

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into as of June 25, 2014 (the “Effective Date”), by and between (a) Thermapure, Inc. (“Thermapure”), (b) Restoration Industry Association, Inc. (“RIA”), (c) Water Out Oregon and Water Out of Oregon, Inc. (collectively “Water Out Oregon”), and (d) Just Right Cleaning and Construction, Inc. (“Just Right”). Thermapure, RIA, Water Out Oregon, and Just Right are collectively referred to as the Parties.

WHEREAS, the RIA represents that it is a trade association representing approximately 20,000 cleaning and restoration professionals from approximately 1,100 member firms (“RIA Members”).

WHEREAS, the RIA filed the action of *Restoration Industry Association, Inc. v. Thermapure Inc.*, Case No. 2:13-cv-01369 JVS (RZx) asserting in its Third Amended Complaint a cause of action seeking a Declaratory Judgment of Invalidity of U.S. Patent No. 6,327,812 (the “’812 Patent”) contending that the ‘812 Patent is invalid and unenforceable (“RIA Action”).

WHEREAS, Thermapure filed the action of *Thermapure v. Water Out Oregon*, Case No: 11-cv-05958-BHS (W.D. Wash.), now consolidated as Case No. 2:13-cv-04052 (“Water Out Action”) against Water Out Oregon for infringement of the ‘812 Patent;

WHEREAS, Water Out Oregon filed a counterclaims in the Water Out Action for a Declaratory Judgment of Non-Infringement and Invalidity of the ‘812 Patent;

WHEREAS, Thermapure filed the action of *Thermapure v. Just Right*, Case No: 11-cv-00431-RHW (E.D. Wash.), now consolidated as Case No. 2:13-cv-08523-JVS-RZ (“Just Right Action”) for infringement of the ‘812 Patent (“Just Right Action”);

WHEREAS, Just Right filed counterclaims in the Just Right Action for a Declaratory Judgment of Non-Infringement and Invalidity of the '812 Patent.

NOW, THEREFORE, in consideration of the foregoing Recitals and of the mutual agreements, covenants and releases set forth herein, and for other good and valuable consideration, the sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

1. Covenant Not To Sue: Thermapure covenants not to sue any RIA Member in good standing for infringement of the '812 patent where that member does not heat ambient air inside a structure to a temperature in excess of 105 degrees. This agreement does not constitute an admission by Thermapure that the '812 patent contains a temperature limitation. Thermapure, on behalf of itself, TPE Associates LLC, and E-Therm, Inc., represents and warrants that it has the full authority to grant this covenant and that, as of the Effective Date, Thermapure has not assigned the right to sue for infringement of the '812 Patent.

2. Best Practices/Advertising: The RIA agrees to distribute to its members and make available on its website best practices and educational materials for guidance that its members should: [1] measure ambient air temperature inside a structure, [2] maintain temperature records for at least two years, [3] contact Thermapure for licensing information for use of temperatures in excess of 105 degrees, and [4] refrain from advertising the sanitization of structures using heat without the consent of Thermapure.

3. Website: The RIA will incorporate on the main page of its website a link to webpages containing the foregoing information and all information relating to the settlement,

best practices for temperature measurement and record keeping and services offered by Thermapure.

4. Defense/Indemnity of RIA Members: RIA agrees not to defend or indemnify any RIA member from any suit for infringement of the '812 patent where that member heats ambient air inside a structure to a temperature in excess of 105 degrees.

5. Notice of Infringement: If RIA receives notice from Thermapure that one of its members infringes, RIA agrees to convene a three member panel to request temperature records from that member for prior two years and to provide those records to Thermapure.

6. Stipulation of Validity of '812 Patent: The RIA, Just Right, and Water Out Oregon will execute a stipulation that the '812 patent is valid and dismissal of all claims with prejudice, a copy of which is attached as Exhibit 1.

7. Dismissal of Water Out Oregon and Just Right: Water Out Oregon and Just Right represent and warrant they have never heated ambient air inside a structure to in excess of 105 degrees. Subject to that representation being accurate, Thermapure releases Just Right and Water Out Oregon from past infringement and will dismiss the Water Out Oregon and Just Right actions with prejudice. Thermapure, on behalf of itself, TPE Associates LLC, and E-Therm, Inc., represents and warrants that it has the full authority to grant this release and that, as of the Effective Date, Thermapure has not assigned the right to sue for infringement of the '812 Patent.

