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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

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G. LOOMIS, INC., a Washington State corporation,	CASE NO.
	COMPLAINT FOR:
Plaintiff,	(1) FALSE DESIGNATION OF ORIGIN, ETC. (VIOLATION OF LANHAM ACT, 15 U.S.C. § 1125(a));
v.	(2) FEDERAL TRADEMARK INFRINGEMENT (VIOLATION OF LANHAM ACT, 15 U.S.C. § 1114);
GARY A. LOOMIS, an individual; NORTH FORK COMPOSITES LLC, a Washington State limited liability company; and DOES 1-10, inclusive,	(3) BREACH OF WRITTEN CONTRACT
Defendants.	(4) STATE INFRINGEMENT OF TRADE NAME (WASHINGTON COMMON LAW);
	(5) WASHINGTON STATE CONSUMER PROTECTION ACTION VIOLATION BASED ON TRADE NAME INFRINGEMENT (RCW CH. 19.86); AND
	(6) INDUCEMENT OF TRADEMARK INFRINGEMENT
	DEMAND FOR JURY TRIAL

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2 **INTRODUCTION**

3 1. Plaintiff G. Loomis, Inc. ("GLI" or "Plaintiff") owns the G. LOOMIS
4 trademark and trade name, which it uses throughout the United States and abroad in
5 connection with fishing equipment and other sporting goods. Defendant Gary Loomis
6 ("Gary Loomis") was an owner of Plaintiff until on or about May 28, 1997, when he sold his
7 entire interest in Plaintiff, including any and all interest in Plaintiff's mark G. LOOMIS.
8 After he sold his interest, Gary Loomis continued to work with Plaintiff as an employee until
about May of 2008.

9 2. Prior to leaving Plaintiff's employ, Gary Loomis began working with
10 Plaintiff's competitors to design and sell a line of fishing-related equipment and products
11 under various trademarks incorporating his name "Gary Loomis", e.g. GARY LOOMIS
12 SPINNERBAITS and GARY LOOMIS LURES, all of which were confusingly similar to
13 Plaintiff's mark G. LOOMIS. Shortly thereafter, Gary Loomis terminated his employment
with Plaintiff and began using the foregoing trademarks to compete with Plaintiff in earnest.

14 3. Plaintiff was forced to bring a lawsuit against Gary Loomis in order to protect
15 its rights in its G. LOOMIS trademark. In September 2009, the parties resolved that matter
16 by written Settlement Agreement. In that Settlement Agreement, Gary Loomis agreed, *inter*
17 *alia*, that he would not offer services or products in connection with any mark or name
confusingly similar to Plaintiff's G. LOOMIS trademark.

18 4. Now, mere months after entering the Settlement Agreement, Gary Loomis has
19 again begun working with one of Plaintiff's competitors - defendant North Fork Composites
20 LLC ("NFC") - and is again using the GARY LOOMIS trademark, this time to sell fishing-
rod building services.

21 5. Plaintiff contacted Gary Loomis' counsel, advised that Gary Loomis' conduct
22 was in breach of the Settlement Agreement, and requested that he cease using the GARY
23 LOOMIS trademark. Despite Plaintiff's attempts to persuade Gary Loomis and NFC to stop

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2 their infringing activity, Gary Loomis and NFC continue to use the infringing marks. Left
3 with no other recourse, Plaintiff now brings this Complaint and alleges as follows:

4 **JURISDICTION AND VENUE**

5 6. Plaintiff brings this action for injunctive relief and damages for, *inter alia*,
6 breach of contract, federal trademark infringement, false designation of origin, false
7 representation, false endorsement, and violation of Washington State common law regarding
8 trade name infringement. This Court has subject matter jurisdiction over the federal question
9 claims pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental jurisdiction
10 over the claims alleging violations of state law pursuant to 28 U.S.C. §§ 1338(b) and
11 1367(a).

12 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b). Defendants
13 Gary Loomis and NFC reside in this District and offer their services under the infringing
14 GARY LOOMIS mark in this District and to businesses and individuals in this District.
15 Accordingly, this District is where the infringement and other wrongful acts alleged herein
16 occurred.

17 **THE PARTIES**

18 8. Plaintiff is a Washington State corporation having its principal place of
19 business at 1359 Downriver Drive, Woodland, Washington 98674. Plaintiff is registered to
20 and does conduct business in the State of Washington.

21 9. Plaintiff is informed and believes, and on that basis alleges, that defendant
22 NFC is a Washington State limited liability company, having its place of business at
23 2617 Northeast 434th Street, Woodland, Washington, 98674.

24 10. Plaintiff is informed and believes, and on that basis alleges, that Gary Loomis
25 is an individual having his principal place of residence at 2612 N.E. 434th Street, Woodland,
Washington 98674. Plaintiff is further informed and believes, and on that basis alleges, that
Gary Loomis founded NFC, and that he is an officer, director, or managing agent of NFC.

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2 11. Plaintiff is unaware of the true names and capacities, whether individual,
3 corporate, associate or otherwise, of defendants Does 1 through 10, inclusive, or any of them,
4 and therefore sues these defendants, and each of them, by such fictitious name. Plaintiff will
5 amend this Complaint when the identities of these defendants are ascertained. Gary Loomis,
6 NFC, and Does 1 through 10, inclusive, shall collectively be referred to as "Defendants."

7 12. Plaintiff is informed and believes, and on that basis alleges, that each
8 defendant conspired and acted in concert with each other to commit the wrongs against
9 Plaintiff alleged herein, and in doing so were at all relevant times the agents, servants,
10 employees, principals, joint venturers, alter egos and/or partners of each other. Plaintiff is
11 further informed and believes, and on that basis alleges, that in doing the things alleged in
12 this Complaint, each defendant was acting within the scope of authority conferred upon that
13 defendant by the consent, approval and/or ratification of the other defendants, whether said
14 authority was actual or apparent.

15 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**
16 **Plaintiff Owns the G. LOOMIS Mark**

17 13. Gary Loomis founded his namesake company, G. Loomis, Inc., in 1982. In
18 the ensuing years, GLI and its trademarks "G. LOOMIS" and "LOOMIS" (collectively, the
19 "G. LOOMIS Mark") became synonymous with high-end, high quality, innovative fishing
20 equipment.

