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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

ORDER OF DISMISSAL

18 AND RELATED ACTIONS

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

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

25 WHEREAS, Thermapure filed the action of *Thermapure v. Water Out*
26 *Oregon*, Case No: 11-cv-05958-BHS (W.D. Wash.), now consolidated as Case No.
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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 Restoration Industry Association has stipulated and agreed
16 that the U.S. Patent No. 6,327,812 is valid.

17 WHEREAS, the Restoration Industry Association has stipulated and agreed to
18 a dismissal of its Third Amended Complaint for Declaratory Judgment of Invalidity
19 of U.S. Patent No. 6,327,812 with prejudice.

20 WHEREAS, Thermapure has covenanted and stipulated not to sue any RIA
21 Member in good standing for infringement of the ‘812 patent where that member
22 does not heat ambient air inside a structure to a temperature in excess of 105
23 degrees.

24 WHEREAS, Thermapure’s stipulation does not constitute an admission the
25 ‘812 patent contains a temperature limitation.

26 WHEREAS, Thermapure, on behalf of itself, TPE Associates LLC, and E-
27 Therm, Inc., represents and warrants that it has the full authority to grant this
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1 covenant and that as of the date of this stipulation has not assigned the right to sue
2 for infringement of the '812 Patent.

3 WHEREAS, Water Out Oregon and Water Out of Oregon, Inc., have
4 represented and warranted that they have never heated ambient air inside a structure
5 to in excess of 105 degrees.

6 WHEREAS, although Thermapure contends that this is not a claim limitation,
7 subject to that representation being accurate, Thermapure agrees to a dismissal of its
8 Complaint against Water Out Oregon for Infringement of U.S. Patent No. 6,327,812
9 with prejudice.

10 WHEREAS, Water Out Oregon and Water Out Oregon, Inc. have stipulated
11 and agreed that the U.S. Patent No. 6,327,812 is valid and have stipulated and
12 agreed to a dismissal of counterclaims for Declaratory Judgment of Non-
13 Infringement and Invalidity of U.S. Patent No. 6,327,812 with prejudice.

14 WHEREAS, Just Right Cleaning and Construction, Inc. has represented and
15 warranted that it has never heated ambient air inside a structure to in excess of 105
16 degrees.

17 WHEREAS, although Thermapure contends that this is not a claim limitation,
18 subject to the foregoing representation being accurate, Thermapure agrees to
19 dismissal of its Complaint against Just Right for Infringement of U.S. Patent No.
20 6,327,812 with prejudice.

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

25 WHEREAS, The Parties have stipulated that the Court retain jurisdiction to
26 enforce the terms of the Agreement.

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1 IT IS HEREBY ORDERED AS FOLLOWS:

2 1. The Restoration Industry Association's Third Amended Complaint for
3 Declaratory Judgment of Invalidity of U.S. Patent No. 6,327,812 is dismissed with
4 prejudice.

5 2. Subject to the accuracy of representation and warranty of Water Out
6 Oregon and Water Out Oregon, Inc., that they have never heated ambient air inside
7 a structure to in excess of 105 degrees, Thermapure's Complaint against Water Out
8 Oregon for Infringement of U.S. Patent No. 6,327,812 is dismissed with prejudice.

9 3. Water Out Oregon's and Water Out of Oregon, Inc.'s counterclaims for
10 Declaratory Judgment of Non-Infringement and Invalidity of U.S. Patent No.
11 6,327,812 are dismissed with prejudice.

12 4. Subject to the accuracy of representation and warranty of Just Right
13 Cleaning and Construction Inc. that it has never heated ambient air inside a structure
14 to in excess of 105 degrees, Thermapure's Complaint against Just Right for
15 Infringement of U.S. Patent No. 6,327,812 is dismissed with prejudice.

16 5. Just Right Cleaning and Construction, Inc.'s counterclaims for
17 Declaratory Judgment of Non-Infringement and Invalidity of U.S. Patent No.
18 6,327,812 are dismissed with prejudice.

19 6. The Court retains jurisdiction over this matter to enforce the terms of
20 the Agreement.



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22 DATED: July 08, 2014

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The Hon. James V. Selna
United States District Judge