

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Consumer Advocacy Group, Inc. & Remington Industries, Inc.

This Settlement Agreement is entered into by and between, Consumer Advocacy Group, Inc. (“CAG” or “Plaintiff”) and Remington Industries, Inc. (“Remington”), with CAG and Remington collectively referred to as the “Parties.” CAG seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Remington employs ten or more persons and 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 sections 25249.5 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

CAG alleges that Remington has manufactured, distributed and/or sold in the State of California, without the requisite warnings allegedly required by Proposition 65, floor mats containing lead. Lead is listed as both a carcinogen and reproductive and developmental toxicant under Proposition 65. (Lead shall be referred to herein as the “Listed Chemical.”)

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as floor mats manufactured, imported, and/or distributed by Remington (“Products”), whether sold in its own name or in the names of others from whom it licenses or for whom it private labels.

#### **1.4 Notice of Violation**

On or about July 23, 2010, CAG served Remington and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Remington and such public enforcers with notice that alleged that Remington was in violation of California Health and Safety Code section 25249.6 for failing to warn consumers and customers that the Products exposed users in California to lead. No public enforcer has filed suit on or otherwise diligently prosecuted the allegations set forth in the Notice.

#### **1.5 No Admission**

Remington denies the material factual and legal allegations contained in the Notice and maintains that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Remington of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Remington of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Remington. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Remington under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean thirty (30) days following the date this Settlement Agreement is fully executed by the Parties.

**2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

**2.1 Reformulation Standards and Commitment**

As of the Effective Date, Remington shall only distribute or sell in California, or cause to be distributed for sale in California, Products that are Reformulated, as further defined below, or which contain the Proposition 65 warning required pursuant to Section 2.2 below. For purposes of this Settlement Agreement, “Reformulated” shall mean Products containing less than 100 parts per million (“ppm”) lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance.

**2.2 Product Warnings**

As provided in Section 2.1 above, unless Products are Reformulated, they shall, as of the Effective Date, only be shipped with the clear and reasonable warnings as set out in Section 2.3 below. Any warning issued for the Products pursuant to Section 2.3 shall be prominently placed with such conspicuousness as compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use, such as by being placed adjacent to other on-package warnings, use and care instructions, or near the UPC code for the Product.

**2.3 Warning Statement/Method**

Remington shall, if applicable, perform its warning obligation under Section 2.2 above by affixing a warning to, or by printing a warning on, the packaging of, or, if no packaging exists, directly on, each Product that states:

**WARNING: California Consumers** -- This product contains chemicals, including lead, known to the State of California to cause cancer and birth defects or other reproductive harm.<sup>1</sup>

In addition to the above warning statement, Remington shall, as of the time it next updates its permanent artwork for the Products' packaging after the Effective Date, cease and desist from placing images of food on it.

#### **2.4 Exceptions**

The warning requirements set forth in Sections 2.2 and 2.3 shall not apply to:

- (i) Reformulated Products (meeting the "Reformulation" definition set forth in Section 2.1 above);
- (ii) Any Products received by Remington prior to receipt of the Notice, provided that Remington does not have actual knowledge, or reason from communications with its suppliers of the Products to believe, that the Listed Chemical is present in the Product in concentrations of 100 ppm or greater; or
- (ii) Any Products shipped by Remington to its customers before the Effective Date.

### **3. SETTLEMENT PAYMENT/REIMBURSEMENT OF FEES AND COSTS**

The Parties reached an accord on the compensation due to Plaintiff and its counsel under the private attorney general doctrine, California Code of Civil Procedure section 1021.5, and principles of contract law. Under these legal principles, Remington shall reimburse Plaintiff's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Remington's attention, and negotiating a settlement in the public interest.

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<sup>1</sup> Remington may, at its option, add references to other chemicals listed under Proposition 65 to the foregoing following the words "including lead" in the above.

Remington shall pay CAG and its counsel \$32,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a separate check made payable to "Yeroushalmi & Associates" and shall be delivered on or before fifteen (15) days following the execution of this agreement by all parties, at the following address:

Reuben Yeroushalmi  
Yeroushalmi & Associates  
3700 Wilshire Boulevard, Suite 480  
Los Angeles, CA 90010

Remington shall issue a separate 1099 for fees and costs paid pursuant to this section.

