

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ERIC LAGUARDIA, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	Case No. 2:20-cv-02311-SDM-EPD
	:	
v.	:	Judge Sarah D. Morrison
	:	
DESIGNER BRANDS INC., <i>et al.</i> ,	:	Magistrate Judge Elizabeth Preston Deavers
	:	
Defendants.	:	

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (“Agreement” or “Settlement”) is entered into pursuant to Rule 23 of the Federal Rules of Civil Procedure, subject to the approval of the Court, between and among the following parties, by and through their respective counsel: Plaintiffs Eric LaGuardia and Nicole Austin (collectively, “Plaintiffs”), individually and on behalf of the proposed Settlement Class defined below, and Defendants Designer Brands Inc. (“Designer Brands”) and DSW Shoe Warehouse, Inc. (“DSW”) (Designer Brands and DSW collectively, “Defendants”) (Plaintiffs and Defendants collectively, the “Parties”).

WHEREAS, on August 20, 2019, Plaintiff Eric LaGuardia filed a civil action against Defendants in the United States District Court for the Southern District of California, captioned *Eric LaGuardia, et al., v. Designer Brands Inc., et al.*, Case No. 3:19-cv-01568, in the United States District Court for the Southern District of California (hereinafter the “Southern District of California Action”), which asserted claims under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”);

WHEREAS, on August 25, 2019, plaintiffs Sophia Wingate and Lindsay Rucker filed a civil action against DSW in the United States District Court for the Northern District of California, captioned *Wingate & Rucker v. DSW Shoe Warehouse, Inc.*, No. 3:19-cv-05324-RS (N.D. Cal. Aug. 25, 2019), which asserted claims under the TCPA;

WHEREAS, on September 12, 2019, plaintiff Simmone Dargoltz filed a civil action against Designer Brands in the United States District Court for the Southern District of Florida, captioned *Dargoltz v. Designer Brands, Inc.*, No. 0:19-cv-62274-RKA (S.D. Fla. Sept. 12, 2019), which asserted claims under the TCPA;

WHEREAS, on September 22, 2019, Plaintiff Nicole Austin filed a civil action against Designer Brands in the United States District Court for the Central District of California,

captioned *Austin v. Designer Brands Inc.*, No. 2:19-cv-08187-JAK-RAO (C.D. Cal Sept. 22, 2019), which asserted claims under the TCPA;

WHEREAS, on October 10, 2019, Defendants moved to consolidate the four overlapping actions and requested that the Judicial Panel on Multidistrict Litigation (“JPML”) transfer them to the United States District Court for the Southern District of Ohio;

WHEREAS, on November 21, 2019, after Defendants’ motion to the JPML was fully briefed, all of the plaintiffs except Plaintiff LaGuardia voluntarily dismissed their actions, thereby mooted Defendants’ motion to transfer and the proceeding before the JPML;

WHEREAS, on November 21, 2019, Plaintiff Eric LaGuardia filed a First Amended Complaint (Dkt. 22) in the Southern District of California Action, adding plaintiffs Sophia Wingate, Lindsay Rucker, and Nicole Austin;

WHEREAS Defendants moved to transfer the Southern District of California Action to the United States District Court for the Southern District of Ohio;

WHEREAS, on May 7, 2020, Judge Jeffrey T. Miller granted Defendants’ motion to transfer and transferred the Southern District of California Action to the United States District Court for the Southern District of Ohio (the “Court”), assigning the case caption *Eric LaGuardia, et al., v. Designer Brands Inc., et al.*, Case No. 2:20-cv-02311 (the “Action”);

WHEREAS the First Amended Complaint (Dkt. 22) contained two causes of action and alleged that Plaintiffs and Wingate and Rucker received marketing text messages from Defendants (the “Texts”) in violation of Sections 227(b) and 227(c) of the TCPA and its implementing regulations (collectively, the “Allegations”) and sought declaratory and injunctive relief, statutory damages, and attorneys’ fees and costs individually and on behalf of two putative classes of individuals nationwide; and

WHEREAS, on June 11, 2020, Defendants filed an Answer in the Action (Dkt. 44);

WHEREAS, also on June 11, 2020, Defendants moved for judgment on the pleadings in the Action (Dkt. 45);

WHEREAS, on October 27, 2020, the Court denied Defendants' motion for judgment on the pleadings in the Action on procedural grounds (Dkt. 93);

WHEREAS, on February 5, 2021, Defendants moved for summary judgment in the Action, with such motion limited to the two threshold issues directed by the Court in the December 2, 2020, case management conference (Dkt. 117);

WHEREAS, on September 9, 2021, the Court granted in part and denied in part Defendants' motion for summary judgment, dismissing Count I of the First Amended Complaint (asserting a violation of Section 227(b) of the TCPA) (Dkt. 140) and as a result only Plaintiffs remained in the Action;

WHEREAS, on November 3, 2022, after the completion of discovery in the Action, Defendants moved for summary judgment on the remaining Count II of the First Amended Complaint in the Action (Dkt. 205);

WHEREAS, also on November 3, 2022, Plaintiffs moved for class certification in the Action (Dkt. 204);

WHEREAS, as well as extensively litigating the Action, the Parties engaged in arms' length negotiations for a comprehensive resolution of this Action. On January 5, 2023, the Parties filed a Joint Motion For Stay (Dkt. 217) in the Action, requesting that the Court stay the Action pending a mediation scheduled for April 6, 2023 (Dkt. 217);

WHEREAS, on January 6, 2023, the Court granted the Joint Motion For Stay and stayed the Action through April 20, 2023, and amended the briefing schedule regarding Defendants'

motion for summary judgment and Plaintiffs' motion for class certification (Dkt. 218);

WHEREAS, on April 6, 2023, with the assistance of Mediator Robert A. Meyer of JAMS Alternative Dispute Resolution, counsel for the Parties engaged in intensive negotiations in a mediation to resolve the Action;

WHEREAS, as the Parties did not reach a settlement at the April 6, 2023, mediation, they proceeded with filing opposition briefs on May 1, 2023 (Dkt. 225, 226) and reply briefs on May 11, 2023 (Dkt. 227, 228) on Defendants' motion for summary judgment and Plaintiffs' motion for class certification in the Action;

WHEREAS, following the April 6, 2023, mediation, the Parties also continued to negotiate a potential resolution of the Action;

WHEREAS the Parties subsequently reached a resolution believed by them to be fair and reasonable through subsequent efforts and negotiations directly between counsel for the Parties;

NOW, THEREFORE, it is hereby STIPULATED AND AGREED, by and among the Parties, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and the other conditions set forth herein, in consideration of the benefits flowing to the Parties and the Settlement Class, that the Action and all of the Released Claims as against all Released Parties shall be fully, finally, and forever compromised, settled, released, discharged, and dismissed, with prejudice, upon and subject to the terms and conditions set forth below.

I. Definitions

In addition to the terms defined at various points within this Agreement, the following defined terms apply throughout this Agreement:

1. "Action" means the action captioned *Eric LaGuardia, et al., v. Designer Brands Inc., et al.*, Case No. 2:20-cv-02311 (S.D. Ohio).