8. Press Release: All consolidated parties to issue mutually agreeable press release.

9. Non Disparagement Agreement: The Parties agree not to make any statement disparaging any other party regarding the matters pertaining to the above referenced lawsuits.
10. Thermapure webinar: The RIA will maintain a Thermapure webinar on its website subject to content approval by RIA which will not be unreasonably withheld.
11. RIA Webinar: RIA may maintain a webinar on its website regarding the '812 Patent subject to content approval by Thermapure which will not be unreasonably withheld.
12. Cleaning and Restoration Articles. RIA will publish in the next twelve months in the RIA Cleaning & Restoration Magazine three articles not to exceed four pages each, authored by David Hedman, and approved by the RIA, which approval is not to be unreasonably withheld.
13. Thermapure Exhibit Booth: Thermapure shall be permitted to have an exhibit booth at no charge for three years at the RIA annual conventions. After three years, Thermapure shall be permitted to have a booth at then prevailing rates.
14. Removal of Website References: All current references to Thermapure shall be immediately removed from the RIA website, including the videos.
15. Retention of Jurisdiction: The Court shall retain jurisdiction to enforce the terms of this Agreement.
16. Entire Agreement: This Agreement contains the entire agreement of the parties hereto pertaining to settlement and releases herein. This Agreement supersedes all prior drafts, agreements, understandings and/or discussions between the parties hereto pertaining to the

subject matter hereof, and no change in, modification of, or addition, amendment or supplement hereto shall be valid unless set forth in writing signed by each of the parties hereto following the signing of this Agreement.

17. Consultation With Counsel: The Parties have each consulted with, or have had the opportunity to consult with, an attorney of their own choosing, and each of them has carefully read this Agreement, fully understands this Agreement and all of its terms and provisions, and each of them is relying upon legal advice in entering into this Agreement voluntarily, free from coercion or duress;

18. Drafting: Each party acknowledges that it has participated in the drafting of this Agreement and reviewed the terms of this Agreement and as such, no rule of construction shall apply in any interpretation of this Agreement which might result in this Agreement being construed in favor of or against any of them, including without limitation, any rule of construction to the effect that ambiguities ought to be resolved against the drafting party;

19. Representations: Except for the statements, representations and promises contained in this Agreement, the Parties are not relying upon any statements, representations, or promises from or by the other Party or Parties, or any of the other Party's respective agents, employees, representatives or attorneys in entering into this Agreement; and

20. Final Agreement: As to the matters addressed herein, this Agreement is intended to be final and binding upon the Parties, regardless of any mistake of fact or law made by the Parties. The Parties each assume the risk of any mistake of fact or law in relation to this

Agreement and may not set aside this Agreement, or any portion thereof, based on the subsequent discovery of any such mistake of fact or law.

21. Counterparts: This Agreement may be executed in counterparts and transmitted by facsimile signatures or scanned pdf via email, with the same force and effect as if all original signatures were set forth in a single document. This Agreement shall not be binding until executed by all of the parties hereto.

22. Further Assurances: Each of the Parties agrees, on the request of another party hereto, to perform all acts reasonably necessary, including execution of further documents, to effectuate the intent of this Agreement. Further, the Parties shall promptly execute and deliver such additional and further documents, and take such additional and further actions, as may be necessary to effectuate this Agreement.

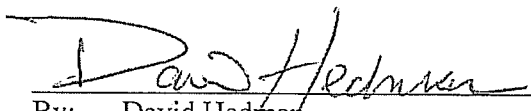
23. Authority: Each signatory hereto represents and warrants: (i) that he/she has the full power and authority to execute, deliver, and perform this Agreement and each instrument, document, exhibit, transaction and attachment hereto on behalf of the party on whose behalf he purports to act; and (ii) that execution and delivery of this Agreement gives rise to a valid agreement that binds and inures to the benefit of the party on whose behalf he purports to act.

**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be duly executed as of the dates set forth below.

THERMAPURE, INC.

