

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

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In the Matter of:)	
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HMI Industries Inc.)	CPSC Docket No.: <u>14-C0003</u>
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SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act (CPSA), 15 U.S.C. §§ 2051–2089 and 16 C.F.R. § 1118.20, HMI Industries Inc. (HMI), and the U.S. Consumer Product Safety Commission (Commission), through its staff (staff), hereby enter into this Settlement Agreement (Agreement). The Agreement and the incorporated attached Order (Order) resolve staff’s charges set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for, the enforcement of the CPSA. By executing this Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. HMI is a corporation, organized and existing under the laws of the state of Delaware with its principal corporate office located in Strongsville, Ohio. HMI is a manufacturer of floor cleaners and indoor air purifiers.

STAFF CHARGES

4. Between September 2004 and August 2006, HMI manufactured and distributed approximately 44,000 Filter Queen Majestic 360 floor cleaners (Subject Products, or Floor Cleaners). The Floor Cleaners were sold through independent distributors nationwide for approximately \$1,800.

5. The Floor cleaners are “consumer products,” and at all relevant times, HMI was a “manufacturer” of these consumer products, which were “distributed in commerce,” as those terms are defined or used in sections 3(a)(5) and (11), of the CPSA, 15 U.S.C. § 2052(a)(5) and (11).

6. The Floor Cleaners are defective because their wiring can overheat, causing electrical arcing and melting. This poses a burn hazard to consumers.

7. HMI received notice of the defect shortly after distribution began in September 2004. Between 2005 and 2008, HMI received hundreds of reports of electrical arcing, sparking, and fire, including reports of property damage and injuries to consumers. During that same time, HMI implemented four separate design changes to alleviate the hazard posed by the product. HMI distributed product information notices to consumers in March 2006 and May 2006, alerting users to the defect which the design change attempted to correct. Throughout this period, HMI also paid out claims filed by consumers who reported that the product failed and caused fires and/or property damage.

8. By March 2006, HMI had sufficient information that reasonably supported the conclusion that the Floor Cleaners contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death. HMI was required to inform the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of

the CPSA, 15 U.S.C. §§ 2064(b)(3) and (4). By that date, the Firm had received approximately 500 reports of arcing, had instituted its third design change, and had sent product information notices to consumers alerting them to the defect.

9. Despite having information regarding the Floor Cleaner's defect or risk, HMI failed to inform the Commission immediately, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. §§ 2064(b)(3) and (4).

10. In failing to inform the Commission about the Subject Products immediately, HMI knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

11. HMI did not file its Full Report with the Commission until February 2009. By that date, HMI was aware of approximately 2,000 incidents of arcing involving the Floor Cleaners, approximately 120 consumer reports of overheating and property damage, and injuries to two consumers. However, HMI advised staff that it knew of only 40 consumer complaints of overheating and damage to carpets, with no reports of injury. Staff relied upon that information and included that information in the joint press release issued on April 29, 2009.

12. In underreporting to Commission staff the number of incidents and injuries associated with the Floor Cleaners, HMI knowingly committed a material misrepresentation to an officer or employee in the course of an investigation under the CPSA in violation of section 19(a)(13) of the CPSA, 15 U.S.C. § 2068(a)(13).

13. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, HMI is subject to civil penalties for its knowing failure to report, as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b), and for HMI's material misrepresentation in violation of CPSA Section 19(a)(13).

HMI's RESPONSE

14. This Agreement does not constitute an admission by HMI to the charges set forth in paragraphs 4 through 13, including, but not limited to, the charge that the Floor Cleaners contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, and the contention that HMI failed to notify the Commission in a timely manner, in accordance with section 15(b) of the CPSA, 15 U.S.C. § 2064(b), and the charge that HMI knowingly committed a material misrepresentation to an officer or employee in the course of an investigation in violation of Section 19(a)(13) of the CPSA.

AGREEMENT OF THE PARTIES

15. Under the CPSA, the Commission has jurisdiction over the matter involving the Floor Cleaners described herein and over HMI.

16. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, HMI shall pay a civil penalty in the amount of seven hundred twenty-five thousand dollars (\$725,000), with three hundred twenty-five thousand (\$325,000) of that sum suspended. The remaining four hundred thousand dollars (\$400,000) is to be paid in forty equal payments of \$10,000, with the first payment due and payable within twenty (20) calendar days after receiving service of the Commission's final Order accepting the Agreement, and each subsequent payment due and payable no later than the 15th day of each succeeding month until all amounts due and payable under this Agreement are paid in full. Interest at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) shall accrue only on amounts not timely paid as provided in this Agreement and shall be payable by HMI. All payments shall be applied first to accrued but unpaid interest, if any, and then to principal. All payments to be made under this Agreement

shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via: <http://www.pay.gov> for allocation to and credit against the payment obligations of HMI hereunder.