2. “Claim Form” means the Court-approved claim form, which may be electronic or physical paper, in substantially the form(s) as that attached hereto as Exhibit 5, that a member of the Settlement Class must complete, sign, and submit to the Settlement Administrator in accordance with the terms of this Agreement to be eligible for payment under the Settlement.
3. “Claims Deadline” shall have the meaning set forth in paragraph 82 of this Agreement.
4. “Class Data” means all phone numbers, names, email addresses, physical addresses, and other contact data relating to Settlement Class Members in Defendants’ possession. For the sake of clarity, the Class Data shall remain Confidential Information under Paragraph 7 and shall not be disclosed as outlined under Paragraphs 55 and 75(a) after it is sent to the Settlement Administrator.
5. “Class Period” means the period from September 1, 2018, through September 1, 2024.
6. “Settlement Class Representatives” means Plaintiffs (Eric LaGuardia and Nicole Austin).
7. “Confidential Information” shall have the meaning as contained in the Protective Order filed in the Action (Dkt. 175) and shall include all initial disclosures, all responses to discovery requests, all deposition testimony and exhibits, and all materials (including documents or testimony) produced by non-parties in response to subpoenas issued in connection with this matter, including all copies, excerpts, and summaries thereof, as well as any other documents, testimony, written responses, or other materials produced in the Action if they contain information that the producing party asserts in good faith is protected from disclosure by statute or common law, including, but not limited to, confidential personal information, medical or psychiatric information, information whose confidentiality a party is obligated to maintain pursuant to an agreement or court order,

trade secrets, personnel records, or such other sensitive commercial information that is not publicly available, as well as the Class Data.

8. “Court” means the United States District Court for the Southern District of Ohio.
9. “Defendants” means Designer Brands Inc. and DSW Shoe Warehouse, Inc.
10. “Defendants’ Counsel” means Rand L. McClellan and Rebecca N. Schrote of Baker Hostetler LLP.
11. “Dkt. ___” means a reference to a docket entry filed in the Action (*e.g.*, “Dkt. 1” is a reference to docket entry no. 1 filed in the Action).
12. “Effective Date” shall have the meaning set forth in paragraph 99 of this Agreement.
13. “Email Notice” shall have the meaning set forth in paragraph 57 of this Agreement.
14. “Final” when referring to an order or judgment means the expiration of any time for appeal or review of the order or judgment or, if any appeal of the order or judgment is filed and not dismissed, the date it is no longer subject to review upon appeal or review by certiorari or otherwise, and the time for any petition for rehearing, appeal or review, *en banc*, by certiorari or otherwise, has expired.
15. “Final Approval” means the date that the Court enters an order and judgment granting final approval of the Settlement and determines the amount of fees, costs, and expenses awarded to Settlement Class Counsel and the amount of Service Awards to the Settlement Class Representatives. In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.
16. “Final Approval Hearing” means the hearing set by the Court under Rule 23(e) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.
17. “Final Approval Order” means the order and final judgment that the Court enters upon Final Approval. In the event that the Court issues separate orders addressing the matters

constituting Final Approval, then Final Approval Order includes all such orders.

18. “Long-Form Notice” shall have the meaning set forth in paragraph 57 of this Agreement.
19. “Motion for Preliminary Approval of the Settlement” shall have the meaning set forth in paragraph 52 of this Agreement.
20. “Motion for Final Approval of the Settlement” shall have the meaning set forth in paragraph 76 of this Agreement.
21. “Notice” or “Notices” means the notices of proposed class action settlement that, as approved by the Court, the Settlement Administrator will send to Settlement Class Members as set forth in paragraph 57 in the form of the Text Notice (in the form specified in Exhibit 2) and Email Notice (in the form specified in Exhibit 1), and the Long-Form Notice which shall be published on the Settlement Website and shall be in the form specified in Exhibit 3.
22. “Notice of Intent to Object” shall have the meaning set forth in paragraph 70 of this Agreement.
23. “Notice of Termination” shall have the meaning set forth in paragraph 107 of this Agreement.
24. “Objection Deadline” means 60 days after the Notice and Claim Form is sent by Text Notice and Email Notice by the Settlement Administrator. The Objection Deadline shall appear in the Notice.
25. “Opt-Out Deadline” means 60 days after the Notice and Claim Form is sent by Text Notice and Email Notice by the Settlement Administrator. The Opt-Out Deadline shall be specified in the Notice.
26. “Opt-Out List” shall have the meaning set forth in paragraph 64 of this Agreement.

27. “Opt-Out Request” shall have the meaning set forth in paragraph 64 of this Agreement.

28. “Parties” mean Plaintiffs and Defendants.

29. “Plaintiffs” mean Eric LaGuardia and Nicole Austin.

30. “Plaintiffs’ Counsel” means:

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31. “Preliminary Approval” means the date that the Court enters, without material change, an order preliminarily approving the Settlement in the form jointly agreed upon by the Parties and attached to the Motion for Preliminary Approval of the Settlement.

32. “Preliminary Approval Order” means the order and judgment that the Court enters upon preliminary approval of the Settlement.

33. “Released Claims” means any and all claims, causes of action, suits, obligations, debts, rights, demands, liens, actions, agreements, promises, liabilities, damages, losses, controversies, claims for damages, equitable, legal, and/or administrative relief, interest, costs, expenses, accounting fees, and attorneys’ fees of any nature whatsoever, whether

based on any federal law, state law, common law, territorial law, foreign law, contract, rule, statute, regulation, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, that arose during the Class Period against the Released Parties, in any way related to (1) the claims or facts in or related to the pleadings in the Action, (2) texts or any form of communications from the Released Parties, or (3) any claims under the TCPA, its implementing regulations, or any similar state statutes or common-law claims.

34. “Released Parties” means Defendants, and all of their past, present, and future heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, divisions, joint ventures, entities in which Defendants have a controlling interest, holding companies, employers, employees, agents, consultants, marketing partners, lead generators, telemarketers, independent contractors, insurers, reinsurers, directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, investors, investment bankers, underwriters, shareholders, lenders, auditors, legal representatives, successors in interest, affiliates, firms, trusts, and corporations; and each and all of the past, present, and future officers, directors, partners, members, principals, insurers, reinsurers, advisors, insureds, representatives, employees, agents, shareholders, attorneys, servants, successors, executors, and assigns of any and all of the foregoing.
35. “Releasing Parties” means (a) Plaintiffs; (b) Settlement Class Members who do not timely opt out of the Settlement Class (whether or not such members submit Claim Forms); (c) to the extent that a Settlement Class Member is not an individual, all of its present, former,

and future predecessors, successors, assigns, parents, subsidiaries, joint ventures, and affiliates, and all employees, agents, representatives, consultants, independent contractors, insurers, directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, investors, investment bankers, underwriters, shareholders, lenders, and auditors of any and all of the foregoing; and (d) to the extent the Settlement Class Member is an individual, any present, former, and future spouses, as well as the present, former, and future heirs, executors, estates, administrators, representatives, agents, attorneys, partners, successors, predecessors, and assigns of each of them, and any other representatives of any and all of the foregoing.

