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*Attorneys for Plaintiff,*  
Roy Lo

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES – UNLIMITED CIVIL**

**ROY LO, Individually and On Behalf  
Of All Others Similarly Situated,**

Plaintiffs,

v.

**NUTRIBULLET LLC,**

Defendant.

Case No.: 21STCV12852

**DECLARATION OF JASON A. IBEY IN  
SUPPORT OF PLAINTIFF’S MOTION  
FOR ATTORNEYS’ FEES, COSTS, AND  
SERVICE AWARD**

**JUDGE:** Hon. William F. Highberger  
**DEPT.:** 10



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**DECLARATION OF JASON A. IBEY**

**I, JASON A. IBEY, declare:**

1. I am one of the attorneys for plaintiff Roy Lo (the “Plaintiff”) in the above-captioned action against defendant Nutribullet LLC (“Defendant”). I am over the age of 18 and am fully competent to make this declaration.
2. I was admitted to the State Bar of California in 2012 and have been a member in good standing ever since that time. I have litigated cases in both state and federal courts in California. I am admitted in every federal district in California. I am also admitted to the state bar of Utah, Massachusetts, and the Ninth Circuit Court of Appeals.
3. I have personal knowledge of the following facts and, if called upon as a witness, could and would competently testify thereto, except as to those matters which are explicitly set forth as based upon my information and belief and, as to such matters, I am informed and believe that they are true and correct.
4. I submit this declaration in support of Plaintiff’s Motion for Attorneys’ Fees, Costs, and Service Award.
5. I am a partner at Kazerouni Law Group, APC.
6. I have been appointed as one of Class Counsel in this action.
7. I have worked on this action since its inception, and attended the full-day of private mediation before Judge Patrick Walsh (Ret.) of Signature Resolution on August 11, 2021.
8. I am unaware of any conflict of interest between Plaintiff and the Settlement Class members, or between Plaintiff and his counsel in this matter.
9. In my opinion, the requested combined award of attorneys’ fees and costs of \$195,000 is fair and reasonable in this risky action taken by my firm on a contingency fee basis. My firm has not been paid for any work on this matter to date.

**HOURS INCURRED**

10. From early 2021 to September 6, 2022, I have incurred approximately 102.10 hours in this action against Defendant. All hours were logged contemporaneously in the normal course of business and categorized by major task. I have been involved in every major aspect of



1 the case, including but not limited to attending the mediation and preliminary approval  
 2 hearing, and motion practice to date. I have spent 0.30 hours on Communications with  
 3 client, approximately 9.50 hours on Communications with co-counsel, approximately 1.90  
 4 hours on Communications with the Court, approximately 12.20 hours on Communications  
 5 with opposing counsel, approximately 7.90 hours on Communications (other),  
 6 approximately 0.40 hours on Discovery, approximately 32.20 hours on  
 7 Mediation/Settlement, approximately 33.90 hours on Motion Practice (including a motion  
 8 for preliminary approval, as well as motion for attorneys' fees, costs and service award),  
 9 approximately 0.30 hours on Pleadings, and approximately 1.70 hours on Pretrial  
 10 Document Review/Preparation, approximately 1.60 hours on Miscellaneous tasks, and  
 11 approximately 0.10 hours on Administrative matters.

- 12 11. I anticipate incurring at least 14 hours of additional time to prepare a motion for final  
 13 approval of the class action settlement and through the fairness hearing, including to attend  
 14 the fairness hearing, for a total of 116.10 hours.
- 15 12. Based on my extensive experience litigating consumer class actions as detailed below, I  
 16 believe my proposed hourly rate of \$450 is fair and reasonable, in light of my extensive  
 17 experience combined with my prior fee approval rates.
- 18 13. In March of 2021, I was approved for an hourly rate of \$440 in *Hinkle v. Sports Research*  
 19 *Corp.*, No. 37-2020-00001422-CU-NP-NC (Sup. Ct. San Diego). In *Franklin v. Ocwen*  
 20 *Loan Servicing, LLC*, No. 3:19-cv-03333-SI (N.D. Cal.), on August 26, 2022, I was  
 21 approved for an hourly rate of \$430 in that class action settlement where the complaint was  
 22 filed in 2018. In May of 2019, I was approved for an hourly rate of \$405 as a senior  
 23 associate attorney in *Ronquillo-Griffin v. TransUnion Rental Screening Sols., Inc.*, No.  
 24 17cv129-JM (BLM), 2019 U.S. Dist. LEXIS 79021 (S.D. Cal. May 9, 2019). Before that,  
 25 I was approved for an hourly rate of \$395 in *Ayala et al v. Triplepulse, Inc.*, BC655048,  
 26 Los Angeles Superior Court (Nov. 13, 2018).

