

## SETTLEMENT AGREEMENT

Plaintiff ABC COMPANY, INC., a California corporation ("Plaintiff"), commenced a civil action ("Complaint") against Defendant GUNS INTERNATIONAL, INC., a California corporation ("Defendant") by filing a Complaint on 1/22/99. The action entitled ABC v. GUNS INTERNATIONAL, INC. was filed as San Diego County Superior Court Case Number 563453 ("Case No. 563453"). Plaintiff and the Defendant will henceforth be referred collectively to as "the parties" or "each party".

The parties desire to resolve their differences and to avoid the expense, inconvenience and publicity attended to protracted litigation.

A Conditional Settlement And Dismissal And Order Thereon ("Conditional Settlement") which incorporates the terms of this Settlement Agreement is being signed by the parties concurrently with the signing of this Settlement Agreement and will be filed with the court.

Based upon the foregoing facts and consideration of the promises, warranties and representations of each party given to the other party and subject to all of the terms, conditions and matters set forth herein, they agree as set forth below.

1. Plaintiff and Defendant stipulate that Plaintiff shall take judgment against Defendant in the principal sum of \$104,065.15 plus interest in the sum of \$5,246.02 plus costs in the sum of \$410.75 plus attorney's fees in the sum of \$4,500.00 for a total judgment of \$114,221.92 together with interest at the rate of 10% per annum from 5/1/99.
2. Defendant agrees to pay Plaintiff the sum of \$80,000.00 plus interest at the rate of 5% per annum from 5/1/99 as follows:
  - 2.1 \$9,000.00 on 5/30/99; and
  - 2.2 \$3,000.00 per month commencing on 8/30/99 and continuing on the last day of each consecutive month thereafter until the sum of \$80,000.00 plus accrued 5% per annum interest from 5/1/99 is paid in full.
3. Each payment will be in the form of a check made payable to ABC COMPANY, INC. and sent to Curtis H. Smith at ABC at 6600 Top Gun, San Diego, CA 90620. Each payment will not be deemed late until passage of ten days after Mark Kroner has given Kim Governor written notice of payment default. If any of these above-referenced payments are not paid timely, this Settlement Agreement will be considered in default and Plaintiff will appear ex parte to have the dismissal of the case without prejudice set aside and have judgment pursuant to conditional settlement entered for \$114,221.92 plus interest at the rate

of 10% per annum from 5/1/99 plus additional attorney fees in the sum of \$750.00 minus any payments made by Defendant.

4. The parties represent that they have not previously assigned or otherwise transferred any of their claims and rights relating to Case No. 563453. Upon the signing by the judge of the Conditional Settlement after it is filed with the court, Defendant releases Plaintiff and its parents, subsidiaries, divisions, affiliated corporations, trustees, directors, officers, stockholders, partners, agents, servants, employees, representatives, attorneys, heirs, executors, administrators, successors and assigns, on any and all other claims, debts, liabilities, demands, obligations, promises, acts, agreements, costs, expenses, damages, actions, and causes of action, of whatsoever kind or nature, whether known or unknown, suspected or unsuspected, from the beginning of time to the date of this Agreement, and thereafter to the consummation of settlement with respect to all interactions and transactions between these parties upon which Case No. 563453 is based, including any claims of malicious prosecution and abuse of process. Upon timely completion of the above-referenced payments in the total sum of \$80,000.00 plus accrued 5% per annum interest from 5/1/99, Plaintiff shall and hereby does forever relieve, release, and discharge Defendant and its parents, subsidiaries, divisions, affiliated corporations, trustees, directors, officers, stockholders, partners, agents, servants, employees, representatives, attorneys, heirs, executors, administrators, successors and assigns, on any and all other claims, debts, liabilities, demands, obligations, promises, acts, agreements, costs, expenses, damages, actions, and causes of action, of whatsoever kind or nature, whether known or unknown, suspected or unsuspected, from the beginning of time to the date of this Agreement, and thereafter to the consummation of settlement with respect to all interactions and transactions between these parties upon which Case No. 563453 is based. The release by Plaintiff is null and void in the event that Defendant files or has filed against it any type of bankruptcy proceeding within 90 days of the last payment made to Plaintiff and attempts through the auspices of the Bankruptcy Court to obtain the return of any payment. At the end of the above-referenced 90-day period and provided no bankruptcy petition was filed by or against Defendant, Plaintiff will send Defendants' counsel an original signed request for dismissal with prejudice of the entire action which Defendants may then file with the Court.

It is the intention of the parties to be legally bound by the terms and conditions of this Settlement Agreement, and in furtherance of that intention, each party expressly waive any and all rights and benefits conferred or which may be conferred upon them by the provisions of Section 1542 of the California Civil Code, and any similar law or laws of any state or territory of the United States or any other country in the world. Section 1542 reads 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."

The contents of this Agreement are to be kept confidential and not to be discussed by the signatories and their counsel with any non-signatories unless otherwise ordered by a Court with jurisdiction or a subpoena by a governmental or quasi-government entity. This confidentiality provision does not apply in the event Plaintiff takes judgment against Defendant as provided herein.

Each party hereto warrants and represents that they have read, and that they understand, all of the provisions contained herein. This Agreement is signed freely by each party. Each person signing below in a representative capacity for a party has authority to bind that party.

Each party hereto represents and warrants that they have consulted with their own attorney concerning and participated in the drafting of each of the terms contained in this document. No inference, assumption, or presumption shall be drawn from the fact that one party or its attorney prepared this Agreement. It shall be conclusively presumed that each party participated in the preparation of this Agreement.

Each party hereto agrees that this document, and the interpretation thereof, shall be governed by the laws of the State of California.

Except as otherwise provided in this Agreement, each party hereto agrees that, should any action, arbitration or other proceeding be instituted in order to enforce the provisions of this Settlement Agreement, each party will bear its own attorneys' fees and costs, including expert witness fees. The site of venue for all purposes in interpretation and enforcement of this Agreement is in San Diego County, California.

Each of the parties hereto understands that each of the terms and conditions set forth herein are contractual and material to this Settlement Agreement as a whole, and that none of the terms or conditions contained herein is a mere recital.

This Agreement is the entire agreement between the parties. If any part of this Agreement is determined to be unenforceable, the remaining provisions shall be enforced.

This Settlement Agreement may be executed in counterparts, each of which will be deemed an original. Facsimile signatures will have the same force and effect as original signatures.

Each party shall, upon the other's reasonable request, take all steps and execute, acknowledge, and deliver to the others all further instruments necessary or expedient to

effectuate the purposes of this Agreement. Each party will further not take any action which would interfere with the performance of this Agreement or which would adversely affect any of the rights provided herein.

(signatures follow on next page)

DATED: \_\_\_\_\_

ABC COMPANY, INC., a California corporation

By: \_\_\_\_\_

— Curtis H. Smith, Sr. General Counsel

DATED: \_\_\_\_\_

GUNS INTERNATIONAL, INC., a California corporation

By: \_\_\_\_\_

— Stephen King, President

**APPROVED AS TO FORM:**

DATED: \_\_\_\_\_

\_\_\_\_\_  
Mark P. Krones, Esq., Attorney for Plaintiff

DATED: \_\_\_\_\_

GOVERNOR LAW OFFICES

By: \_\_\_\_\_

— Kim R. Governor, Esq., Attorney For Defendant