36. “Service Award” means any Court-ordered payment to Plaintiffs for serving as Settlement Class Representatives.
37. “Settlement” means the settlement contemplated by this Agreement.
38. “Settlement Administrator” means Kroll Settlement Administration, the notice and claims administration firm which, subject to approval of the Court, will administer and send the Notices, maintain the Settlement Website, and engage in any other tasks as directed by the Court. Plaintiffs’ Counsel and Defendants’ Counsel may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Plaintiffs’ Counsel or Defendants’ Counsel may move the Court to substitute a different organization as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.
39. “Settlement Class” shall have the meaning set forth in paragraph 54 of this Agreement.

40. “Settlement Class Counsel” shall refer to Plaintiffs’ Counsel, once approved by the Court.
41. “Settlement Class Members” means all persons included in the Settlement Class.
42. “Settlement Class Member Payment” means a \$70 cash payment that will be made by the Settlement Administrator to each Settlement Class Member who submits a valid and timely Claim Form that is approved by the Settlement Administrator. If the total Settlement Class Member Payments are such that, after the Settlement Costs are paid, the remainder of the Settlement Amount is insufficient to pay each Class Member \$70, then the Settlement Class Member Payment shall be made on a *pro rata* basis.
43. “Settlement Costs” means all fees and costs approved by the Court and all administration costs including, but not limited to, notice and settlement administration costs, taxes, expenses, and attorneys’ fees and costs, and any Service Awards awarded by the Court. Settlement Costs shall be paid by Defendants.
44. “Settlement Amount” means the amount paid by Defendants to pay (1) all Settlement Class Member Payments, (2) all costs associated with the administration of the Settlement, (3) any Service Awards awarded by the Court, (4) any attorneys’ fees and costs awarded by the Court, and (5) any required Taxes and Tax Expenses. The Settlement Amount shall be up to \$4,429,180; in no event shall Defendants pay any more than the Settlement Amount.
45. “Settlement Website” means the website that the Settlement Administrator will establish as a means for Settlement Class Members to obtain notice of and information about the Settlement as Settlement Class Counsel and Defendants’ Counsel agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least until the Court’s entry of the Final Approval Order. The URL of the

Settlement Website shall be www.DesignerBrandsTCPASettlement.com or such other URL as Settlement Class Counsel and Defendants' Counsel agree upon in writing. Ownership of the Settlement Website URL shall be transferred to Defendants within 10 days of the date on which operation of the Settlement Website ceases.

46. "Tax Expenses" mean any and all expenses and costs incurred in connection with the payment of Taxes (including, without limitation, fees and expenses of tax attorneys and/or accountants and other advisors and expenses relating to the filing or failure to file all necessary or advisable tax returns).
47. "Taxes" shall have the meaning set forth in paragraph 94 of this Agreement.
48. "Text Notice" shall have the meaning set forth in paragraph 57 of this Agreement.

II. Use of Settlement Amount

49. Subject to approval by the Court, the Settlement Amount shall be used solely by the Settlement Administrator to pay:
 - a. Settlement Class Member Payments;
 - b. any Service Awards awarded by the Court;
 - c. any required Taxes and Tax Expenses;
 - d. any attorneys' fees and costs awarded by the Court; and
 - e. all costs associated with the administration of the Settlement.
50. Defendants shall have no obligation to make any payments under this Agreement until the Court enters the Preliminary Approval Order. But Defendants may make advances for reasonable settlement administration costs to the settlement administrator without a Court Order.
51. Defendants have no other payment obligations pursuant to this Agreement.

III. Class Settlement Procedures

52. Plaintiffs shall file with the Court a motion for preliminary approval of the Settlement (“Motion for Preliminary Approval of the Settlement”), along with this Agreement and all exhibits hereto, and move for entry of the Preliminary Approval Order, which Order shall be substantially in the form attached hereto as Exhibit 4.
53. Solely for purposes of the Settlement, Plaintiffs will request as part of the Preliminary Approval Order and Final Approval Order that the Court: (a) approve the terms of the Agreement as fair, adequate, and reasonable; (b) certify this Action as a class action pursuant to Rules 23(a), (b)(3), and (e) of the Federal Rules of Civil Procedure and approve the definition of the Settlement Class; (c) appoint Plaintiffs to serve as the Settlement Class Representatives; (d) appoint Plaintiffs’ Counsel to serve as Settlement Class Counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure; (e) approve the appointment of Kroll Settlement Administration as Settlement Administrator; (f) approve the form and content of the Notices; (g) approve the procedures for Settlement Class Members to exclude themselves from the Settlement Class or to object to the Settlement; (h) stay the Action pending Final Approval of the Settlement; and (i) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Settlement Class Counsel, and Defendants’ Counsel.
54. For purposes of this Settlement only, Plaintiffs and Defendants agree to ask the Court to certify the following “Settlement Class” under Rules 23(a), (b)(3), and (e) of the Federal Rules of Civil Procedure:

All persons in the United States who, between September 1, 2018, and September 1, 2024, 1) were sent a “marketing”* text message from Defendants, 2) thereafter responded with the word “stop” or the equivalent, and 3) thereafter received a marketing text message from Defendants.

* Marketing means offering or advertising the commercial availability or quality of any property, goods, products, or services.

The following are excluded from the Settlement Class: (1) the trial judge presiding over this Action; (2) Defendants, as well as any parent, subsidiary, affiliate, or control person of Defendants, and the officers, directors, agents, servants, or employees of Defendants; (3) any of the Released Parties; (4) any Settlement Class Member who has timely opted out of this Settlement; (5) Plaintiffs' Counsel and their employees and Settlement Class Counsel and their employees; and (6) the immediate family of any such person(s). Based on the available data, Defendants sent marketing text messages to 63,274 phone numbers during the class period.

55. No later than 10 business days after entry of the Preliminary Approval Order, Defendants shall send the Class Data to the Settlement Administrator. The Settlement Administrator shall not disclose the Class Data to any other person or entity, including Plaintiffs' Counsel or Settlement Class Counsel, or use it for any purpose other than implementation of this proposed settlement. The Settlement Administrator shall provide Settlement Class Counsel with the number of persons to whom Notice was sent, the number of Claim Forms approved by the Settlement Administrator, and any Opt-Out Requests or Notices of Intent to Object received by the Settlement Administrator.
56. Within 30 days of the Preliminary Approval Order, the Settlement Administrator shall send the Text Notice and Email Notice to Settlement Class Members. The Notices shall include, either in the Notices themselves or by including a link to a webpage with, among other information: a description of the material terms of the Settlement, including a date by which Settlement Class Members may exclude themselves from or "opt out" of the

Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date upon which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class Members may access this Agreement, view the Long-Form Notice, submit Claim Forms, and other related documents and information. The Notices shall not bear or include any logos, trademarks, or return addresses of Defendants, or otherwise be styled to appear to originate from Defendants, but shall include the common name used by Defendants to the public. Ownership of the Settlement Website URL shall be transferred to Defendants within 10 days of the date on which operation of the Settlement Website ceases, which shall be one year following distribution of the Settlement.