17. The parties agree that this settlement figure has been agreed to by staff, and is predicated, among other things, upon the accuracy of oral and written representations of, and statements by, HMI and HMI's representatives (including representations and warranties set forth in this Agreement) regarding (a) facts that establish HMI's status as a small business and (b) the financial condition of HMI, including statements concerning HMI's inability to pay a greater penalty due to restrictions imposed by a tangible net worth covenant in an existing loan agreement.

18. HMI warrants and represents that the financial statements and financial information provided to staff are true, accurate, and complete and have been prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated and with each other; and that the financial statements and financial information fairly present the financial condition and results of operations and cash flow of HMI as of the dates, and for the periods, indicated therein, all in conformity with GAAP consistently applied during the periods involved except as otherwise noted. HMI additionally warrants and represents that all information provided to staff in connection with this civil penalty matter is true, accurate, and complete. To the extent that financial information provided by the Firm during the course of this civil penalty matter included projections and/or forward looking statements, such projections or statements represented HMI's good faith assessment of the HMI's future performance, and had a reasonable basis.

19. HMI has provided staff with its consolidated financial statements as of and for the years ending September 30, 2012 and September 30, 2013 and, along with related notes to the financial statements, as reviewed and audited by independent auditors.

20. The parties agree that an amount equal to \$725,000 (representing the entire civil penalty including the suspended portion) plus any accrued and unpaid interest minus any penalty amounts paid by HMI shall become immediately due and payable upon the occurrence of an "Event of Default." An Event of Default means: (1) HMI's breach or failure to perform in any respect any of its agreements, covenants, representations or warranties contained in this Agreement (including the failure of HMI to timely pay any payment obligation under this Agreement as set forth in this Agreement); or (2) a violation by HMI of any CPSC statute or regulation.

21. The suspended portion of the civil penalty (\$325,000), and any obligations of HMI related to such payment, will terminate upon the payment in full by HMI as provided in this Agreement of an amount equal to \$400,000 plus accrued and unpaid interest, if any, provided that no Event of Default has occurred.

22. The parties enter into this Agreement for settlement purposes only. The Agreement does not constitute an admission by HMI that HMI violated the CPSA.

23. Following staff's receipt of this Agreement executed on behalf of HMI, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If within fifteen (15) calendar days the Commission does not receive any written request not to accept the Agreement, the Agreement

shall be deemed finally accepted on the sixteenth (16th) calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

24. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) the Commission's final acceptance of this Agreement and service of the accepted Agreement upon HMI, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect and shall be binding upon the parties.

25. Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon HMI, and (ii) the date of issuance of the final Order, for good and valuable consideration, HMI hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in the Agreement: (a) an administrative or judicial hearing; (b) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (c) a determination by the Commission of whether HMI failed to comply with the CPSA and the underlying regulations; (d) a statement of findings of fact and conclusions of law; and (e) any claims under the Equal Access to Justice Act.

26. HMI shall implement and maintain a compliance program designed to ensure compliance with the statutes and regulations enforced by the Commission that, at a minimum, contains the following elements: (i) written standards and policies; (ii) procedures for implementing corrective and preventive actions when compliance deficiencies or violations are identified; (iii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary; (iv) effective communication of company compliance-related policies and procedures

to all employees through training programs or otherwise; (v) senior manager responsibility for compliance and accountability for violations of the statutes and regulations enforced by the Commission; (vi) board oversight of compliance (if applicable); and (vii) retention of all compliance-related records for at least five (5) years and availability of such records to staff upon request.

27. HMI shall maintain and enforce a system of internal controls and procedures designed to ensure that: (i) information required to be disclosed by HMI to the Commission is recorded, processed and reported in accordance with applicable law; (ii) all reporting made to the Commission is timely, truthful, complete and accurate; and (iii) prompt disclosure is made to HMI management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to adversely affect in any material respect HMI's ability to record, process, and report to the Commission in accordance with applicable law.

28. Upon request of staff, HMI shall provide written documentation of its compliance program, and internal controls and procedures including, but not limited to, the effective dates thereof. HMI shall cooperate fully and truthfully with staff and shall make available all information, materials, and personnel deemed necessary by staff to evaluate HMI's compliance with the terms of the Agreement.

29. The parties acknowledge and agree that the Commission may make public disclosure of the terms of the Agreement and the Order.

