have not been accompanied by Proposition 65 warnings alleging exposure to Carbon Monoxide and Soot. The Covered Products have been sold with a warning for exposure to Lead. Carbon Monoxide and Soot are listed under Proposition 65 as chemicals known to the State of California to cause cancer and reproductive harm. Wimberley has cited the “Pittsburgh Steelers Bucket Grill” as a specific example of the Grills that are the subject of her allegations.

(b) Imperial does not admit and denies the material, factual, and legal allegations contained in the Notices, and maintains 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.

(c) The Parties enter into this Settlement Agreement to resolve all Proposition 65 claims concerning the Covered Products (defined below) set forth in Wimberley’s Notice, including claims against manufacturers, distributors, customers, retailers, and affiliates, who allegedly violated Proposition 65 by distributing the Covered Products in California.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as “Bucket Grills” manufactured, distributed, sold, or offered for sale by Imperial in the State of California (“Covered Products”).

1.4 Notice of Violation

On or about June 30, 2020 Wimberley served Imperial, Target Corporation, the National Football League 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 Imperial, Target Corporation, the National Football League and such public enforcers with notice that alleged that Imperial, Target Corporation, and the National Football League were in alleged violation of Proposition 65 for failing to warn consumers and customers that the Covered Products exposed users in California to carbon monoxide and soot. To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting allegations set forth in the Notice.

1.5 No Admission

By execution of this Settlement Agreement, Imperial, and each of its respective affiliates and subsidiaries, parents, directors, officers, agents, employees, attorneys, representatives, shareholders, successors, and assigns and each entity to whom Imperial directly or indirectly distributes or sells the Covered Products, including but not limited to downstream distributors, wholesalers, customers, retailers, marketplace retailers, franchises, cooperative members and licensees (collectively, the “Releasees”) deny the material allegations contained in the Notice and maintains that all of the products that it has sold and distributed in California, including the Covered Products, have and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Releasees 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 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 Imperial under this Settlement Agreement.

1.6 Effective Date

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

2. INJUNCTIVE RELIEF: WARNINGS

No later than ninety (90) days after the Effective Date, and continuing thereafter, Covered Products that Imperial directly manufactures, imports, distributes, sells or offers for sale in California shall be (a) labeled in compliance with California Code of Regulations, Title 27, Article 6, Clear and Reasonable Warning Requirements § 25601-25603 (see also: www.P65Warnings.ca.gov.) or (b) discontinued for sale in California. Covered Products that are in the stream of commerce and were manufactured, packed, or labeled prior to 90 days after the Effective Date shall be permitted to be sold as previously manufactured, packed or labeled.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health & Safety Code Section 25249.7(b)(2), and in settlement of certain claims alleged in the Notice or referred to in this Settlement Agreement, Imperial agrees to pay a Civil Penalty of \$50.00. The penalty payment will be allocated in accordance with California Health & Safety Code Section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Wimberley. Wimberley's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

3.2 Attorneys' Fees and Costs

The Parties reached an accord on the compensation due to Wimberley's counsel under general contract principals and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for work performed in this matter. Under these legal principles, Imperial agrees to pay Wimberley's counsel \$2,350.00 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

3.3 Payment Information

On the Effective date, The Law Offices of Stephen Ure, PC shall provide Imperial with an IRS W-9 form for The Law Offices of Stephen Ure, PC within fourteen business (14) days of the Effective Date, Imperial shall send monies in the amount of (\$2,400) via bank wire to the "Law Offices of Stephen Ure, PC" (tax identification number 42-1641673).

The Law Offices of Stephen Ure, PC shall then distribute the civil penalty payments to OEHHA and Wimberley, in the amounts of (\$37.50) and (\$12.50), respectively. The Law Offices of Stephen Ure, PC shall be responsible for delivering OEHHA's portion of any penalty made under this Settlement Agreement and Imperial assumes no responsibility or liability for ensuring these payments are made by The Law Offices of Stephen Ure, PC

3.4 Other than the payment specified herein, each side is to bear its own attorneys' fees and costs.

4. CLAIMS COVERED AND RELEASED

4.1 Release of Imperial and Downstream Customers and Upstream Vendors Involved in the Sale of The Covered Products.

In further consideration of the promises and agreements contained in this Settlement Agreement, and for the payments to be made pursuant to Section 3 above, Wimberley, in her representative capacity, and acting on her own behalf, and on behalf of her past and current agents, representatives, attorneys, successors and/or assigns, hereby, and *not* on behalf of the public, waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims related to the Covered Products, including, without limitation, all causes of action, in law or equity, suits, liabilities, demands, obligations, damages, costs, fines penalties, losses or expenses (including but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively, "Claims"), against Imperial, Target Corporation and the National Football League, their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity whom Imperial, Target Corporation and the National Football League directly or indirectly distributes or sells Covered Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative

members, importers, and licensees and upstream vendors involved in the sale of products (collectively, "Released Parties").

4.2 Wimberley's Individual Release of Claims

Wimberley, in her individual capacity and on behalf of herself, her past and current agents, representatives, attorneys, and successors and/or assignees, and *not* in her representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all claims against Imperial and the Released Parties with regard to the Covered Products. Wimberley acknowledges that she is familiar with California Civil Code section 1542, which provides as follows:

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.

Wimberley, in her individual capacity and on behalf of herself, her past and current agents, representatives, attorneys, and successors and/or assignees, expressly waives and relinquishes any and all rights and benefits which she may have under, or which may be conferred by virtue of Section 1542 of the California Civil Code, as well as under any state or federal statute or common law principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to the released matters.

4.3 Imperial Release of Wimberley

Imperial, 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 Wimberley and 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 representative, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products.

5. SEVERABILITY

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

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 carbon monoxide and soot arising from the Covered Products. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then Imperial shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected.

6.2 This Settlement Agreement shall apply to and be binding upon Wimberley and Imperial, 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 delivered or sent by email and: (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 Imperial:

David Barnes
621 US-46
Hasbrouck, NJ 07604

With a copy, that shall not constitute notice, to:

Anne Marie Ellis, Esq.
Buchalter 18400 Von Karman Avenue: Suite 800
Irvine, CA 92612
aellis@buchalter.com

For Wimberley:

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)

Wimberley 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. 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.

12. 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:

WIMBERLEY:


EVELYN WIMBERLEY, an individual

IMPERIAL:

By: 

Name: David G Barnes

Its: Licensed Brand Manager