57. Notice shall be provided to Settlement Class Members in the following ways:
- a. Text Notice, as approved by the Court, shall be sent to the telephone numbers in the Class Data provided by Defendants. The Text Notice will be in the form specified in Exhibit 2. After the initial Text Notice is sent, reminder notices shall be sent to each phone number corresponding to a Class Member who has not yet submitted a claim. The reminder notice shall be identical to the initial Text Notice. The reminder notices shall be sent 30 days after the initial Text Notice.
 - b. Email Notice, as approved by the Court, shall be sent to the email addresses in the Class Data provided by Defendants. The Email Notice will be in the form specified in Exhibit 1. After the initial Email Notice is sent, reminder notices shall be sent to each email address corresponding to a Class Member who has not yet submitted a claim. The reminder notices shall be identical to the initial Email Notice. The reminder notices shall be sent 30 days after the initial Email Notice.

- c. The Long-Form Notice shall be published on the Settlement Website and shall be in the form specified in Exhibit 3. A link to the Long-Form Notice shall also be included in the Email Notice.
58. The Settlement Administrator shall provide Settlement Class Counsel and Defendants' Counsel with a declaration that confirms that Notices were sent to all Settlement Class Members in a timely manner.
59. Within seven (7) days of sending Notice, the Settlement Administrator shall establish a toll-free number whereby the Settlement Class Members may call and hear automated responses or request a copy of the Long-Form Notice to be sent to them by mail or email.
60. At least one (1) day prior to sending Notice, the Settlement Administrator shall establish the Settlement Website and ensure it is live.
61. All costs related to the Notices shall be considered Settlement Costs and shall be paid out of the Settlement Fund, as defined below.
62. Within the parameters set forth in this Agreement, any changes to the Notices shall be agreed to by Settlement Class Counsel and Defendants' Counsel.
63. The Long-Form Notice and the Settlement Website shall include the procedure for Settlement Class Members to exclude themselves ("opt out") of the Settlement Class. A Settlement Class Member may opt out of the Settlement Class at any time before the Opt-Out Deadline. Any Settlement Class Member who does not timely and validly request to opt out shall be bound by the terms of this Agreement.
64. Settlement Class Members who wish to opt out from the Settlement Class must submit timely and written requests for exclusion (the "Opt-Out Request"). To be effective, the Opt-Out Request must include the Settlement Class Member's name, address, and

telephone number where he or she may be contacted, the telephone number(s) which he or she maintains received marketing text message(s) from Defendants relating to the claims asserted in this Action, an unequivocal statement that the Settlement Class Member wishes to be excluded from the Settlement Class, and the Opt-Out Request must be personally signed by the Settlement Class Member submitting the request. The deadline for a Settlement Class Member to submit an Opt-Out Request (the “Opt-Out Deadline”) shall be 60 days after the Text Notices and Email Notices are sent by the Settlement Administrator. Opt-Out Requests must be exercised individually by the Settlement Class Members and are only effective as to the individual Settlement Class Member requesting exclusion.

- a. Plaintiffs shall not elect or seek to opt out or exclude themselves from the Settlement Class, and any such attempt will be deemed a breach of this Agreement sufficient to permit Defendants to terminate the Agreement.
 - b. The Settlement Administrator shall promptly log and prepare a list of all Opt-Out Requests (the “Opt-Out List”) and shall provide the Opt-Out List weekly to Settlement Class Counsel and Defendants’ Counsel, and shall submit a declaration to the Court which includes and attests to the accuracy of the Opt-Out List no later than 20 days prior to the Final Approval Hearing set by the Court.
 - c. All Settlement Class Members who do not timely and properly exclude themselves from the Settlement Class shall be bound by this Agreement, and all their claims shall be dismissed with prejudice and released as provided for herein pursuant to the terms of a Final Approval Order.
65. An Opt-Out Request that does not include all of the foregoing information as set forth in

paragraph 64 of this Agreement, or that is not sent to the Settlement Administrator, or that is not postmarked within the time specified, shall be considered deficient. If an Opt-Out Request is deemed deficient in that it lacks a signature or any of the information required by paragraph 64 of this Agreement, the Settlement Administrator will provide the Settlement Class Member with an opportunity to correct the deficiencies by sending an email describing the deficiencies within 7 days of receiving the deficient Opt-Out Request and informing the Settlement Class Member that he or she has 15 days to correct the issue. If the Settlement Class Member does not correct the deficiencies within the specified time, that person shall be a Settlement Class Member and shall be bound as a Settlement Class Member by the Settlement, if approved.

66. If a member of the Settlement Class submits both a Claim Form and an Opt-Out Request, the former shall govern and any request for exclusion will be treated as having been withdrawn.
67. Any member of the Settlement Class who submits a timely and valid Opt-Out Request shall not: (i) be bound by the Final Approval Order; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement.
68. So-called “mass” or “class” opt-outs shall not be allowed, opt-outs are permitted only on a per person basis.
69. The Long-Form Notice and the Settlement Website shall include the procedure for Settlement Class Members to object to the Settlement and/or to Settlement Class Counsel’s application for attorneys’ fees, costs, and expenses and/or Service Awards to the Settlement Class Representatives. Objections to the Settlement, to the application for

fees, costs, expenses, and/or for the Service Award must be mailed to the Clerk of the Court, the Settlement Administrator, Settlement Class Counsel, and Defendants' Counsel.

70. Settlement Class Members who do not request exclusion from the Settlement Class may object to the proposed Settlement. Settlement Class Members who choose to object to the proposed Settlement must file a written notice of intent to object ("Notice of Intent to Object"). The deadline for a Settlement Class Member to submit a Notice of Intent to Object shall be 60 days after the Text Notices and Email Notices by the Settlement Administrator. Any Settlement Class Member who timely files an objection in compliance with this Agreement may appear at the Final Approval Hearing, in person or by counsel, and be heard to the extent and only if permitted by the Court.
71. To be effective, a Notice of Intent to Object must include all of the following information from the Settlement Class Member:
 - a. The name of the case and case number;
 - b. The Settlement Class Member's name, address, telephone number, and signature;
 - c. The specific reasons why the Settlement Class Member objects to the terms of the proposed Settlement;
 - d. The name, address, bar number, and telephone number of any attorney who represents the Settlement Class Member related to the Settlement Class Member's intention to object to the terms of the Settlement; and
 - e. Whether the Settlement Class Member and/or their attorney intend to appear at the Final Approval Hearing and whether the Settlement Class Member and/or their attorney will request permission to address the Court at the Final Approval Hearing.