21 14. Today, due to their high quality, Plaintiff's G. LOOMIS brand fishing rods
22 have become especially well-known and are recognized throughout the world. Plaintiff's
23 G. LOOMIS fishing rods are made from proprietary combinations of resins and composite
24 sheets. The employees that make the rods have an average of over ten years experience
25 working with the company.

15 15. Plaintiff's G. LOOMIS brand fishing equipment is sold at hundreds of outdoor
16 activity related retail shops and sporting goods stores in the United States, as well as on the

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2 Internet. In addition, Plaintiff's G. LOOMIS products are distributed internationally in Asia,
3 Europe, Latin America and the South Pacific.

4 16. The recognition associated with the G. LOOMIS Mark has allowed Plaintiff to
5 expand its product offerings beyond fishing equipment and into travel luggage and clothing
6 apparel.

7 17. Plaintiff owns all rights and title to the G. LOOMIS Mark and any marks
8 confusingly similar thereto. As part of its efforts to protect its rights in the G. LOOMIS
9 Mark, GLI applied for, and on March 12, 1991, obtained, a federal registration for the mark
10 G. LOOMIS, U.S. Reg. No. 1,637,672. A true and correct copy of the registration is attached
11 hereto as Exhibit A.

12 18. Plaintiff has diligently maintained the G. LOOMIS Mark and has spent
13 considerable sums to promote its products under the G. LOOMIS Mark, spending thousands
14 of dollars every year to promote fishing equipment marked with the G. LOOMIS Mark.

15 19. GLI has exclusively and continually used the G. LOOMIS Mark in commerce
16 for well over 25 years. The G. LOOMIS Mark has also been registered for over 15 years.
17 Consequently, the federal registration for the G. LOOMIS Mark is incontestable.

18 **Defendants' Infringing Conduct**

19 20. In or around November 2009, Defendants launched the NFC "Gary Loomis
20 Approved Rod Builder Program." The purpose of this program is to create a registry of rod
21 builders qualified to build custom NFC fishing rods. Defendants maintain the registry on
22 their website www.northforkcomposites.com (the "Website") and the registry "is marked
23 with NFC Approved Rod Builder logo (that's the logo above)." That logo features an
24 abstract depiction of a river, in large font, the words GARY LOOMIS (stylized to appear like
25 a signature) and, in smaller font underneath those words, the words "Approved Rod Builder"
(the "GARY LOOMIS Logo"). A true and correct copy of the GARY LOOMIS Logo is
attached hereto as Exhibit B.

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2 21. According to the Website, Defendants intend to incorporate the GARY
3 LOOMIS Logo into "much of our advertising, as well as in our catalog, on our website, and
4 in other marketing efforts." Additionally, also according to the Website, Defendants intend
5 to license all "approved rod builders" to use the GARY LOOMIS Logo in their business, are
6 encouraging them to do so, and will provide them with decals and other items bearing the
7 infringing GARY LOOMIS Logo.

8 22. Defendants adopted the GARY LOOMIS Logo in disregard of Plaintiff's
9 exclusive rights in the G. LOOMIS Mark and have been and are unlawfully infringing
10 Plaintiff's rights in the G. LOOMIS Mark by marketing, advertising, offering for sale, selling
11 and/or distributing rod building services and/or a rod building registry in connection with the
12 infringing GARY LOOMIS Logo.

13 23. Plaintiff is informed and believes, and on that basis alleges, that Defendants,
14 by such conduct, have been and are willfully and intentionally misappropriating Plaintiff's
15 rights in the G. LOOMIS Mark with the intent to profit therefrom.

16 24. The natural, probable and foreseeable result of the wrongful conduct by
17 Defendants is to deprive Plaintiff of business and goodwill, to injure Plaintiff's reputation and
18 to dilute the distinctive quality of Plaintiff's G. LOOMIS Mark, thereby irreparably harming
19 Plaintiff.

20 25. Plaintiff is informed and believes, and on that basis alleges, that it has lost or
21 will lose revenues, and has sustained or will sustain damages as a result of Defendants'
22 wrongful conduct. Plaintiff is further informed and believes, and on that basis alleges, that
23 Defendants have been unjustly enriched by their improper use of Plaintiff's G. LOOMIS
24 Mark.

25
Previous Infringing Conduct

26 26. This is not the first time that Gary Loomis has infringed Plaintiff's rights in its
27 G. LOOMIS Mark. To the contrary, on or about May 28, 1997, Gary Loomis sold all of his

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2 interest in Gary Loomis Products, Inc., the company which owned GLI, pursuant to a written
3 Agreement of Purchase and Sale of Stock (the "Purchase Agreement"). Gary Loomis
4 Products, Inc., was sold for close to \$9 million, of which Gary Loomis received the majority
5 share. Two days later, as part of the Purchase Agreement, Gary Loomis entered into a
6 separate, but related, Assignment of Rights of Publicity and Intellectual Property Agreement
7 (the "Intellectual Property Agreement"). Pursuant to the Intellectual Property Agreement,
8 Gary Loomis warranted to GLI that all intellectual property owned, created by or to which
9 Gary Loomis had any rights had been disclosed to GLI and made subject to the Purchase
10 Agreement.

11 27. Pursuant to another related agreement and until about May 2008, Gary
12 Loomis continued to work for Plaintiff as an employee. Prior to leaving Plaintiff's employ,
13 Gary Loomis began offering products using the mark Gary Loomis Spinnerbaits.
14 Additionally, Plaintiff is informed and believes, and on that basis alleges, that Gary Loomis
15 began working with Plaintiff's competitors to design and sell a line of fishing equipment and
16 related products and using a variety of infringing marks, including, *inter alia*, the infringing
17 trademark GARY LOOMIS.

18 28. On September 3, 2008, Plaintiff, through counsel, sent a letter to Gary Loomis
19 respectfully asking that he stop using trademarks confusingly similar to Plaintiff's
20 G. LOOMIS Mark. Through his counsel, Gary Loomis refused to discontinue using the
21 marks. Plaintiff made additional attempts to resolve the matter without litigation, but they
22 were unsuccessful. Therefore, Plaintiff filed a lawsuit against Gary Loomis and his related
23 companies, for, *inter alia*, trademark infringement, false designation of origin, breach of
24 fiduciary duty, and breach of contract (the "First Lawsuit").