Dated: 7/8/14

  
By: David Hedman  
Its: President

RESTORATION INDUSTRY ASSOCIATION,  
INC.

Dated: \_\_\_\_\_

By: Scott Stamper  
Its: President

JUST RIGHT CLEANING AND  
CONSTRUCTION, INC.

Dated: \_\_\_\_\_

By: Ben Justesen  
Its: President

WATER OUT OREGON AND WATER OUT  
OREGON, INC.

Dated: \_\_\_\_\_

By: Felix Herrada III  
Its: President

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be duly executed as of the dates set forth below.


THERMAPURE, INC.

Dated: \_\_\_\_\_

By: David Hedman  
Its: President

RESTORATION INDUSTRY ASSOCIATION,  
INC.

Dated: July 7, 2014



By: Scott Stamper  
Its: President

JUST RIGHT CLEANING AND  
CONSTRUCTION, INC.

Dated: \_\_\_\_\_

By: Ben Justesen  
Its: President

WATER OUT OREGON AND WATER OUT  
OREGON, INC.

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RESTORATION INDUSTRY ASSOCIATION,  
INC.

Dated: \_\_\_\_\_

By: Scott Stamper  
Its: President

JUST RIGHT CLEANING AND  
CONSTRUCTION, INC.

Dated: 7/7/14

  
By: Ben Justesen  
Its: President

WATER OUT OREGON AND WATER OUT  
OREGON, INC.

Dated: \_\_\_\_\_

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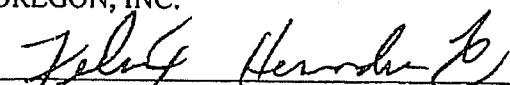
JUST RIGHT CLEANING AND  
CONSTRUCTION, INC.

Dated: \_\_\_\_\_

By: Ben Justesen  
Its: President

WATER OUT OREGON AND WATER OUT  
OREGON, INC.

Dated: 7/7/14

  
By: Felix Herrada III  
Its: President

# **EXHIBIT 1**

1 KNEAFSEY & FRIEND LLP  
2 Sean M. Kneafsey (SBN 180863)  
3 [skneafsey@kneafseyfriend.com](mailto:skneafsey@kneafseyfriend.com)  
4 800 Wilshire Blvd., Suite 710  
5 Los Angeles, CA 90017  
6 Tel: (213) 892-1200  
7 Fax: (213) 892-1208

8 *Attorney for Thermapure, Inc.*

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION

12 RESOTRATION INDUSTRY  
13 ASSOCIATION, INC.,

14 Plaintiff,

15 v.

16 THERMAPURE, INC,

17 Defendant.

Case No. 2:13-cv-03169-JVS-RZ

Consolidated with  
2:13-cv-04052-JVS-RZ and 2:13-  
cv-08523-JVS-RZ

**STIPULATION RE VALIDITY OF  
'812 PATENT AND DISMISSAL  
OF ACTION**

18 AND RELATED ACTIONS

Date: July 28, 2014  
Time; 1:30 p.m.  
Courtroom No.: 10C

20  
21 WHEREAS, the Restoration Industry Association, Inc., ("RIA") filed the  
22 action of *Restoration Industry Association, Inc. v. Thermapure Inc.*, Case No. 2:13-  
23 cv-01369 JVS (RZx) asserting in its Third Amended Complaint a cause of action  
24 seeking a Declaratory Judgment of Invalidity of U.S. Patent No. 6,327,812 (the  
25 "'812 Patent") contending that the '812 Patent is invalid and unenforceable.

26 WHEREAS, Thermapure filed the action of *Thermapure v. Water Out*  
27 *Oregon*, Case No: 11-cv-05958-BHS (W.D. Wash.), now consolidated as Case No.  
28

1 2:13-cv-04052 (“Water Out Action”) against Water Out Oregon and Water Out of  
2 Oregon, Inc. (collectively “Water Out Oregon”) for infringement of the ‘812 Patent;

3 WHEREAS, Water Out Oregon filed a counterclaims in the Water Out Action  
4 for a Declaratory Judgment of Non-Infringement and Invalidity of the ‘812 Patent;

5 WHEREAS, Thermapure filed the action of *Thermapure v. Just Right*, Case  
6 No: 11-cv-00431-RHW (E.D. Wash.), now consolidated as Case No. 2:13-cv-  
7 08523-JVS-RZ (“Just Right Action”) for infringement of the ‘812 Patent (“Just  
8 Right Action”);

9 WHEREAS, Just Right Cleaning and Construction, Inc. (“Just Right”) filed  
10 counterclaims in the Just Right Action for a Declaratory Judgment of Non-  
11 Infringement and Invalidity of the ‘812 Patent.