72. In addition, a Notice of Intent to Object must contain the following information, if the Settlement Class Member or his or her attorney requests permission to speak at the Final Approval Hearing:
- a. A statement of the legal and factual basis for each objection;
 - b. A list of all witnesses the Settlement Class Member may seek to call at the Final Approval Hearing;
 - c. A list of all legal authority the Settlement Class Member will present at the Final Approval Hearing; and
 - d. An identification of the Settlement Class Member's full name and phone number at which the Settlement Class Member received marketing text message(s) from Defendants.
73. Any Settlement Class Member who does not file a timely Notice of Intent to Object shall be barred from making any objection to the proposed Settlement. Settlement Class Members have the right to exclude themselves from the proposed Settlement and pursue a separate and independent remedy against Defendants by complying with the exclusion provisions set forth in this Agreement. Settlement Class Members who object to the proposed Settlement, but do not exclude themselves from the proposed Settlement, shall remain Settlement Class Members and shall waive their right to pursue an independent remedy against Defendants. To the extent any Settlement Class Member objects to the proposed Settlement, and such objection is overruled in whole or in part by the Court, such Settlement Class Member will be forever bound by the Final Approval Order. Settlement Class Members can avoid being bound by any judgment of the Court relating to the Settlement by complying with the exclusion provisions in this Agreement.

74. The Settlement Administrator shall immediately provide Settlement Class Counsel and Defendants' Counsel a copy of each Notice of Intent to Object received by the Settlement Administrator.

IV. Settlement Administrator

75. The Settlement Administrator shall administer the Settlement as described herein and perform such other functions as are specified elsewhere in this Agreement, including, but not limited to:

- a. obtaining the Class Data from Defendants and strictly maintaining its confidentiality; only the Settlement Administrator and Defendants may have access to the Class Data;
- b. preparing the Text Notice, Email Notice, and Long-Form Notice, in substantially the form as those attached to this Agreement as Exhibits 1, 2, and 3, and as approved by the Court, sending the Text Notices and Email Notices to the Settlement Class Members, publishing the Long-Form Notice on the Settlement Website, and ensuring that the Notices comply with Rule 23 of the Federal Rules of Civil Procedure and due process;
- c. establishing and maintaining the Settlement Website;
- d. establishing and maintaining a post office box for Opt-Out Requests and Notices of Intent to Object;
- e. maintaining copies of all Opt-Out Requests and Notices of Intent to Object;
- f. establishing and maintaining an automated toll-free telephone line for Settlement Class Members;
- g. responding to any Settlement Class Member inquiries;

- h. processing, logging, and reviewing all Opt-Out Requests for deficiencies and addressing deficiencies with those requesting exclusion and providing them with an opportunity to correct the deficiencies, as provided for in paragraph 65 of this Agreement;
- i. processing, logging, and reviewing submitted Claim Forms for deficiencies and/or fraud, and addressing deficiencies with Settlement Class Members who submitted a deficient Claim Form and providing them with an opportunity to correct the deficiencies, as provided for in paragraph 85 of this Agreement;
- j. providing reports to Settlement Class Counsel and Defendants' Counsel regarding the status of sending out the Notices, the status of the Settlement Website, the number of Claim Forms received, the number of Opt-Out Requests, and the Notices of Intent to Object received;
- k. performing the duties of an escrow agent as described in this Agreement, and any other Settlement-administration-related function at the instruction of Settlement Class Counsel and Defendants' Counsel, including, but not limited to, verifying that Settlement Class Member Payments have been distributed as required;
- l. distributing payment to Settlement Class Members that submitted timely and valid Claim Forms;
- m. invoicing Defendants for payment of Settlement Costs, as provided in this Agreement and which shall be paid by Defendants and count towards the Settlement Amount;
- n. performing any tax-related function at the instruction of Settlement Class Counsel and Defendants' Counsel;

- o. effectuating compliance with the applicable provisions of the Class Action Fairness Act (“CAFA”), including the notice requirements in 28 U.S.C. § 1715 and providing a certification of compliance;
 - p. providing declarations to the Court in support of preliminary and final settlement approval; and
 - q. performing any other Settlement-administration-related function at the instruction of both Settlement Class Counsel and Defendants’ Counsel, subject to this Agreement.
76. The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by completing its duties in a reasonable, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law and in accordance with its normal business practices, including but not limited to a summary of work performed by the Settlement Administrator, and an accounting of all amounts paid to Settlement Class Members. Such records will be provided to Settlement Class Counsel and Defendants’ Counsel and to the Court along with the motion for final approval of the settlement (“Motion for Final Approval of the Settlement”).
77. In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.
78. The Settlement Administrator, with approval by the Parties, shall be responsible for compliance with the applicable provisions of CAFA, including the notice requirements in

28 U.S.C. § 1715.

79. As soon as practicable after the conclusion of the Settlement Administrator's obligations to provide notice and administer the claims process, the Settlement Administrator shall provide Settlement Class Counsel and Defendants' Counsel with an appropriate declaration outlining compliance with those obligations, including compliance with the applicable provisions of CAFA including the notice requirements under CAFA. The declaration will include final tallies of valid claims, Opt-Out Requests, and Notices of Intent to Object, as well as a statement of the total expenses incurred by the Settlement Administrator as of that date.
80. Payment pursuant to the Court-approved Settlement, this Agreement, or as otherwise ordered by the Court shall be final and conclusive against any and all Settlement Class Members who do not exclude themselves from the Settlement. No person shall have any claim against Plaintiffs, Plaintiffs' Counsel, Settlement Class Counsel, Defendants, Defendants' Counsel, any of the other Released Parties, or the Settlement Administrator based on any acts taken or for distributions made substantially in accordance with the Court-approved Settlement, or as otherwise ordered by the Court.
81. All proceedings with respect to the administration, processing, and determination of the validity of submitted Claim Forms and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of submitted Claim Forms, shall be subject to the jurisdiction of the Court.

V. Claim Form Submission, Calculation of Distributions

82. To be eligible for the Settlement Class Member Payment, each qualified individual must submit a Claim Form either by mail or on the Settlement Website by the Claims Deadline.

If submitted by mail, a Claim Form shall be deemed to have been submitted on the postmark date on the envelope, mailed first-class postage prepaid, and addressed in accordance with the Notice instructions. If submitted by private courier (*e.g.*, FedEx), a Claim Form shall be deemed to have been submitted on the shipping date reflected on the shipping label. The deadline for individuals to submit a Claim Form shall be 120 days after the Notice and Claim Form is sent by the initial Text Notice and Email Notice by the Settlement Administrator (the “Claims Deadline”).

83. Settlement Class Members may alternatively submit Claim Forms online electronically at the Settlement Website. The Settlement Website will include a button to “Submit a Claim” that will allow individuals to submit their Claim Forms online. Online submission of Claim Forms must be submitted by the Claims Deadline, and Claimants will be asked to verify their identity online.
84. Settlement Class Members who submit valid and timely Claim Forms shall be entitled to Settlement Class Member Payments upon Final Approval by the Court of the Settlement and pursuant to the terms of the Agreement. Only one Claim Form may be submitted per Settlement Class Member. Neither the Settlement Administrator nor Defendants shall have any obligation to investigate any submitted Claim Form that is not valid and timely.
85. The Settlement Administrator shall review each timely submitted Claim Form and determine whether the individual is a Settlement Class Member and thereby eligible to receive the Settlement Class Member Payment. If a submitted Claim Form is deemed deficient, the Settlement Administrator will provide the Settlement Class Member with an opportunity to correct the deficiencies by sending an email or letter describing the deficiencies within 7 days of receiving the deficient Claim Form and informing the

Settlement Class Member that he or she has 15 days to correct the issue.