25 **Settlement of the First Lawsuit**

26 29. Approximately two months before Gary Loomis commenced his infringing
27 conduct complained of herein, in September 2009, Plaintiff and Gary Loomis resolved the

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2 prior trademark dispute and entered a Settlement Agreement. A true and correct copy of the
3 Settlement Agreement is attached hereto as Exhibit C. In the Settlement Agreement, Gary
4 Loomis acknowledged the validity and enforceability of Plaintiff's G. LOOMIS mark. See
5 Settlement Agreement at ¶ 2(a)(iii). He also agreed to certain restrictions on his use of his
6 name "Gary Loomis," and Plaintiff agreed that certain uses of "Gary Loomis" were
acceptable.

7 30. Pursuant to the Settlement Agreement, Gary Loomis agreed that he would
8 "permanently and forever cease and desist worldwide from . . . offering services or making,
9 selling, using, offering for sale . . . any sporting equipment product or service, or any
10 accessory related to sporting equipment product or service, . . . in connection with a mark,
11 corporate name, trade name, domain name or any other source indicia, the same as or
12 confusingly similar to the G. Loomis Mark [or] the 'Loomis' trade name" Settlement
Agreement at ¶ 2(a)(i).

13 31. Gary Loomis also agreed that he would refrain from "forming any business
14 entities or organizations to avoid the aforementioned restrictions . . . or assisting any third-
15 parties in engaging in any conduct . . . that would violate the aforementioned restrictions."
Settlement Agreement at ¶ 2(a)(ii).

16 32. The Settlement Agreement did not prohibit Gary Loomis from using his
17 personal name - "Gary Loomis" - "descriptively in text." *Id.* at ¶ 3(a). In doing so, however,
18 Gary Loomis was required to "use the name 'Gary Loomis' in such a way that consumers of
19 the goods/services marketed in any way in connection with Gary Loomis' personal name
20 clearly recognize that such use is merely reflective of his personal name." *Id.* at ¶ 3(a).
21 Gary Loomis was also expressly permitted to use the phrase "Designed by Gary Loomis" if
22 used adjacent to a brand name and provided that he complied with certain other
23 requirements. *Id.* at ¶ 3(b).

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2 33. The Settlement Agreement also allowed Gary Loomis to use his signature to
3 the extent that such use was not prohibited by the express restrictions imposed in the
4 Settlement Agreement. *Id.* at ¶ 3(d). Thus, Gary Loomis could not use his signature as a
5 mark, a corporate name, or as a trade name used to offer for sale any sporting equipment
6 product or service. *Id.* at ¶¶ 2(a)(i).

7 34. Not only does Defendants' conduct complained of herein violate Plaintiff's
8 rights in its G. LOOMIS Mark, it also constitutes a flagrant violation of the Settlement
9 Agreement.

10 35. As with Defendants' prior infringement, Plaintiff attempted to resolve this
11 matter without resort to litigation. Again, however, Defendants' refused to cease their
12 infringing behavior.

13 36. Accordingly, Plaintiff brings this action to enforce its rights and to stop
14 Defendants' infringing conduct.

15 **FIRST CLAIM FOR RELIEF**
16 **(Lanham Act - False Designation of Origin - 15 U.S.C. § 1125(a)**
17 **as against all Defendants)**

18 37. Plaintiff incorporates and realleges herein by this reference Paragraphs 1
19 through 36, inclusive, as though set forth in full herein.

20 38. By virtue of Plaintiff's long standing use of the G. LOOMIS Mark in
21 connection with fishing equipment, and its extensive marketing, advertising, promotion and
22 sale of goods under the mark, the G. LOOMIS Mark has acquired secondary meaning
23 whereby the consuming public associates the mark with a single source of goods and/or
24 services.

25 39. Defendants intended to, and did, confuse and mislead the public, and did
represent and create the false impression that Plaintiff somehow authorized, originated,
sponsored, approved, licensed or participated in Defendants' use of the GARY LOOMIS
Logo.

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2 40. As alleged above, Defendants have used and continue to use in commerce the
3 GARY LOOMIS Logo. The use and continued use in commerce by Defendants of the
4 GARY LOOMIS Logo is likely to cause confusion or mistake, or to deceive as to the origin,
5 sponsorship or approval of Defendants' goods, services, or commercial activities by Plaintiff.

6 41. In fact, there is no connection or association or licensing relationship between
7 Plaintiff, on the one hand, and Defendants, on the other hand. Plaintiff has not authorized,
8 licensed or given permission to Defendants to use the G. LOOMIS Mark in any manner
9 whatsoever, including without limitation, the infringing use of the GARY LOOMIS Logo.

10 42. Thus, Defendants have created and will create a false impression concerning
11 an association between Plaintiff and Defendants, and have created and will continue to create
12 a false designation of the origin of Defendants goods and/or services, and have created and
13 will continue to create confusion as to a connection among the respective parties.

14 43. As a direct and proximate result of Defendants' creation of a false impression
15 of association between Plaintiff and Defendants, and Defendants' creation of a false
16 designation of the origin of Defendants' goods and/or services, Plaintiff has been damaged
17 and will continue to be damaged. Pursuant to 15 U.S.C. §§ 1116(a), Plaintiff is entitled to an
18 order enjoining Defendants from using the GARY LOOMIS Logo and from any other use of
19 Plaintiff's G. LOOMIS Mark or any variation thereof. Pursuant to 15 U.S.C. §1117(a),
20 Plaintiff is entitled to an order requiring Defendants to account to Plaintiff for any and all
21 profits derived from their actions; and pursuant to 15 U.S.C. § 1117(a), Plaintiff is entitled to
22 an order awarding all damages sustained by Plaintiff caused by Defendants.

23 44. Defendants' conduct alleged herein was intentional and without foundation in
24 law. Pursuant to 15 U.S.C. §1117(a), Plaintiff is entitled to an award of treble damages
25 against Defendants.

 45. Defendants' acts make this an exceptional case under 15 U.S.C. § 1117(a), and
Plaintiff is entitled to an award of attorneys' fees and costs.

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2 **SECOND CLAIM FOR RELIEF**
3 **(Lanham Act - Federal Trademark Infringement 15 U.S.C. § 1114**
4 **as against all Defendants)**

5 46. Plaintiff incorporates and realleges herein by this reference Paragraphs 1
6 through 45, inclusive, as though set forth in full herein.

7 47. Plaintiff's G. LOOMIS Mark registered as United States Trademark
8 No. 1,637,672 is inherently distinctive and/or has acquired secondary meaning designating
9 Plaintiff as the source of all goods and/or services advertised, marketed, sold or used in
10 connection with the mark. The mark has been registered for over 15 years and has been
11 continuously and exclusively used in commerce during that time. Consequently, the
12 foregoing federal registration for the G. LOOMIS Mark is incontestable.