1 14. At the \$450 hourly rate and with the 116.10 hours incurred above, my lodestar for this  
2 action is \$52,242, after taking into considering the estimated additional hours likely to be  
3 incurred.

4 15. Based on my experience, as outline in more detail below, I believe an hourly rate of \$450  
5 for this matter is fair and reasonable for this class action litigation.

6 16. I have reviewed my firm's expense records for this matter and believe they were reasonably  
7 incurred.

8 **EXPERIENCE**

9 17. Prior to being admitted to practice law in California, I interned for the Honorable Deborah  
10 Sanchez of the Los Angeles Superior Court, at the Courthouse in Bellflower, California,  
11 for approximately two months.

12 18. I predominantly practice in the Central District of California and Southern District of  
13 California; however, I have litigated numerous cases in each of the district courts in  
14 California and in various state courts in California. I have also litigated cases in district  
15 courts outside of California on a *pro hac vice* basis.

16 19. I practice law almost exclusively in the area of consumer actions, with over 95% of my  
17 legal practice dedicated to consumer class actions. I have been involved in litigating several  
18 dozens of consumer class actions, obtaining class certification status in five contested  
19 cases.

20 20. I have contributed significantly to eight appellate briefs before the Ninth Circuit Court of  
21 Appeals.

22 21. I have participated in more than a dozen mediations involving putative class action cases,  
23 several of which have resulted in settlement on a class action basis under similar causes of  
24 action asserted in this action.

25 22. I serve as, or have served as, one of class counsel in the following consumer cases:

- 26 a. Serving as one of class counsel in unlawful recording class action settlement in  
27 *Franklin v. Ocwen Loan Servicing, LLC*, No. 3:18-cv-03333-SI, Dkt. No. 169  
28 (N.D. Cal.) (finally approved on Aug. 26, 2022);

- 1 b. Served as one of class counsel in *Deunas v. Freedom Laser Therapy, Inc., d/b/a*  
2 *iRestore*, No. 30-01060877-CU-BT-CXC (Sup. Ct. Orange 2021) (finally approved  
3 product false advertising class action settlement);
- 4 c. Served as one of class counsel in data breach settlement in *Cotter v. Checkers*  
5 *Drive-In Restaurants, Inc.*, No. 8:19-cv-01386-VMC-CPT (M.D. Fla.) (finally  
6 approved);
- 7 d. Served as one of class counsel in *Hinkle v. Sports Research Corp.*, No. 37-2020-  
8 00001422-CU-NP-NC (Sup. Ct. San Diego) (final class action settlement  
9 approval granted on March 26, 2021);
- 10 e. Served as one of class counsel in finally approved class action settlement in *Holt v.*  
11 *Foodstate, Inc.*, No. 1:17-cv-00637-LM (D. N.H. Jan. 16, 2020) (involving product  
12 false advertising claims);
- 13 f. Appointed one of class counsel in the matter of *Holt v. Noble House & Resorts,*  
14 *Ltd.*, No. 17-cv-2246-MMA-BLM (S.D. Cal. Oct. 16, 2018) (involving alleged  
15 unlawful surcharges at certain restaurants);
- 16 g. Served as one of class counsel in finally approved as one of class counsel in the  
17 CIPA (Cal. Pen. Code § 632.7) class action in *Ronquillo-Griffin v. Telus Communs.,*  
18 *Inc.*, 3:17-cv-00129-JM-BLM, (S.D. Cal. Nov. 1, 2018);
- 19 h. Served as one of class counsel in finally approved as one of class counsel in the  
20 TCPA class action in *Barrow v. JPMorgan Chase Bank, N.A.*, 1:16-cv-03577-AT  
21 (N.D. Ga. Nov. 5, 2018);
- 22 i. Served as one of class counsel in finally approved as one of class counsel in *Ayala*  
23 *v. TriplePulse Inc.*, 2018 Cal. Super. LEXIS 3242, \*4 (Los Angeles County  
24 Superior Court, Nov. 13, 2018), involving the alleged unlawful misrepresentations  
25 on a products label and in defendant's advertising;
- 26 j. Served as one of class counsel in finally approved as one of class counsel in the  
27 TCPA class action in *Fox v. Spectrum Club of Santa Barbara*, No. 16CV00050  
28 (Superior Court of Santa Barbara, March 23, 2017).

