

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Evelyn Wimberley and Fountainhead

This Settlement Agreement is entered into by and between Evelyn Wimberley (hereinafter “Wimberley”), on the one hand, and Fountainhead Group, Inc. (hereinafter collectively “Fountainhead”), with Wimberley and Fountainhead collectively referred to as the “Parties.” Wimberley is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Wimberley contends that Fountainhead Group, Inc. is a company in the course of doing business for purposes of Proposition 65.

1.2 General Allegations

Wimberley alleges that Fountainhead distributed and/or sold in the State of California Round-Up Parts Repair Kit and Sprayers containing lead and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”). Lead is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as Round-Up Parts Repair Kit and Sprayers containing lead, including but not limited to Round Up-2 gallon deluxe plastic tank, Round Up-4 gallon backpack sprayer, Round Up-1 gallon deluxe sprayer and Round-Up Parts Repair Kit. All such items shall be referred to herein as the “Products.”

1.4 Notice of Violation

On or about January 31, 2011, Wimberley served Fountainhead, and all public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided Fountainhead and such public enforcers with notice that alleged that Fountainhead was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers and customers that the Products exposed users in California to lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Fountainhead denies the material factual and legal allegations contained in Wimberley’s Notice and maintains that all products that it has sold and distributed in California, including the Products, have been and are in compliance with Proposition 65 and all other applicable laws. Nothing in this Settlement Agreement shall be construed as an admission by Fountainhead 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 Fountainhead of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Fountainhead. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Fountainhead under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Settlement Agreement is fully executed.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Reformulation Option. The Products shall be deemed to comply with Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if the Products do not exceed the following limits for lead: 50 ppm by weight for any accessible component part. For purposes of this Settlement Agreement, accessible component part shall mean components of the Product to which a person would be exposed to lead by direct contact during normal and reasonably foreseeable use.

2.2 Warning Alternative. Products that do not meet the warning exemption standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. The warning requirements set forth in Section 2.3 below shall apply only to Products that Fountainhead offers for sale thirty (30) days after the Effective Date that are distributed, marketed, sold or shipped for sale or use inside the State of California. The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date.

2.3 Where required under Sections 2.1 and 2.2 above, Fountainhead shall provide Proposition 65 warnings as follows:

(a) Fountainhead may use either of the following warning statements:

(1) **WARNING:** This product uses a brass sprayer nozzle which contains lead and other chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

or, where Fountainhead has reason to believe that chemicals listed under Proposition 65 in addition to lead are present in a Product,

WARNING: This product contains lead and other chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

(b) The requirements for warnings, set forth in subsection (a) above are imposed pursuant to the terms of this Settlement Agreement. The Parties

recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.

(c) If Proposition 65 warnings for lead or lead compounds should no longer be required, Fountainhead shall have no further obligations pursuant to this Settlement Agreement.

3. MONETARY PAYMENTS

In settlement of all claims referred to in this Settlement Agreement, the total monetary settlement payments to be paid by Fountainhead are set forth in section 3 and 4, which shall subsequently and within a commercially reasonable time be distributed by Law Offices of Stephen Ure, PC as specified herein.

3.1 PAYMENT IN LIEU OF PENALTIES PURSUANT TO HEALTH & SAFETY

CODE §25249.7(b)

In lieu of civil penalties and in settlement of all claims that have been threatened or could be raised with respect to failure to warn pursuant to Proposition 65 with regard to lead in the Products, Fountainhead shall pay \$500.00 in the name of Evelyn Wimberley to Susan G. Komen for the Cure, a 501(c)(3) non-profit organization dedicated to the fight against breast cancer (federal tax identification number 75-1835298). Fountainhead shall mail this payment in Wimberley's name within thirty days following the Effective Date, to the following address, providing a copy of its check and transmittal letter to Parker:

Susan G. Komen for the Cure
5005 L.B.J. Freeway, Suite 250
Dallas, TX 75244

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to Wimberley and her counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Fountainhead shall reimburse Wimberley's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Fountainhead's attention, and negotiating a settlement in the public interest. Fountainhead shall pay Wimberley's counsel \$67,000.00 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. Fountainhead shall wire \$67,000.00 to the account of "Law Offices of Stephen Ure, PC" on or before June 20, 2011. The Law Offices of Stephen Ure, PC. will provide and Fountainhead will confirm receipt of bank wire instructions prior to that date. Other than the payment required hereunder, each side is to bear its own attorneys fees and costs.

5. RELEASE OF ALL CLAIMS

5.1 Release of Fountainhead 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, Wimberley, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, and in the interest of the general public, 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 Fountainhead and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including but not limited to Lowes HIW, Inc.), 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 is limited to those claims that arise under Proposition 65, as such claims relate to Fountainhead 's or the Releasees' alleged failure to warn about exposures to or identification of lead contained in the Products.

Wimberley also, in her individual capacity, on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees and *not* in her representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Fountainhead and the Releasees arising under Proposition 65, as such claims relate to Fountainhead and the Releasees' alleged failure to warn under Proposition 65 about exposures to or identification of lead contained in the Products sold by Fountainhead and the Releasees. Wimberley acknowledges that she is familiar with Section 1542 of the Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR 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.

Plaintiff, in her individual capacity only and *not* in her representative capacity, and on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which she may have under, or which may be conferred on her by the provisions of Civil Code § 1542 as well as under any other

state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.

Compliance with the terms of this Settlement Agreement resolves any issue, now and in the future, concerning compliance by Fountainhead and Fountainhead 's Releasees with the requirements of Proposition 65 with respect to alleged exposure to lead in the Products.

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Fountainhead and Fountainhead 's Releasees under Proposition 65 as covered under this release.

5.2 Fountainhead 's Release of Wimberley

Fountainhead waives any and all claims against Wimberley, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Wimberley and her 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.

Fountainhead acknowledges that it is familiar with Section 1542 of the Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR 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.

Fountainhead on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Civil Code

§ 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

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 Fountainhead :

The Fountainhead Group., Inc.
Mr. John Romano, Chairman and CEO
23 Garden St.,
New York Mills, NY 13417

And

For Wimberley:

Mr. Stephen Ure
Law Offices of Stephen Ure, PC.
1518 Sixth Avenue
San Diego, California 92101

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 and 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)


Wimberley agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

10. MODIFICATION

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

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:	AGREED TO:
Date : <u>6/14</u> , 2011	Date: _____, 2011
By:  _____ Evelyn Wimberley	By: _____ On Behalf of Fountainhead Group, Inc.

and the same document.

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

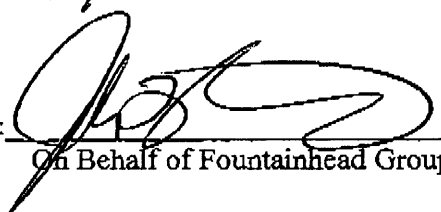
Wimberley agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

10. **MODIFICATION**

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

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:	AGREED TO:
Date : _____, 2011	Date: <u>6/20</u> , 2011
By: _____ Evelyn Wimberley	By:  On Behalf of Fountainhead Group, Inc.