IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

HYUNDAI MOTOR AMERICA, INC., a California corporation, and HYUNDAI MOTOR COMPANY, a Korean corporation, Plaintiffs, v. RYDELL CHEVROLET, INC., a Delaware corporation, and DOES 1 through 10, inclusive, Defendants.	CASE NO. 6:15-cv-02041 EJM (JSS) **DEFENDANT RYDELL CHEVROLET, INC.'S BRIEF IN SUPPORT OF MOTION FOR ENFORCEMENT OF SETTLEMENT OR, IN THE ALTERNATIVE, FOR A SETTLEMENT CONFERENCE**

INTRODUCTION

Defendant Rydell Chevrolet, Inc. ("Rydell"), by its attorneys GORDON & REES, LLP and SIMMONS PERRINE MOYER BERGMAN PLC, submits this brief[1] in support of its Motion For Enforcement of Settlement Or, In the Alternative, For a Settlement Conference. In support thereof, Rydell states as follows.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case involves the purported sale of allegedly illegal "grey market" Hyundai-branded automobile parts by Defendant Rydell Chevrolet, Inc. On February 5, 2015, without making a prior demand on Rydell, a local Iowa business, Plaintiffs filed this action in the Central District of California, seeking to recover for (1) trademark infringement under the Lanham Act, (2) false designation of origin under the Lanham Act, (3) trademark dilution, (4) common law trademark infringement, (5) common law unfair competition, (6) trademark dilution under CA law, and (7)

[1] Unless stated otherwise, all exhibits referenced herein are to the Declaration of Richard P. Sybert ("Sybert Decl.")

unfair competition under CA law. *See* Dkt No. 1.

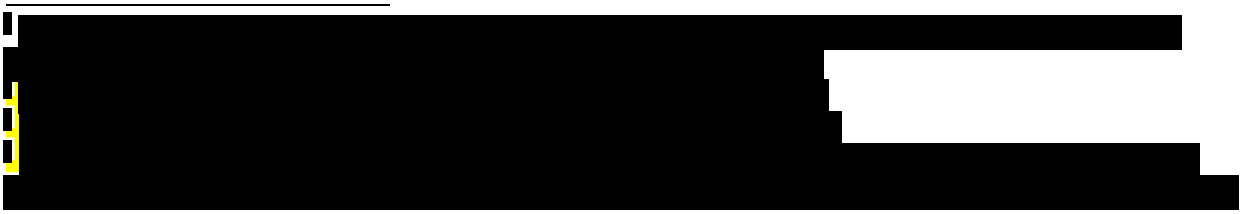
The case was removed to the Northern District of Iowa on Rydell's motion, which Hyundai vigorously opposed. *See* Dkt No. 28. Rydell then filed a motion to dismiss Plaintiffs' Complaint on the grounds that Plaintiffs failed to plead that "all or substantially all" of the alleged "grey market" goods were materially different from Plaintiffs' domestic goods and as such had failed to properly plead that Rydell had engaged in the sale of "illegal grey market goods."[2] *See* Dkt No. 49. In response, Plaintiffs filed an amended complaint ("FAC"). *See* Dkt No. 50. Rydell filed its answer on September 29, 2015. *See* Dkt No. 62.

Throughout this action, Plaintiffs and Rydell have engaged in settlement discussions in an attempt to resolve the current dispute. On August 11, 2015, the parties did in fact reach a settlement of all material matters in controversy. As evidenced by email correspondence from Plaintiffs' counsel Kenneth Keller on that date, [redacted]

The material terms of that settlement agreement can be extrapolated from the parties' correspondence of June 18, 2015 (Ex. B), July 24, 2015 and July 31, 2015 (Ex. C.) and the aforementioned correspondence of August 11, 2015 (Ex. A). These terms are that: [redacted]

[2] This motion was subsequently withdrawn upon the filing of Plaintiffs' FAC. *See* Dkt No. 52.

Despite the parties' agreement and this matter being fully resolved by that agreement, Plaintiffs' counsel sent counsel for Rydell an email on September 16, 2015, in which the former asserted that Rydell has "backtracked from, withdrawn or dramatically changed the material terms of the settlement" and as such Hyundai "will be moving forward with its lawsuit." *See* Ex.



D.