30. HMI represents that the Agreement: (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of HMI, and each of its successors and/or assigns,

enforceable against HMI in accordance with the Agreement's terms. The individuals signing the Agreement on behalf of HMI represent and warrant that they are duly authorized by HMI to execute the Agreement.

31. The Commission signatories represent that they are signing the Agreement in their official capacities and that they are authorized to execute this Agreement.

32. The Agreement is governed by the laws of the United States.

33. The Agreement and the Order shall apply to, and be binding upon, HMI and each of its subsidiaries, successors, transferees, and assigns, and a violation of the Agreement or Order may subject HMI and each of its successors, transferees, and assigns to appropriate legal action.

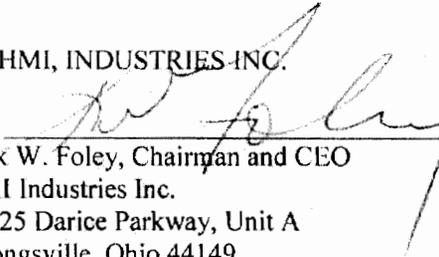
34. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained herein and therein.

35. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties, and therefore, shall not be construed against any party for that reason in any subsequent dispute.

36. The Agreement shall not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

37. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall

remain in full force and effect, unless the Commission and HMI agree that severing the provision materially affects the purpose of the Agreement and Order.

Dated: June 10/2014 By: 
HMI, INDUSTRIES INC.
Kirk W. Foley, Chairman and CEO
HMI Industries Inc.
13325 Darice Parkway, Unit A
Strongsville, Ohio 44149

Dated: _____ By: _____
Elizabeth Abbene Coleman
Jenner & Block, LLP
353 North Clark Street
Chicago, Illinois 60654
Counsel for HMI Industries Inc.

Dated: _____ By: _____
Mary B. Murphy
Assistant General Counsel

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

Stephanie Tsacoumis
General Counsel

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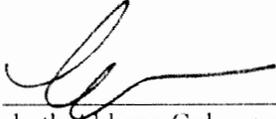
HMI. INDUSTRIES INC.

Dated: _____

By: _____

Kirk W. Foley, Chairman and CEO
HMI Industries Inc.
13325 Darice Parkway, Unit A
Strongsville, Ohio 44149

Dated: 6/11/2014

By:  _____

Elizabeth Abbene Coleman
Jenner & Block, LLP
353 North Clark Street
Chicago, Illinois 60654
Counsel for HMI Industries Inc.

Dated: _____

By: _____

Mary B. Murphy
Assistant General Counsel

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

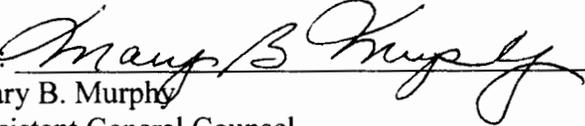
Stephanie Tsacoumis
General Counsel

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HMI, INDUSTRIES INC.

Dated: _____ By: _____
Kirk W. Foley, Chairman and CEO
HMI Industries Inc.
13325 Darice Parkway, Unit A
Strongsville, Ohio 44149

Dated: _____ By: _____
Elizabeth Abbene Coleman
Jenner & Block, LLP
353 North Clark Street
Chicago, Illinois 60654
Counsel for HMI Industries Inc.

Dated: 6/16/14 By: 
Mary B. Murphy
Assistant General Counsel

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

Stephanie Tsacoumis
General Counsel

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

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HMI, Industries Inc.)	CPSC Docket No.: <u>14-C0003</u>
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_____)	

ORDER

Upon consideration of the Settlement Agreement entered into between HMI, Industries Inc. (HMI), and the U.S. Consumer Product Safety Commission (Commission), and the Commission having jurisdiction over the subject matter and over HMI, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED, that HMI shall comply with the terms of the Settlement Agreement and shall pay a civil penalty of \$725,000 (\$725,000, with \$325,000 of the total suspended) subject to the terms and conditions of the Settlement Agreement. HMI shall pay the non-suspended portion of the penalty, \$400,000, in accordance with the schedule and terms set forth in the Settlement Agreement. Upon the occurrence of an Event of Default as set forth in the Settlement Agreement, an amount equal to \$725,000 (representing the entire civil penalty

including the suspended portion) plus any accrued and unpaid interest minus any penalty amounts paid by HMI immediately shall become due and payable.

Provisionally accepted and provisional Order issued on the 2nd day of July, 2014.

BY ORDER OF THE COMMISSION:



Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

Finally accepted and final Order issued on the _____ day of _____, 2014.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission