

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 John Moore and Remington Industries, Inc.

This Settlement Agreement is entered into by and between John Moore (“Moore” or “Plaintiff”) and Remington Industries, Inc. (“Remington”), with Moore and Remington collectively referred to as the “Parties.” Moore 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

Moore alleges that Remington has manufactured, distributed and/or sold in the State of California, without the requisite health hazard warnings allegedly required by Proposition 65, automotive floor mats containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed as a carcinogen and a reproductive and developmental toxicant under Proposition 65. (DEHP 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, distributed and/or sold in California by Remington (“Products”), whether 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 August 5, 2010, Moore 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 DEHP. 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. 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

### 2.1 Reformulation

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 Phthalate Free, as further defined below, or which contain the Proposition 65 warnings required pursuant to Section 2.2 below. For purposes of this Settlement Agreement, "Phthalate Free" shall mean Products containing less than or equal to 1,000 parts per million ("ppm") each of DEHP, butyl benzyl phthalate ("BBP"), and Di-n-butyl phthalate ("DBP") when analyzed pursuant to any testing methodology selected by Remington that is acceptable to state or federal government agencies in determining compliance with phthalate standards.

### 2.2 Warnings

Except as provided in Section 2.4 below, as of the Effective Date, Remington shall not distribute, sell, or offer for sale in California, Products containing the Listed Chemical or BBP or DBP unless such Products are Phthalate Free or are shipped with the clear and reasonable warnings 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.

### 2.3 Warning Statement/Method

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

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

## **2.4 Exceptions**

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

- (i) 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 Products do not contain the Listed Chemical, BBP, or DBP in a concentration exceeding 1,000 ppm;
- (ii) Any Products shipped by Remington to its customers before the Effective Date; or
- (iii) Reformulated Products (meeting the “Phthalate Free” definition set forth in Section 2.1 above).

## **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

### **3.1 Initial Civil Penalty**

In settlement of all the claims referred to in this Settlement Agreement, Remington shall pay an initial civil penalty of \$2,500. Said initial civil penalty shall be apportioned in accordance with California Health and Safety Code section 25192, with 75% of these funds remitted to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Moore as provided by California Health and Safety Code section 25249.12(d). Remington shall issue two separate checks for the initial civil penalty

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<sup>1</sup> Remington may, at its option, add references to other chemicals listed under Proposition 65 to the foregoing before or after the words “one or more phthalates” in the above. Until it next updates its permanent artwork for the Products’ packaging after the Effective Date, Remington

payment: (a) one check made payable to "The Chanler Group in Trust For OEHHA" in the amount of \$1,875, representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for John Moore" in the amount of \$625, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John Moore whose information shall be provided fourteen (14) calendar days before the payment is due.

Payments to OEHHA and Moore shall be delivered to Moore's counsel on or before the Effective Date, at the following address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

### **3.2 Additional Civil Penalty**

Remington shall pay an additional civil penalty of \$12,500 on December 15, 2011. As an incentive for achievement reformulating the Products, however, this additional civil penalty shall be waived in its entirety if an officer of Remington certifies in writing that, as of November 30, 2011, it will only manufacture, or accept from a manufacturer or other supplier, for sale in California, Products which are Phthalate Free. Such certification must be received by The Chanler Group on or before December 10, 2011. Unless waived pursuant to the above, additional civil penalty payments required pursuant to this Section 3.2 shall be apportioned and disbursed when due in the same manner as set forth in Section 3.1 above.

### **4. REIMBURSEMENT OF FEES AND COSTS**

The Parties reached an accord on the compensation due to Plaintiff and his counsel under the private attorney general doctrine and principles of contract law. Under these legal

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may also add the term "California Consumers –" immediately following the term "WARNING:".

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. Remington shall pay Moore and his counsel \$15,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a separate check made payable to "The Chanler Group" and shall be delivered on or before the Effective Date, at the following address:

The Chanler Group  
Attn: Proposition 65 Controller  
Parker Plaza  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710

Remington shall issue a separate 1099 for fees and costs pursuant to this Section to The Chanler Group, Parker Plaza, 2560 Ninth Street, Suite 214, Berkeley, CA 94710. The Chanler Group's tax identification number shall be furnished by Moore's counsel at least fourteen (14) calendar days before payment is due.

In the event Remington provides an additional penalty payment pursuant to Section 3.2 above, it shall also provide an additional attorneys fee reimbursement payment to The Chanler Group in the amount of \$2,500 on or before December 15, 2011 to help defray costs and fees incurred by The Chanler Group with respect to the oversight and further disbursement of such additional penalty payments pursuant to the allocation set forth in Section 3.1 above.

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of Remington and Downstream Customers**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Plaintiff on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees hereby 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, 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 waiver and release 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 the Listed Chemical contained in the Products.

In addition to the above, Plaintiff in his individual capacity only, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, waives and releases Remington and its Releasees from all Claims arising out of alleged failure to warn under Proposition 65 for exposure to BBP and/or DBP in the Products.

The Parties further understand and agree that the above waivers and releases shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Remington.

## **5.2 Remington's Release of Plaintiff**

Remington waives any and all claims against Plaintiff his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Plaintiff and his 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 the Products.

**6. SEVERABILITY**

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

**7. 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, 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.

**8. 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 Moore:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

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.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts, by 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.

**10. 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).

**11. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

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:**

*John E. Moore*

By: Plaintiff, John Moore

DECEMBER 15, 2010

Date

**AGREED TO:**

*Bart Plaumann*

Signature

*BART PLAUANN*

By (Print Name)

*PRESIDENT*

On Behalf of Remington Industries, Inc.

12-30-10

Date