However, it is Plaintiffs as opposed to Rydell who, for reasons unknown, are seeking to undo the parties' settlement agreement. Plaintiffs assert that Rydell must [redacted]

Moreover, Hyundai seems intent on binding Rydell [redacted] Rydell has not diverged from its agreement with respect to [redacted].

Additionally, counsel for Hyundai (Mr. Keller) has insisted that there are other issues that Rydell has "backtracked on." However, based upon the parties' negotiations, the only other major issue of material divergence was with respect to [redacted]

[redacted]

Plaintiffs are attempting to vitiate the settlement agreement between the parties. Plaintiffs should not be allowed to avoid settlement by being unreasonable as to what [redacted]

Accordingly, Rydell moves for enforcement of the settlement reached by the parties as described above. The parties agreed to these provisions and Plaintiffs' refusal to execute an agreement previously agreed-to, presumably because they no longer agree to it, is improper. A party to a voluntary settlement agreement cannot avoid the agreement because he changes his mind. *See Worthy v. McKesson Corp.*, 756 F.2d 1370, 1372 (8th Cir. 1985).

II. APPLICABLE LAW

A dispute concerning the existence of terms of a settlement agreement is a question of fact. *TCBY Systems, Inc. v. EGB Associates, Inc.*, 2 F.3d 288, 291 (8th Cir. 1993); *see also*

[redacted]

Vaughn v. Sexton, 975 F.2d 498, 506 (8th Cir. 1992). While a district court "does not have the power . . . to decide . . . that a draft settlement agreement was binding when the parties did not agree on it." *Id.* at 290 (*citing Wang Lab., Inc. v. Applied Computer Sciences, Inc*., 958 F.2d 355, 359 (Fed. Cir. 1992)), the fact that "the parties left insubstantial matters for later negotiation . . . does not vitiate the validity of the agreement reached," *Trnka v. Elanco Products*, 709 F.2d 1223, 1226 n.2 (8th Cir. 1983). Moreover, the fact that a settlement agreement had to be reduced to writing does not invalidate that settlement agreement if the parties agreed to all material terms. *Worthy*, 756 F.2d at 1373.

III. **DISCUSSION**

Here it is evident that the parties reached settlement since Plaintiffs' own counsel unequivocally stated [redacted] All that was left to do by the parties was to address a few insubstantial matters such [redacted] Though crucial to the agreement, [redacted]. Plaintiffs should not be permitted to vitiate the agreement reached by making a "mountain out of a mole hill," or in other words, making an issue regarding the [redacted]. Rydell does not object to the [redacted] that Plaintiffs put forth in their Resistance to Rydell's motion to dismiss and [redacted].

The "law favors settlement of controversies and, accordingly, [courts] have long held that voluntary settlement of legal disputes should be encouraged, with the terms of settlement not inordinately scrutinized." *EEOC v. American Prods. Corp*., 144 F.Supp.2d 1084, 1092 (N.D.

Iowa 2001) (citations omitted). Thus, this Court should enforce the settlement between the parties in accordance with what the law dictates [redacted] to be.

Moreover, contrary to Plaintiffs' allegations, there is no ambiguity or backtracking by Rydell with respect to the [redacted] set forth above, which are that [redacted]

The FAC states:

> Defendants are importing, promoting, distributing, and selling the Non-Genuine Hyundai Parts to HMA Dealers, and upon information and belief, directly to consumers, and representing the Non-Genuine parts to the Dealers and the public as "Genuine" when in fact they are not.

Dkt No. 50 at ¶ 42. As evidenced by the language in the complaint, "Dealers" refers to "HMA Dealers" and Rydell has always understood [redacted]

Likewise, with respect to [redacted], Rydell, subject to certain confidentiality provisions, remains willing and able to state in the parties' settlement agreement that [redacted]

[8] *See supra* note 6.

[redacted]

[redacted]

[redacted].

Rydell remains willing to make the [redacted] and requests that this Court enforce the settlement between the parties as such.

IV. CONCLUSION

Wherefore, Rydell respectfully requests that this Court enforce the settlement as it existed on August 11, 2015, as reflected by the settlement terms set forth above and explained herein, dismiss all claims in Plaintiffs' FAC with prejudice and award Rydell its costs and fees, including attorneys' fees, in bringing this motion, or, in the alternative, order the Parties to appear in a settlement conference.

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2015, I filed the foregoing with the Clerk of Court using the ECF system which will send notification of such filing to all attorneys and parties of record.

/s/ Dawn M. Gibson

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