86. The individual Settlement Class Member Payment shall be \$70 to each Settlement Class Member who submits a valid and timely claim. If the total Settlement Class Member Payments are such that, after the Settlement Costs are paid, the remainder of the Settlement Amount is insufficient to pay each Class Member \$70, then the Settlement Class Member Payment shall be made on a *pro rata* basis.
87. Within 60 days from the Effective Date, the Settlement Administrator shall pay by check to Settlement Class Members who submitted timely and valid Claim Forms their Settlement Class Member Payments.
88. Settlement Class Member Payments shall be sent to each Settlement Class Member, who does not timely opt out and who timely submits a valid Claim Form as described above, by the Settlement Administrator via U.S. mail. Settlement Class Member Payments will be made payable by check and will be issued and mailed by the Settlement Administrator with an appropriate legend, in a form approved by Settlement Class Counsel and Defendants' Counsel, to indicate that it is from the Settlement, and will be sent to the address submitted on the Claim Form. Each check shall be valid for 90 days from the date of its issuance. Timely negotiation of checks is a condition of any Settlement Class Member's right to the Settlement Class Member Payment.
89. For any returned checks, the Settlement Administrator shall make a reasonable effort to locate a current mailing address for the Settlement Class Members whose checks were returned (such as by running addresses of returned checks through the National Change of Address database to effectuate delivery of such checks). For any such Settlement Class Member for whom an updated address is found, the Settlement Administrator shall make

only one additional attempt to re-mail or re-issue a Settlement Class Member Payment to the updated address.

90. In the event of any complications arising in connection with the issuance or cashing of a check, other than the Settlement Class Member's failure to timely deposit or cash the check, the Settlement Administrator shall provide written notice to Settlement Class Counsel and Defendants' Counsel. Absent specific instructions from Settlement Class Counsel and Defendants' Counsel, the Settlement Administrator shall proceed to resolve the dispute using its best practices and procedures to ensure that the funds are fairly and properly distributed to the Settlement Class Member entitled to the Settlement Class Member Payment.
91. Neither Defendants nor the Settlement Administrator shall have any obligation to re-issue checks that are not negotiated within 90 days of issuance.

VI. Settlement Funding

92. Defendants will fund the Settlement as follows: (a) within 14 business days after the entry of the Preliminary Approval Order (and receipt of wire instructions provided by the Settlement Administrator to Defendants and an executed IRS Form W-9), Defendants will transfer \$100,000 to the Settlement Administrator for the purpose of settlement administration; and (b) within 15 business days after the Effective Date, Defendants will transfer an amount to pay the Settlement Class Members who submitted a valid and timely Claim Forms that were approved by the Settlement Administrator, any Service Award, and any amount awarded to Settlement Class Counsel for attorneys' fees and costs to the Settlement Administrator, and any taxes (collectively, the "Settlement Fund").
93. The Settlement Fund will remain under the control of the Settlement Administrator. The

Settlement Administrator shall communicate with Settlement Class Counsel and Defendants' Counsel on at least a monthly basis to discuss potential cash needs for the following month. Defendants may remit additional payment to the Settlement Administrator as necessary to fund the administration; any additional payments for settlement administration shall become part of the Settlement Fund and count towards the Settlement Amount. Any interest earned on the Settlement Fund shall become part of the Settlement Fund.

94. The Settlement Fund at all times shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed upon Defendants or Defendants' Counsel, or Plaintiffs or Settlement Class Counsel, with respect to income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or otherwise (collectively "Taxes"), shall be paid out of the Settlement Fund. Plaintiffs and Settlement Class Counsel, and Defendants and Defendants' Counsel, shall have no liability or responsibility for any of the Taxes. The Settlement Fund shall indemnify and hold Plaintiffs and Settlement Class Counsel, and Defendants and Defendants' Counsel, harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

VII. Distribution of Settlement Fund, Disposition of Residual Funds.

95. The Settlement Administrator shall distribute the Settlement Fund in the following order and within the time period set forth with respect to each such payment:

- a. First, to the Settlement Class Representatives any Service Award, and to Settlement Class Counsel any attorneys' fees and costs, ordered by the Court. Provided the Settlement Class Representatives and Settlement Class Counsel have provided completed and executed IRS Form W-9s, then, within 14 days after the Defendants' funding the Settlement Fund, the Settlement Administrator shall pay the Court-awarded fees and costs of Settlement Class Counsel and any Service Awards by check, which shall be paid to Shamis & Gentile, P.A. at 14 NE 1st Ave., Suite 705, Miami, Florida 33132. If all Settlement Class Counsel agree in writing, the payment to Settlement Class Counsel may be made to one firm, and that firm shall be solely responsible for distributing each Settlement Class Counsel firm's allocated share of such fees. Defendants and Defendants' Counsel shall have no responsibility for any allocation, and no liability whatsoever to any person or entity claiming any share of the funds to be distributed for payment of Court-awarded fees, costs, or any other payments not specifically described herein.
- b. Next, no later than 60 days following the Effective Date, the Settlement Class Members who submitted timely and valid Claim Forms shall be sent their Settlement Class Member Payments with any checks issued expiring 90 days after the date of issuance;
- c. No later than 130 days after the completion of the payments set forth in paragraph 95(a) and (b), any residual funds in the Settlement Fund shall be distributed as follows:
 - i. To the extent that any checks to Settlement Class Members expire and become null and void, or are undeliverable, the Settlement Administrator

shall apply the proceeds from these checks against Settlement Costs. .

- ii. All costs associated with the disposition of residual funds—whether through additional distributions to Settlement Class Members and/or through an alternative plan approved by the Court—shall be borne solely by the Settlement Fund.

VIII. Final Approval Order

- 96. Plaintiffs' Motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiffs shall file their Motion for Final Approval of the Settlement, and their application for attorneys' fees, and costs, and for Service Awards for the Settlement Class Representatives, no later than 30 days after the Opt-Out Deadline and Notice of Intent to Object Deadline. Defendants agree not to oppose Class Counsel's request for attorneys' fees of up to 25% of the Settlement, or \$1,107,295 and costs (not including Settlement Costs) up to \$34,000. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement, and on Settlement Class Counsel's application for attorneys' fees, costs, and expenses and for a Service Award for the Settlement Class Representatives. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their legal representative) who object to the Settlement, provided the objectors submitted timely Notices of Intent to Object that meet all of the requirements listed in this Agreement and outlined in the Preliminary Approval Order and Notice.
- 97. The Settlement is expressly conditioned upon the entry of a Final Approval Order that shall:

- a. Determine that the Settlement is fair, adequate, and reasonable, within the meaning of Federal Rule of Civil Procedure 23, and direct its consummation pursuant to its terms;
 - b. Finally certify the Settlement Class for purposes of this Settlement only, and certify Plaintiffs as the Settlement Class Representatives and Plaintiffs' Counsel as Settlement Class Counsel;
 - c. Determine that the Notice provided satisfies due process requirements;
 - d. Enter judgment dismissing the Action with prejudice and without costs, except as set forth in this Agreement;
 - e. Provide that each Settlement Class Member who has not properly or timely excluded himself or herself from the Settlement in accordance with the Court's prior orders and terms of the Settlement shall be bound by all provisions of the Settlement and the Final Approval Order;
 - f. Bar and enjoin all Releasing Parties from instituting or participating in any lawsuit, regulatory, or other proceeding arising out of or related in any way to the Released Claims, including during any appeal from the Final Approval Order;
 - g. Release the Released Parties from the Released Claims; and
 - h. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Plaintiffs, Defendants, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.
98. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and entering final

judgment thereon, and whether to approve Settlement Class Counsel's request for attorneys' fees, costs, expenses, and Service Awards.