13 48. Plaintiff has not authorized, licensed or given permission to Defendants to use
14 Plaintiff's mark registered as United States Trademark No. 1,637,672 in any manner
15 whatsoever, including without limitation, the confusingly similar GARY LOOMIS Logo.

16 49. Defendants' use of the GARY LOOMIS Logo is likely to cause confusion,
17 mistake or to deceive as to source, origin, affiliation or sponsorship.

18 50. Unless an injunction is issued enjoining any continuing or future infringing
19 use by Defendants of Plaintiff's mark registered as United States Trademark No. 1,637,672,
20 including use of the GARY LOOMIS Logo, such continuing or future use is likely to
21 continue to cause confusion, mistake or to deceive as to source, origin, affiliation or
22 sponsorship, and to thereby irreparably damage Plaintiff.

23 51. As a direct and proximate result of Defendants' infringing use, Plaintiff has
24 been damaged and will continue to be damaged. Pursuant to 15 U.S.C. §§ 1116(a), Plaintiff
25 is entitled to an order enjoining Defendants from using the GARY LOOMIS Logo and from
any other use of Plaintiff's mark registered as United States Trademark No. 1,637,672.
Pursuant to 15 U.S.C. § 1117(a), Plaintiff is entitled to an order requiring Defendants to
account to Plaintiff for any and all profits derived by Defendants from their actions; and

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2 pursuant to 15 U.S.C. § 1117(a), Plaintiff is entitled to an order awarding all damages
3 sustained by Plaintiff by reason of the Defendants' infringing conduct.

4 52. Defendants' conduct alleged herein was intentional and without foundation in
5 law. Pursuant to 15 U.S.C. §1117(a), Plaintiff is entitled to an award of treble damages
6 against Defendants.

7 53. Defendants' acts make this an exceptional case under 15 U.S.C. § 1117(a), and
8 Plaintiff is entitled to an award of attorneys' fees and costs.

9 **THIRD CLAIM FOR RELIEF**
10 **(Breach of Written Contractas against all Defendants)**

11 54. Plaintiff incorporates and realleges herein by this reference Paragraphs 1
12 through 53, inclusive, as though set forth in full herein.

13 55. As alleged above, Plaintiff and Gary Loomis entered into the Settlement
14 Agreement. The Settlement Agreement binds and applies to Gary Loomis, as well as all
15 persons "in active concert or participation with" him who have notice of the Settlement
16 Agreement. On information and belief, Gary Loomis founded and is an officer, director, or
17 managing agent, of NFC. Thus, NFC is in privity with Gary Loomis and acting "in active
18 concert or participation" with Gary Loomis. Gary Loomis is an officer, director, or
19 managing agent of NFC and had knowledge of the Settlement Agreement, thus imparting
20 knowledge of the Settlement Agreement and all restrictions imposed on Gary Loomis and
21 those acting with him thereunder. Accordingly, NFC is also bound by the Settlement
22 Agreement.

23 56. Plaintiff has performed all conditions, covenants and promises required to be
24 performed on its part in accordance with the terms and conditions of the Settlement
25 Agreement, except to the extent that Defendants' breach has prevented such performance.

57. Defendants' breached the Settlement Agreement, without limitation, by reason
of the following:

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2 a. In breach of paragraph 2(a)(i) of the Settlement Agreement,
3 Defendants have been using the GARY LOOMIS Logo, which is confusingly similar to the
4 G. LOOMIS Mark, in connection with offering sporting equipment services.

5 b. In breach of paragraph 2(a)(ii) of the Settlement Agreement, Gary
6 Loomis has assisted a third party, defendant NFC, to use the GARY LOOMIS Logo, in a
7 manner that violates paragraph 2(a)(i) of the Settlement Agreement.

8 58. As a result of Defendants' breach of the Settlement Agreement, Plaintiff has
9 suffered damages in an amount greater than this Court's minimum jurisdiction, which amount
10 will be determined at trial.

11 59. The Settlement Agreement contains a prevailing party attorneys' fees and cost
12 provision. Plaintiff has engaged attorneys to pursue its rights as a result of Defendants'
13 breach of the Settlement Agreement, and is entitled to recover from Defendants the
14 attorneys' fees and cost incurred to that end.

15 **FOURTH CLAIM FOR RELIEF**
16 **(State Infringement of Trade Name - Washington Common Law**
17 **as against all Defendants)**

18 60. Plaintiff incorporates and realleges herein by this reference Paragraphs 1
19 through 60, inclusive, as though set forth in full herein.

20 61. In January 1982, Plaintiff filed articles of incorporation with the Washington
21 State Secretary of State under the corporate name "G. Loomis, Inc." and Plaintiff has
22 continuously used this corporate name since such filing. Plaintiff's registered corporate name
23 of "G. Loomis, Inc." constitutes a valid, protectable trade name under Washington common
24 law.

25 62. Defendants' acts constitute trade name infringement pursuant to Washington
common law. Those acts have caused and continue to cause a likelihood of confusion with
Plaintiff's trade name.

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2 63. Pursuant to Washington common law, Plaintiff is entitled to an injunction
3 prohibiting Defendants from continuing the practices described above.

4 64. As a result of Defendants' actions, Plaintiff has been damaged in an amount
5 according to proof at trial.

6 65. The conduct of Defendants in infringing Plaintiff's trade name was willful,
7 malicious, oppressive and fraudulent, and undertaken with deliberate disregard for Plaintiff's
8 rights. Plaintiff is therefore entitled to an award of exemplary and punitive damages.

9 **FIFTH CLAIM FOR RELIEF**
10 **(Violation of the Consumer Protection Act by Trade Name Infringement –**
11 **RCW Ch. 19.86 as against all Defendants)**

12 66. Plaintiff incorporates and realleges herein by this reference Paragraphs 1
13 through 65, inclusive, as though set forth in full herein.

14 67. Defendants' conduct in infringing Plaintiff's trade name constitutes an unfair
15 or deceptive act or practice in trade or commerce that has a substantial risk of confusing or
16 misleading the public under Washington's Consumer Protection Act.

17 68. Plaintiff is damaged in its business by Defendants' trade name infringement in
18 violation of Washington's Consumer Protection Act.

