

1 Clifford A. Chanler, State Bar No. 135534
Gregory M. Sheffer, State Bar No. 173124
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

3 Where it is impracticable to provide the warning on the same page and in the same
4 location as the display and/or description of the Covered Product, Ace may utilize a designated
5 symbol to cross reference the applicable warning and shall define the term “designated symbol”
6 with the following language on the inside of the front or back cover of the catalog or on the same
7 page as any order form for the Covered Product(s):

8 **WARNING:** Certain products identified with this
9 symbol ▼ and offered for sale in this
10 catalog contain DEHP, a chemical known
 to the State of California to cause birth
 defects and other reproductive harm.

11 The designated symbol must appear on the same page and in close proximity to the
12 display and/or description of the Covered Product. On each page where the designated symbol
13 appears, Settling Defendants must provide a header or footer directing the consumer to the
14 warning language and definition of the designated symbol.

15 If Ace elects to provide warnings in any mail order catalog, then the warnings must be
16 included in all catalogs offering to sell one or more Covered Products printed after the Effective
17 Date.

18 (ii) **Internet Website Warning.** Ace shall give a warning in
19 conjunction with the sale of any Covered Products via the Internet, provided it appears either:
20 (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as
21 the order form for a Covered Product; (c) on the same page as the price for any Covered Product;
22 or (d) on one or more web pages displayed to a purchaser during the checkout process. The
23 following warning statement shall be used and shall appear in any of the above instances
24 adjacent to or immediately following the display, description, or price of the Covered Product
25 for which it is given in the same type size or larger than the Covered Product description text:

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

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

27
28

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.
26
27
28


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>	

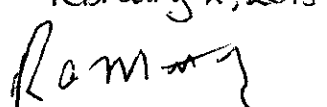
1 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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 _____</p> <p>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: February 2, 2015</p> <p>16 </p> <p>17 _____</p> <p>18 Bruce Mitchell, General Counsel Gibson Brands, Inc. fka Gibson Guitar Corp.</p>	

19
20
21
22
23
24
25
26
27
28

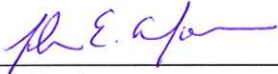
1 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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 <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>	

19
20
21
22
23
24
25
26
27
28