IX. Effective Date and Releases

99. "Effective Date" means the fifth business day after which all of the following events have occurred:

- a. The Court has entered without material change the Final Approval Order; and
- b. The time for seeking rehearing or appellate or other review has expired, and no appeal or petition for rehearing or review has been filed; or
- c. The Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken;

100. Plaintiffs and each Settlement Class Member hereby fully, finally, and forever release, resolve, relinquish, and discharge each of the Released Parties from the Released Claims.

101. Upon the Effective Date, Plaintiffs and Settlement Class Members shall be deemed to have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties.

102. In connection with and as part of the Released Claims, Plaintiffs expressly acknowledge that they are familiar with principles of law such as Section 1542 of the Civil Code of the State of California, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Notwithstanding California or other law, Plaintiffs expressly agree that, in connection with and as part of the Released Claims, the provisions, rights, and benefits of Section

1542 and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction that may be applicable herein are hereby knowingly and voluntarily waived, released, and relinquished to the fullest extent permitted by law in connection with the Released Claims; and also agree and acknowledge that the foregoing is an essential term of the releases provided herein. Plaintiffs also agree and acknowledge in connection with and as part of the Released Claims that they may discover claims presently unknown or unsuspected or facts in addition to or different from those which they now know or believe to be true with respect to matters released herein, and that such claims, are hereby released, relinquished, and discharged.

X. Payment of Attorneys' Fees, Costs, and Service Awards

103. Any award of attorneys' fees, and costs to Settlement Class Counsel shall be payable solely out of the Settlement Fund. The Parties agree that the Court's failure to approve, in whole or in part, any award for attorneys' fees shall not prevent the Settlement from becoming effective, nor shall it be grounds for termination.
104. Settlement Class Counsel will ask the Court to approve a Service Award of \$10,000 to each of the two Settlement Class Representatives. The Service Award is to be paid solely from the Settlement Fund. The Service Award shall be paid to the two Settlement Class Representatives in addition to any Settlement Class Member Payment that they would be entitled to receive. Defendants agree not to oppose Settlement Class Counsel's request for the Service Awards.
105. Defendants, Defendants' Counsel, and the Released Parties shall have no responsibility for, and no liability with respect to, the allocation or payment of attorneys' fees and costs, or Service Awards that the Court may award in this Action or for any allocation or

payment of any portion of the Settlement Fund to any other person who may assert some claim thereto.

106. The procedure for and the allowance or disallowance by the Court of any application for Service Awards to the Plaintiffs and/or any attorneys' fees, and costs to be paid to Settlement Class Counsel or Plaintiffs' Counsel are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement of the Released Claims as set forth in this Agreement. Any such separate order, finding, ruling, holding, or proceeding relating to any such applications for attorneys' fees and costs, or any separate appeal from any separate order, finding, ruling, holding, or proceeding relating to them or reversal or modification of them, shall not operate to terminate or cancel this Agreement or otherwise affect or delay the finality of the Final Approval Order.

XI. Termination of Settlement

107. This Settlement may be terminated by either Plaintiffs' Counsel or Defendants by serving on counsel for the opposing Party and filing with the Court a written notice of termination ("Notice of Termination") within 30 days (or such longer time as may be agreed in writing between Plaintiffs' Counsel and Defendants' Counsel) after any of the following occurrences:
- a. the Court declines to enter the Preliminary Approval Order or makes material changes thereto;
 - b. the Court refuses to approve the Settlement or any material part of it;
 - c. the Court declines to enter the Final Approval Order in any material respect;
 - d. the Final Approval Order is vacated, modified, or reversed in any material respect;

or

e. the Effective Date does not occur.

108. If, prior to the Final Approval Hearing, the number of individuals in the Settlement Class who have timely submitted an Opt-Out Request from the Settlement Class in accordance with the provisions of the Preliminary Approval Order and the Notice given pursuant thereto totals 200 or more, Defendants shall have, in their sole and absolute discretion, the option to terminate this Agreement. Defendants may terminate the Agreement by serving on Settlement Class Counsel and filing with the Court a Notice of Termination within 10 business days after being informed in writing by the Settlement Administrator that 200 or more Opt-Out Requests have been timely filed.

XII. Effect of a Termination

109. Except as otherwise provided herein, in the event the Settlement and this Agreement are terminated or if the Effective Date fails to occur for any reason, the Parties shall be deemed to have reverted *nunc pro tunc* to their respective status in the Action as of the date of execution of this Agreement, and except as otherwise expressly provided, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered and without any prejudice in any way from the negotiation, fact, or terms of the Agreement. Except as otherwise provided herein, in the event this Agreement is terminated or if the Effective Date fails to occur for any reason, then within 15 business days after the Notice of Termination is sent by Plaintiffs' Counsel or Defendants' Counsel, the balance of the Settlement Fund or any part thereof that may have been paid or advanced by Defendants, less any Notice and Settlement administration costs reasonably paid, or incurred, or owing, and less any Taxes and Tax Expenses paid,

incurred, or owing, shall be refunded to Defendants pursuant to written instructions from Defendants' Counsel, including interest accrued thereon. If such Notice and Settlement administration costs and Taxes and Tax Expenses have not been advanced to the Settlement Fund or otherwise paid by Defendants, Defendants shall be solely liable to satisfy and pay such amounts.

110. In the event the Settlement is terminated, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose.

XIII. No Admission of Liability

111. Defendants dispute their liability for the claims alleged in the Action, and Defendants maintain that they complied, at all times, with applicable laws and regulations. Defendants do not, by this Agreement or otherwise, admit any liability or wrongdoing of any kind. Defendants have agreed to enter into this Agreement solely to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of the Released Claims.
112. Plaintiffs' Counsel believe that the claims asserted in the Action have merit, and they have examined and considered the benefits under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action.
113. Plaintiffs' Counsel fully investigated the facts and law and conducted extensive discovery. Plaintiffs' Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class.
114. The Parties understand and acknowledge that this Agreement constitutes a compromise

and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any Party of any fault, liability, or wrongdoing of any kind whatsoever.

115. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement, (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.
116. In addition to any other defenses Defendants may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the Released Claims contained herein.