19 69. Pursuant to RCW 19.86.090, Plaintiff is entitled to recover its damages, as well as
20 treble damages of up to \$25,000 and its attorneys' fees and costs, from Defendants.

21 **SIXTH CLAIM FOR RELIEF**
22 **(Inducement of Trademark Infringement as against all Defendants)**

23 70. Plaintiff incorporates and realleges herein by this reference Paragraphs 1
24 through 68 inclusive, as though set forth in full herein.

25 71. Defendants' activities offering licensing of the infringing GARY LOOMIS
Logo are made for the purpose of inducing third parties to use the GARY LOOMIS Logo and
infringe Plaintiff's trademark rights.

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2 72. As a result of Defendants' actions, Plaintiff has been and will be damaged in
3 an amount according to proof at trial.

4 73. The conduct of Defendants was willful, malicious, oppressive and fraudulent,
5 and undertaken with deliberate disregard for Plaintiff's rights. Plaintiff is therefore entitled to
6 an award of exemplary and punitive damages.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for relief as follows:

9 1. For a temporary, preliminary and permanent injunction enjoining Defendants,
10 and each of their agents, representatives, affiliates, partners and employees, and those
11 persons in active concert or participation or privity with them, who receive actual notice of
12 the injunction order by personal service, or otherwise from:

13 a. Infringing Plaintiff's trademark rights in any way, including without
14 limitation, manufacturing, distributing, promoting, fulfilling orders for, marketing, selling or
15 advertising goods and/or services in connection with the GARY LOOMIS Logo, or any other
16 mark or name confusingly similar to the G. LOOMIS Mark, including without limitation
17 "Loomis" and "Gary Loomis";

18 b. Using any false designation of origin, or any false or misleading
19 description of fact, including the GARY LOOMIS Logo, or any other mark or name
20 confusingly similar to the G. LOOMIS Mark, that can, or is likely to, lead the consuming
21 public, or individual members thereof, to believe that any products produced, promoted,
22 marketed, advertised, provided or sold by Defendants are in any manner associated or
23 connected with Plaintiff, or are licensed, approved or authorized in any way by Plaintiff;

24 c. Inducing any third parties to infringe Plaintiff's trademark rights in any
25 way, including without limitation, by manufacturing, distributing, promoting, fulfilling
orders for, marketing, selling or advertising goods and/or services in connection with the

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2 GARY LOOMIS Logo, or any other mark or name confusingly similar to the G. LOOMIS
3 Mark, including without limitation "Loomis" and "Gary Loomis";

4 2. For an order directing Defendants to file with the Court and serve upon
5 Plaintiff's counsel, within thirty (30) days after entry of the order of injunction, a report
6 setting forth the manner and form in which Defendants have complied with the injunction.

7 3. For an order requiring Defendants to immediately deliver to Plaintiff for
8 safekeeping all products and promotional, marketing and advertising materials, including
9 without limitation, advertisements, inventory lists, customer lists and brochures containing
10 the GARY LOOMIS Logo, or any other mark confusingly similar to the G. LOOMIS Mark.

11 4. For an order finding that, by the acts complained of herein, Defendants' have
12 infringed the G. LOOMIS Mark.

13 5. For an order finding that, by the acts complained of herein, Defendants have
14 created a false designation of origin and/or a false impression of association, in violation of
15 15 U.S.C. § 1125(a).

16 6. For an order finding that, by the acts complained of herein, Defendants have
17 infringed Plaintiff's G. Loomis, Inc. trade name, in violation of Washington common law and
18 the Washington Consumer Protection Act, RCW Ch. 19.86.

19 7. For an order finding that, by the acts complained of herein, Defendants' have
20 induced and facilitated third party's infringement of the G. LOOMIS Mark.

21 8. For an order finding that, by the acts complained of herein, Defendants have
22 breached the Settlement Agreement;

23 9. For an order pursuant to 15 U.S.C. § 1117(a) compelling Defendants to
24 account to Plaintiff for any and all profits derived by Defendants from their unlawful and
25 infringing conduct.

10. For an order awarding Plaintiff general and/or specific damages, in an amount
to be fixed by the Court in accordance with proof, including enhanced and/or exemplary

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2 damages, as appropriate, as well as all of Defendants' profits or gains of any kind from their
3 acts of infringement, and false designation of origin; and further for an order that such acts
4 were willful and wanton, thereby justifying an award, where appropriate, of treble or
5 enhanced damages.

6 11. For an order that this be deemed an exceptional case and that Plaintiff recover
7 from Defendants all of Plaintiff's attorneys' fees, costs, disbursements and other expenses
8 Plaintiff has incurred due to Defendants' illegal actions.

9 12. For an order awarding Plaintiff pre-judgment interest.

10 13. For an order awarding Plaintiff its attorneys' fees and cost as per contract.

11 14. For an order awarding Plaintiff such other and further relief as the Court may
12 deem just and proper.

13 Respectfully submitted this 21 day of Dec, 2009.

14 DATED: December 21, 2009.

15 LANDSMAN & FLEMING LLP

16 By: 

17 R. Broh Landsman (WSBA #9321)
18 Attorneys for Plaintiff G. LOOMIS, INC.
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DATED: December _____, 2009.

JEFFER, MANGELS, BUTLER & MARMARO
LLP

By: **PRO HAC VICE PENDING**
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Int. Cl.: 28

Prior U.S. Cls.: 22, 23, 38 and 50

Reg. No. 1,637,672

United States Patent and Trademark Office

Registered Mar. 12, 1991

Amended

OG Date Nov. 21, 2006

**TRADEMARK
PRINCIPAL REGISTER**

G. LOOMIS

G. LOOMIS, INC. (WASHINGTON COR-
PORATION)
1359 DOWNRIVER DRIVE
WOODLAND, WA 98674

FOR: FISHING EQUIPMENT,
NAMELY FISHING RODS, ROD
BLANKS, FISHING REELS, FISHING
LINE, [GOLF CLUBS AND GOLF CLUB
SHAFTS], IN CLASS 28 (U.S. CLS. 22, 23,
38 AND 50).

FIRST USE 8-0-1982; IN COMMERCE
8-0-1982.

SER. NO. 74-038,502, FILED 3-14-1990.

SEC. 2(F).