12 WHEREAS, the RIA, Thermapure, Water Out Oregon, and Just Right  
13 (collectively the “Parties”) have entered into a Settlement Agreement  
14 (“Agreement”) dated June 25, 2014;

15 WHEREAS, the Agreement provides that the Parties enter into this  
16 stipulation.

17 WHEREFORE, THE PARTIES HEREBY STIPULATE AS FOLLOWS:

18 1. The Restoration Industry Association stipulates and agrees that the U.S.  
19 Patent No. 6,327,812 is valid.

20 2. The Restoration Industry Association stipulates and agrees to a  
21 dismissal of its Third Amended Complaint for Declaratory Judgment of Invalidity of  
22 U.S. Patent No. 6,327,812 with prejudice.

23 3. Water Out Oregon and Water Out of Oregon, Inc., represent and  
24 warrant that they have never heated ambient air inside a structure to in excess of 105  
25 degrees. Subject to that representation being accurate, although Thermapure  
26 contends that this is not a claim limitation, Thermapure agrees to a dismissal of its  
27 Complaint for Infringement of U.S. Patent No. 6,327,812 with prejudice.  
28

1           4.     Thermasure covenants and stipulates not to sue any RIA Member in  
2 good standing for infringement of the '812 patent where that member does not heat  
3 ambient air inside a structure to a temperature in excess of 105 degrees. This  
4 stipulation does not constitute an admission by Thermasure that the '812 patent  
5 contains a temperature limitation. Thermasure, on behalf of itself, TPE Associates  
6 LLC, and E-Therm, Inc., represents and warrants that it has the full authority to  
7 grant this covenant and that as of the date of this stipulation has not assigned the  
8 right to sue for infringement of the '812 Patent.

9           5.     Water Out Oregon and Water Out of Oregon, Inc. stipulate and agree  
10 that the U.S. Patent No. 6,327,812 is valid and stipulate and agree to a dismissal of  
11 counterclaims for Declaratory Judgment of Non-Infringement and Invalidity of U.S.  
12 Patent No. 6,327,812 with prejudice.

13           6.     Just Right Cleaning and Construction, Inc. represents and warrants that  
14 it has never heated ambient air inside a structure to in excess of 105 degrees.  
15 Subject to that representation being accurate, although Thermasure contends that  
16 this is not a claim limitation, Thermasure agrees to dismissal of its Complaint for  
17 Infringement of U.S. Patent No. 6,327,812 with prejudice Thermasure, on behalf of  
18 itself, TPE Associates LLC, and E-Therm, Inc., represents and warrants that it has  
19 the full authority to grant this release and that as of the date of this stipulation has  
20 not assigned the right to sue for infringement of the '812 Patent.

21           7.     Just Right Cleaning and Construction, Inc. stipulates and agrees that the  
22 U.S. Patent No. 6,327,812 is valid and stipulates and agrees to a dismissal of  
23 counterclaims for Declaratory Judgment of Non-Infringement and Invalidity of U.S.  
24 Patent No. 6,327,812 with prejudice.

25           8.     The Parties stipulate that the Court retain jurisdiction to enforce the  
26 terms of the Agreement.

27  
28 SO STIPULATED

1 DATED: July 7, 2014

FOSTER PEPPER LLP

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*/s/ Joel Ard*

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By: Joel Ard  
Attorneys for Restoration Industry Association, Inc.,  
Water Out Oregon, Water Out of Oregon, Inc., and  
Just Right Cleaning and Construction, Inc.

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7 DATED: July 7, 2014

KNEAFSEY & FRIEND LLP

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*/s/ Sean M. Kneafsey*

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By: Sean M. Kneafsey  
Attorneys for ThermaPure, Inc.

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