XIV. Miscellaneous Provisions

117. Gender and Plurals. As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.
118. Headings. The headings herein are used for the purpose of convenience only and are not meant to have legal effect. Any inconsistency between the headings used in this

Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

119. Exhibits. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that a conflict or inconsistency exists between the terms of this Agreement and the terms of any exhibit hereto, the terms of this Agreement shall prevail.
120. No Assignment. Plaintiffs represent and warrant they have not assigned any claim or right or interest therein as against the Released Parties to any other person, and that they are fully entitled to release the same.
121. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.
122. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement.
123. Obligation to Meet and Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.
124. Integration. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.
125. Governing Law. The Agreement shall be construed in accordance with, and be governed by, the laws of the State of Ohio, without regard to the principles regarding choice of law.

126. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Original signatures are not required. Any signature submitted by facsimile or through email of a PDF or image shall be deemed an original.
127. Certification of Destruction. Plaintiffs and Plaintiffs' Counsel agree to continue to be bound by the Protective Order in this Action. Within 120 days of the Court's entry of the Final Approval Order, Plaintiffs and Plaintiffs' Counsel shall either return all Confidential Information, and all information subject to the Protective Order or certify that all such information has been destroyed.
128. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notices and the Settlement Administrator. The Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.
129. Notices. All notices to Plaintiffs' Counsel and Settlement Class Counsel shall be sent by email with a hard copy sent by mail, with delivery confirmation, to:

Jeffrey Wilens, Esq.
Lakeshore Law Center
18349 Yorba Linda Boulevard, Suite 107-610
Yorba Linda, CA 92886
jeff@lakeshorelaw.org

Rand McClellan
200 Civic Center Drive, Suite 1200
Columbus, OH 43215
rmcclellan@bakerlaw.com

The notice recipients and addresses designated above may be changed by written notice from the counsel to which the change applies. Upon the request of any Party, the Parties agree to promptly provide each other with copies of Opt-Out Requests, Notices of Intent to Object, or other filings or documents received as a result of the Notices.

130. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Plaintiffs' Counsel and Defendants' Counsel and, if the Settlement has been approved preliminarily or finally by the Court, approved by the Court.
131. No Waiver. The waiver by any Party of any provision or breach of this Agreement shall not be deemed or construed as a waiver of any other provision.
132. Authority. Each Party represents and warrants that (a) the person executing this Agreement on behalf of the Party has full power and authority to execute and deliver this Agreement and to take appropriate action required or permitted to effectuate its terms; (b) assuming the due authorization, execution, and delivery by the other Parties, this Agreement has been duly and validly executed and delivered by such Party; and (c) this Agreement constitutes a legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms, subject to bankruptcy, insolvency, reorganization, or other similar laws or general application affecting the rights and remedies of creditors, and to general principles of equity.
133. Agreement Mutually Prepared. Neither Defendants nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose

of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

134. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the facts and law made in this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement.
135. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement, received independent legal advice with respect to the advisability of entering into this Agreement and the legal effects of this Agreement, and fully understands the effect of this Agreement.
136. Individual Claimants Only. Claims may be made only by individual Settlement Class Members for themselves and may not be made, or accepted by the Settlement Administrator, by factors, consolidators, or otherwise.
137. This Agreement shall be binding upon and inure to the benefit of the respective heirs, estates, successors, and assigns of the Parties hereto, including any and all Released Parties and any corporation, partnership, or other entity into or with which any of the Parties may merge, consolidate, or reorganize.
138. Time Periods and Deadlines. The time periods and dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Plaintiffs' Counsel and Defendants' Counsel, without notice to Settlement Class Members. In the event any date or deadline for actions

in this Agreement falls on a weekend or legal holiday, such date or deadline shall be on the first business day thereafter.

139. Recitals. The Recitals are an integral and material part of this Agreement and are incorporated in full herein.

(signatures on following page)

By: _____ Date:
Eric LaGuardia
Plaintiff

By: _____ Date:
Nicole Austin
Plaintiff

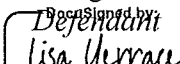
By: _____ Date:
Andrew J. Shamis, Esq.
Plaintiffs' Counsel


By: _____ Date:
Jeffrey Wilens, Esq.
Plaintiffs' Counsel

By: _____ Date:
Alex M. Tomasevic, Esq.
Plaintiffs' Counsel

By: _____ Date:
Jeffrey P. Spencer, Esq.
Plaintiffs' Counsel

By:  _____ Date: 11/21/2024
7D55E88367504CB...
Designer Brands Inc.

By:  _____ Date: 11/21/2024
7D55E88367504CB...
DSW Shoe Warehouse, Inc.
Defendant

By:  _____ Date: 11/25/2024
Counsel for Defendants

By: _____
Eric LaGuardia
Plaintiff

Date:

By: _____
Nicole Austin
Plaintiff

Date:

By: *andrew shamis*

Andrew J. Shamis, Esq.
Plaintiffs' Counsel

Date: Nov 21, 2024

By: _____
Jeffrey Wilens, Esq.
Plaintiffs' Counsel

Date:

By: *Alex Tomasevic*

Alex Tomasevic (Nov 21, 2024 09:58 PST)
Alex M. Tomasevic, Esq.
Plaintiffs' Counsel

Date: Nov 21, 2024

By: *Jeffrey Spencer*

Jeffrey Spencer (Nov 21, 2024 15:01 PST)
Jeffrey P. Spencer, Esq.
Plaintiffs' Counsel

Date: Nov 21, 2024

By: _____
Designer Brands Inc.
Defendant

Date:

By: _____
DSW Shoe Warehouse, Inc.
Defendant

Date:

By: _____
Counsel for Defendant

Date:

By: Eric LaGuardia Date: Nov 25, 2024
Eric LaGuardia
Plaintiff

By: _____ Date: _____
Nicole Austin
Plaintiff

By: _____ Date: _____
Andrew J. Shamis, Esq.
Plaintiffs' Counsel

By: Jeffrey Wilens Date: 11-22-2024
Jeffrey Wilens, Esq.
Plaintiffs' Counsel

By: _____ Date: _____
Alex M. Tomasevic, Esq.
Plaintiffs' Counsel

By: _____ Date: _____
Jeffrey P. Spencer, Esq.
Plaintiffs' Counsel

By: _____ Date: _____
Designer Brands Inc.
Defendant

By: _____ Date: _____
DSW Shoe Warehouse, Inc.
Defendant

By: _____ Date: _____

Counsel for Defendant

By: _____ Date:
Eric LaGuardia
Plaintiff

By: Nicole Austin _____ Date: 11/25/2024
Nicole Austin
Plaintiff

By: _____ Date:
Andrew J. Shamis, Esq.
Plaintiffs' Counsel

By: Jeffrey Wilens _____ Date: 11-22-2024
Jeffrey Wilens, Esq.
Plaintiffs' Counsel

By: _____ Date:
Alex M. Tomasevic, Esq.
Plaintiffs' Counsel

By: _____ Date:
Jeffrey P. Spencer, Esq.
Plaintiffs' Counsel

By: _____ Date:
Designer Brands Inc.
Defendant

By: _____ Date:
DSW Shoe Warehouse, Inc.
Defendant

By: _____ Date:

Counsel for Defendant