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Nov. 21, 2006.*

DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE

Exhibit A



Exhibit B

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into as of September 21, 2009 (the "Effective Date"), by and between:

1. G. Loomis, Inc. ("GLI"), a Washington corporation with its principal place of business located at 1359 Downriver Drive, Woodland, Washington 98674, on the one hand; and on the other hand:

2. Gary Loomis ("Gary Loomis"), an individual having his residence at 2612 N.E. 434th Street, Woodland, Washington 98674; and

3. Gary Loomis Inc. ("Gary Loomis Inc."), a Washington State corporation having its principal place of business at 1760 Downriver Drive, Woodland, Washington 98674.

GLI, Gary Loomis and Gary Loomis, Inc. are, at times, individually referred to in this Agreement as a "Party" and collectively referred to in this Agreement as the "Parties." Gary Loomis and Gary Loomis, Inc. are, at times, collectively referred to as the "Gary Loomis Parties."

This Agreement is entered into with reference to the following recitals:

RECITALS

A. Gary Loomis is a well-known designer of products in the sport fishing industry. Gary Loomis has been involved in the founding of a number of companies in the sports fishing industry, including GLI.

B. GLI manufactures and sells high quality fishing rods, fishing equipment, other sporting related goods, travel luggage and clothing apparel in connection with its trademark "G. Loomis" (the "G. Loomis Mark") and trade name "Loomis".

C. On or about May 28, 1997, Shimano American Corporation, Gary Loomis, Gary and Susan Loomis Charitable Remainder Unitrust, Swinging Bridge Partners L.P. and Strome-Susskind Hedgecap Fund, L.P. entered into an Agreement of Purchase and Sale of Stock of G. Loomis Products, Inc. (the "Stock Purchase Agreement"), pursuant to which, amongst other things, ownership of GLI was transferred to Shimano. After the transfer of the ownership of GLI to Shimano, GLI continued to own all rights in the G. Loomis Mark.

D. The Stock Purchase Agreement including amongst its exhibits an "Employment Agreement" between GLI and Gary Loomis ("Employment Agreement"). The Employment Agreement expired in accordance with its terms on or about May 29, 2000. The term of the Employment Agreement was extended upon modified terms, and Gary Loomis remained in the employ of GLI. Gary Loomis ceased to be employed by GLI on or about April 28, 2008.

E. The Stock Purchase Agreement included amongst its exhibits an Assignment of Rights of Publicity and Intellectual Property Agreement between GLI and Gary

Loomis (the "IP Agreement"). The IP Agreement provides that the term of use by GLI of the Transferred Rights (as defined therein) shall expire upon the later of May 27, 2002 (5 years after the Closing Date) or the expiration of the Employment Agreement.

F. The Stock Purchase Agreement included amongst its exhibits an "Agreement and Covenant not to Compete or Solicit" between Shimano and Gary Loomis ("Non-Compete" Agreement). The Non-Compete Agreement expired in accordance with its terms on or about May 29, 2000.

G. GLI is the owner of U.S. Reg. No. 1,637,672 for the trademark G. LOOMIS as described in the actual trademark registration.

H. GLI is the owner of a triangular shaped design mark depicted in Exhibit A hereto (the "Triangle Design Mark").

I. GLI is the owner of trademarks including the two consecutive letters "GL" (the "GL Marks") such as GL, GLX, GL2 and GL3 including U.S. Reg. 2,534,036 for the trademark GL3 as described in the actual trademark registration.

J. A dispute has arisen between GLI and the Gary Loomis Parties as to alleged violations by the Gary Loomis Parties of GLI's trademark rights to the G. Loomis Mark in connection with the Gary Loomis Parties' alleged use of confusingly similar marks. These uses of marks alleged to be confusingly similar to the G. Loomis Mark include without limitation using the company name "Loomis Outdoors, Inc.;" using the marks "Gary Loomis Spinnerbaits," "Gary Loomis Lures," or other uses of "Gary Loomis" as a mark in connection with fishing related goods; and registering the websites "loomisfishing.com" and "loomisoutdoors.com."

K. On or about October 30, 2008, GLI filed a complaint against Gary Loomis, Loomis/Borger and Loomis Outdoors in the United States District Court for the Central District of California, styled *G. Loomis, Inc. v. Gary Loomis et al.* Case No. 08-cv-7197 (CAS) (JTLx), alleging, *inter alia*, false designation of origin, federal trademark infringement, state trademark infringement, cyberpiracy, state infringement of trade name, misappropriation and breach of fiduciary duty. Subsequently GLI filed a First Amended Complaint adding Gary Loomis, Inc. and LBS as parties (the "Action").

L. On April 21, 2009, this case was transferred to the Western District of Washington, where it is currently pending, and assigned Case No. CV 09-05236. Thereafter, GLI filed a Second Amended Complaint, *inter alia*, adding claims under Washington state law and addressing certain alleged defects identified by Gary Loomis and Gary Loomis, Inc.

M. On or about January 5, 2009, Gary Loomis sent a cease and desist letter to GLI insisting that GLI cease infringement upon his alleged right of publicity and conveying a false impression of his endorsement of its products, including the use of any trademark that conveys an impression of affiliation with, origination from, or endorsement by Gary Loomis. In his Answer to the Second Amended Complaint, Gary Loomis filed a counterclaim alleging violation of his right of publicity, the Lanham Act, common law unfair competition, trademark infringement and violation of the Washington Consumer Protection Act.

N. The Parties wish to settle all claims in the Action and any other causes of actions, claims or disputes asserted or which could have been asserted in the Action described above, whether known or unknown, without any admission of liability, as set forth in the terms of this Agreement.

NOW, THEREFORE, in consideration of the recitals and mutual undertakings contained herein, the Parties agree as follows:

AGREEMENT

1. Incorporation of Recitals and Definitions

The above recitals, definitions and exhibits are incorporated herein by reference.