Yeroushalmi & Associates' tax identification number and a form W-9 shall be furnished to Remington by CAG's counsel at least fourteen (14) calendar days before payment is due.

#### **4. RELEASE OF ALL CLAIMS**

##### **4.1 Release of Remington and Downstream Customers**

In further consideration of the promises and agreements herein contained, and for the payment to be made pursuant to Section 3 above, Plaintiff on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby releases and waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in 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 Remington and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to Big Lots), franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities

(collectively “Releasees”). This release and waiver is limited to those claims that arise under Proposition 65, as such claims relate to Remington’s alleged failure to warn about exposures to or identification of lead and/or lead compounds contained in the Products.

In addition to the above, CAG on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assigns, hereby releases and waives all Claims against Remington and its Releasees with respect to any other application of Proposition 65 to the Products. In furtherance of the foregoing, CAG hereby waives any and all rights and benefits which it now has, or in the future may have, conferred upon it with respect to the Products by virtue of the provisions of 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 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

CAG understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is that even if CAG hereafter discovers facts in addition to, or different from those which it now knows or believes to be true as to the Products, it will not be able to make any claim against Remington, its parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of its customers, manufacturers, distributors, wholesalers, retailers or any other person in the course of doing business, and the successors and assigns of any of them, who may manufacture, use, maintain, distribute or sell the Products based on those facts. Furthermore, CAG acknowledges that it intends these consequences for any such Claims which may exist as of the date of this release but which CAG does not know exist, and which, if known, would materially affect its decision to enter into this Consent Judgment, regardless of

whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

**4.2 Remington's Release of Plaintiff**

Remington waives any and all claims against Plaintiff and its attorneys and other representatives, for any and all actions taken or statements made by Plaintiff and/or its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to any other application of Proposition 65 to the Products.

**5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by any court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and shall apply only within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products specifically, then Remington shall provide written notice to Plaintiff of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**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 Remington:

Bob Lockaby  
Chairman & CEO  
Remington Industries, Inc.  
8822 Production Lane, Suite 101  
Ooltewah, TN 37363

With a copy to:

Robert Falk, Esq.  
Morrison & Foerster LLP  
425 Market Street, 32<sup>nd</sup> Floor  
San Francisco, California 94105

And

For CAG:

Reuben Yeroushalmi  
Yeroushalmi & Associates  
3700 Wilshire Boulevard, Suite 480  
Los Angeles, CA 90010

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**

This Settlement Agreement may be executed in counterparts, by a scan suitable for email or by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Plaintiff agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

**10. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties, or as the result of an order issued by a court of competent jurisdiction based on an application or motion of either CAG or Remington.

**11. 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:**

Lyn H. Marcus, Pres  
Signature

Lyn H Marcus, Pres.  
By (Print Name )

\_\_\_\_\_  
On Behalf of the Consumer Advocacy Group

3/4/11  
Date

**AGREED TO:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By (Print Name )

\_\_\_\_\_  
On Behalf of the Remington Industries, Inc.

\_\_\_\_\_  
Date

**10. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties, or as the result of an order issued by a court of competent jurisdiction based on an application or motion of either CAG or Remington.

**11. 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:**

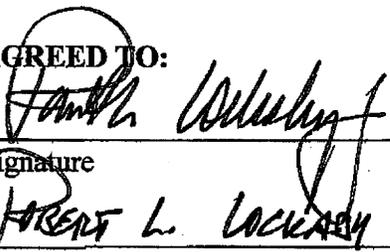
\_\_\_\_\_  
Signature

\_\_\_\_\_  
By (Print Name )

\_\_\_\_\_  
On Behalf of the Consumer Advocacy Group

\_\_\_\_\_  
Date

**AGREED TO:**

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
By (Print Name )

*CEO + Chairman*  
\_\_\_\_\_  
On Behalf of the Remington Industries, Inc.

*3/4/11*  
\_\_\_\_\_  
Date