2. Agreements by the Gary Loomis Parties

a. The Gary Loomis Parties, and each of them, and those persons in active concert or participation with any of them who receive actual notice of the following restrictions by personal service or otherwise, shall as of October 1, 2009, permanently and forever cease and desist worldwide from:

(i) except as explicitly set forth in Section 3 below, offering services or making, selling, using, offering for sale, importing, exporting, advertising, marketing, displaying or distributing any sporting equipment product or service, or any accessory related to sporting equipment product or service, or soliciting an investment in or raising money for any entity involved in the business of making, selling, using, offering for sale, importing, exporting, advertising, marketing, displaying or distributing any sporting equipment product or service, or any accessory related to sporting equipment product or service, in connection with a mark, corporate name, trade name, domain name or any other source indicia, the same as or confusingly similar to the G. Loomis Mark, the "Loomis" trade name, the GL Marks and/or the Triangle Design Mark. Without limiting the foregoing the Gary Loomis Parties shall not take any action that infringes or dilutes GLI's rights to the G. Loomis Mark, the GL Marks and/or the Triangle Design Mark or contributes to or induces the infringement or dilution of GLI's rights to the G. Loomis Mark, the GL Marks and/or the Triangle Design Mark;

(ii) forming any business entities or organizations to avoid the aforementioned restrictions of this Section 2, or assisting any third-parties in engaging in any conduct, including the formation of any business entities or organizations, that would violate the aforementioned restrictions; and

(iii) contesting or challenging the validity or enforceability of the G.Loomis Mark, the "Loomis" trade name, the GL Marks or the Triangle Design Mark.

b. By September 24, 2009, Gary Loomis shall initiate the transfer of ownership of all Internet Domain names incorporating the G. Loomis Mark or the GL Marks, or any marks confusingly similar thereto, including, without limitation, the Internet domain names loomisfishing.com, to GLI, free and clear of all liens and encumbrances, and shall cause Gary

Loomis, Inc. to be administratively dissolved. Gary Loomis shall by October 1, 2009, provide GLI with written proof satisfactory to GLI that the transfer has been initiated and the corporate names changed. Gary Loomis shall bear all costs associated with the domain name transfer and corporate name change.

c. By October 15, 2009, the Gary Loomis Parties shall provide GLI with a written list of all products that were sold in connection with any mark violative of Section 2(a)(i) above ("Conflicting Products") and the number of units thereof manufactured and distributed, and a list of the names of the persons or entities the Conflicting Products were sold to, a list of each Conflicting Product and the number of units thereof in inventory as of October 1, 2009, as well as a copy of all documents reflecting the foregoing in the possession, custody or control of any of the Gary Loomis Parties.

3. Agreements by GLI

a. Notwithstanding the prohibitions of Section 2(a) above, nothing in this Agreement shall prevent Gary Loomis from using (i) "GAL" as a trademark provided the letters have equal commercial impression and are in the same size, color and font; and (ii) "Gary Loomis" as his personal name descriptively in text. For example, nothing herein shall prevent Gary Loomis from descriptively stating that Gary Loomis was a founder of GLI and/or that Gary Loomis designs sporting equipment including fishing equipment. Whatever use of the name "Gary Loomis" is made by Gary Loomis, it (i) must not include the term "Loomis" alone or emphasized apart from the term "Gary", and (ii) must use the name "Gary Loomis" in such a way that consumers of the goods/services marketed in any way in connection with Gary Loomis' personal name clearly recognize that such use is merely reflective of his personal name and do not believe that the brand of such goods/services is associated in any way with GLI or that such goods/services are sponsored by, licensed by or approved by GLI.

b. Gary Loomis, his licensees, assigns and heirs may use the phrase "Designed by Gary Loomis" (the "Phrase").

(i) The Phrase may only be used adjacent to a manufacturer's name or brand (the "Brand").

(ii) The Phrase will be less prominent than the Brand

(iii) Each character of the Phrase will be in the same font and same font size.

(iv) Each character of the Phrase will be on the same background and in the same color.

(v) When the Phrase is physically placed on a product, either directly or by means of a hang tag, label, band or sticker:

(A) the Phrase must appear immediately adjacent to the words "who is not affiliated with G.Loomis, Inc." (the "Disclaimer");

(B) each character of the Phrase and Disclaimer will be in the same font and same font size;

(C) each character of the Phrase and Disclaimer will be on the same background and in the same color;

(D) the size of each character of the Phrase and Disclaimer will be no more than 60 percent of the largest character of the Brand; and

(E) when the product is a rod, the Phrase and Disclaimer will appear on the side of the rod opposite the identification of the Brand.

c. The Gary Loomis Parties will not apply for a federal or state trademark registration for the Phrase.

d. Except as prohibited in Section 2 above, GLI hereby covenants and agrees that it shall assert no claim against Gary Loomis, or any of his licensees, assigns or heirs, to prevent the use of Gary Loomis' likeness, voice, signature or photograph, or otherwise take any action to prevent the exploitation of any other rights of publicity afforded Gary Loomis under the laws of any State, the United States, or any other country. GLI shall not challenge nor file any proceedings against the use or restriction by Gary Loomis, or any of his licensees, assigns or heirs, of the trademark "GAL", or the Phrase "designed by Gary Loomis", anywhere, provided such use is consistent with the restrictions in this Agreement. If necessary for the registration by Gary Loomis, or any other company or person properly claiming through him, of the mark "GAL", GLI shall sign the appropriate consents thereto.

e. By October 1, 2009, GLI shall cease all use of Gary Loomis' name, persona and likeness in the marketing, promotion, advertisement, distribution and sale of goods.

f. Nothing in this Agreement prohibits or limits Gary Loomis, his licensees, assigns or heirs from using the words "Gary Loomis" or "Loomis" in connection with golf products including without limitation, the use of the phrase, "Loomis Golf".

4. Dismissal

No later than five (5) business days following the Effective Date of this Agreement, the Parties shall file with the United States District Court for the Western District of Washington (the "Court") a Notice of Dismissal with Prejudice in the form attached hereto as Exhibit B, dismissing the Action with prejudice, each party to bear its own attorneys' fees and costs.

5. Releases

a. Except for the obligations created by this Agreement, GLI, on behalf of itself, its officers, directors, agents, employees, representatives, parents, insurers, assigns and successors, hereby fully and forever releases and discharges the Gary Loomis Parties, and each of them, and each of their officers, directors, agents, employees, heirs, representatives, parents, insurers, assigns and successors, from any and all claims, demands, liens, actions, suits, causes of action, obligations, controversies, debts, costs, attorneys' fees, expenses, damages, judgments,

orders, and liabilities of whatever kind or nature at law, in equity, or otherwise, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist or which hereafter can, shall or may exist, based on any facts, acts, events, or omissions occurring from the beginning of time to the Effective Date, relating to the claims raised in the Action.

b. Except for the obligations created by this Agreement, the Gary Loomis Parties, and each of them, on behalf of themselves and each of their officers, directors, agents, employees, heirs, representatives, parents, insurers, assigns and successors, hereby fully and forever release and discharge GLI and each of its officers, directors, agents, employees, representatives, parents, insurers, assigns and successors, from any and all claims, demands, liens, actions, suits, causes of action, obligations, controversies, debts, costs, attorneys' fees, expenses, damages, judgments, orders, and liabilities of whatever kind or nature at law, in equity, or otherwise, whether now known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist or which hereafter can, shall or may exist, based on the facts, acts, events, and omissions occurring from the beginning of time to the Effective Date, relating to the claims raised in the Action or any counterclaims that have or could be brought by the Gary Loomis Parties or any of them.

6. Waiver of Rights under California Civil Code Section 1542.

With regard to the general releases set forth herein, this Agreement is intended to cover and does cover all claims or possible claims of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected, or hereafter discovered or ascertained, and all rights under Section 1542 of the Civil Code of California ("Section 1542") or any similar provision of the law of any other State (including without limitation the State of Washington) are hereby expressly waived, relating to the claims that have or could be raised by GLI in the Action or any counterclaims that have or could be brought by the Gary Loomis Parties or any of them. The Parties acknowledge that they are familiar with Section 1542, which 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 Parties expressly, knowingly and intentionally waive and relinquish any and all rights that they have under Section 1542, as well as under any other similar state or federal statute or common law principle relating to the claims that were raised or could be brought in the Action or any counterclaims that were raised or could be brought by the Gary Loomis Parties or any of them.

7. Representations and Warranties.

The Parties are entering into this Agreement in reliance on the following representations and warranties, all of which the Parties acknowledge to be material:

a. Representations and Warranties of the Gary Loomis Parties:

(i) This Agreement constitutes each of their legal, valid and binding obligations and is enforceable in accordance with its terms; and

(ii) Other than the above mentioned uses of terms in Recital J above, the Gary Loomis Parties, or either of them, is not presently making, selling, using, offering for sale, importing, exporting, advertising, displaying or distributing any products or services that would violate the provisions of Section 2 above.

(iii) The Gary Loomis Parties have no ownership or control over the domain name "www.loomisoutdoors.com".

b. Representations and Warranties of GLI:

(i) The execution, delivery and performance by GLI of its obligations under this Agreement are within its corporate power, have been duly authorized by all necessary corporate action, do not contravene any law or any contractual provision binding on it, and do not require any consent or approval of any person or governmental authority except such consents and approvals as have been obtained and are in full force and effect; and

(ii) This Agreement constitutes GLI's legal, valid and binding obligation and is enforceable in accordance with its terms.

8. **No Admission of Liability.**

Each Party acknowledges and agrees that this Agreement is a compromise of disputed claims and neither this Agreement, nor any consideration provided pursuant to this Agreement, shall be taken or construed to be an admission or concession by either GLI's or the Gary Loomis Parties of any kind with respect to any fact, liability, or fault.

9. **Acknowledgments.**

Each Party acknowledges:

a. It has received independent legal advice from counsel with respect to the advisability of entering into this Agreement and making the settlement provided for herein. Each Party has executed this Agreement with the consent and the advice of such independent counsel. Prior to the execution of this Agreement, each Party and its legal counsel has had adequate opportunity to make whatever investigation and inquiry they may deem necessary or desirable in connection with the subject matter of the Agreement;

b. It enters into this Agreement and makes the settlement provided for herein of its own free will, without reservation, and acts under no force or duress or coercion of any kind or character in so doing;

c. The individuals executing this Agreement are duly authorized representatives and each such individual has the requisite authority to enter into this Agreement on behalf of his or her principal;

d. This Agreement has been carefully read by each Party, and all the terms used herein and their significance, both factual and legal, are known and understood by each Party;

e. Each Party agrees to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement; and

f. Each Party represents to the other that no claim released pursuant to Sections 5 and 6 above has been transferred to any other party.

10. Binding Agreement.

This Agreement is binding upon, and shall inure to the benefit of, the Parties and each of their respective heirs, successors, assigns, directors, officers, employees, representatives, agents, shareholders, insurers, parents, subsidiaries and affiliates, and shall have worldwide effect.

11. Entire Agreement

This Agreement contains the entire understanding between the Parties with respect to the subject matter contained herein, and supersedes any prior or contemporaneous written or oral agreements or representations concerning the within subject matter.

12. Specific Performance

Should any Party materially default in any of its obligations under this Agreement, or should any of the representations and warranties made herein be materially false, the defaulting party acknowledges that the non-defaulting party may be irreparably damaged and that it would be extremely difficult and impractical to measure such damage. Accordingly, the defaulting party acknowledges that the non-defaulting party, in addition to any other available rights or remedies, shall be entitled to specific performance, injunctive relief and any other equitable remedy, all without posting any bond or other security, and the defaulting party waives the defense that a remedy at law or damages is adequate.

13. No Waiver

No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

14. No Modification

This Agreement may not be amended or modified at any time except by written instrument executed by authorized representatives of each Party.

15. Attorneys' Fees

In any action or other proceeding between the Parties, or any of them, for relief arising out of this Agreement, or the breach thereof, the prevailing party shall be awarded, in addition to any other relief awarded or granted, its reasonable costs and expenses, including attorneys' fees, incurred in the proceeding.

16. Severability

If any provision of this Agreement shall be found to be unlawful, void or unenforceable in whole or in part for any reason, such provision or such part thereof shall be deemed separate from and shall in no way affect the validity of the remainder of this Agreement. If such provision or part thereof shall be deemed unlawful, void or unenforceable due to its scope or breadth, such provision or part thereof shall be deemed valid to the extent of the scope or breadth permitted by law.

17. Jurisdiction and Venue

This Agreement will be governed by and interpreted in accordance with Washington law without regard to conflicts of law principles. If for any reason any controversy, claim, or dispute arising out of or relating to this Agreement or the breach of any of its terms is to be resolved in a court of law, the parties irrevocably submit to the jurisdiction of any state or federal court located within Washington state and closest to Clark County, Washington, and waive any objection to jurisdiction and venue in any such court, and waive any claim that the forum is an inconvenient forum. This provision does not restrict the breadth, scope or enforceability of this Agreement.

18. Counterparts

This Agreement may be executed in counterparts and via facsimile signatures, and each counterpart shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

G. LOOMIS, INC.

By: 

Name: James D. Gibson

Title: Executive Director

GARY A. LOOMIS

By: 

Gary A. Loomis

GARY LOOMIS INC.

By: 

Gary A. Loomis