- 1 23. On August 16, 2018, I presented oral argument in *Self-Forbes v. Advanced Call Center*,  
 2 No. 17-15804 (9th Cir. 2018), and obtained a successful ruling for my client. *Self-Forbes*  
 3 *v. Advanced Call Ctr. Techs., LLC*, 2018 U.S. App. LEXIS 30577, at \*1 (9th Cir. Oct. 29,  
 4 2018).
- 5 24. On October 20, 2017, I presented oral argument before the Ninth Circuit Court of Appeal  
 6 in the matter of *Carter v. Rent-A-Center, Inc.*, No. 16-15835.
- 7 25. I have served or serve as plaintiff's counsel in at least the following actions alleging similar  
 8 claims to this action under the Song-Beverly Consumer Warranty Act:  
 9 a. *De La Cruz v. Group SEB USA, Inc. d/b/a T-Fal.*, No. 5:21-cv-02030 (C.D. Cal.);  
 10 b. *Schneider v. All Clad Metalcrafters*, No. 30-2021-01189853 (Sup. Ct. Orange);  
 11 c. *Ormond v. Gibson Brands, Inc.*, No. 8:21-cv-01552 (C.D. Cal.).
- 12 26. With regard to putative class action involving other claims of false advertising of products,  
 13 specifically, I have served as one of plaintiff's counsel in at least the following:  
 14 a. *Hinkle v. Sports Research Corp.*, No. 37-2020-00001422-CU-NP-NC (Sup. Ct.  
 15 San Diego) (final class action settlement approval granted on March 26, 2021);  
 16 b. *Holt v. Foodstate, Inc.*, No. 1:17-cv-00637-LM (D. N.H. Jan. 16, 2020)  
 17 (involving product false advertising claims);  
 18 c. *Figueroa v. Bissell Homecare, Inc.*, No. 2:21-cv-04645-FMO-GLS (C.D. Cal.)  
 19 (pending motion to remand by plaintiffs and motion to dismiss by defendant);  
 20 d. *Kline et al., v. Post Holdings, Inc.*, No. 3:15-cv-02348-AJB-RBB (S.D. Cal.) (co-  
 21 counsel in finally approval class action settlement involving non-functional slack-  
 22 fill);  
 23 e. *Kerzner v. Street King LLC*, No. BC549460 (Superior Court, Los Angeles);  
 24 f. *Alaei v. H.J. Heinz Company, L.P.*, No. 3:15-cv-02961-MMA-DHB (S.D. Cal.);  
 25 g. *Welk v. Nutraceutical Corp.*, No. 3:17-cv-00266-BEN-KSC (S.D. Cal.);  
 26 h. *Palmer v. Whole Foods Market IP, L.P.*, No. BC690514 (Sup. Ct., Los Angeles).

1 27. I have contributed significantly to several other consumer putative class actions in which a  
2 favorable published decision was issued, including but not limited to the following cases:

- 3 a. *Miholich v. Senior Life Ins. Co.*, No. 21-cv-1123-WQH-AGS, 2022 U.S. Dist.  
4 LEXIS 23981 (S.D. Cal. Feb. 10, 2022) (denying defendant’s motion to dismiss  
5 and strike class allegations in TCPA action for alleged unsolicited telemarketing  
6 to consumers on the National Do-Not-Call Registry);
- 7 b. *Read v. Cenlar FSB*, No. EDCV 21-504 JGB (SPx), 2022 U.S. Dist. LEXIS  
8 3586 (C.D. Cal. Jan. 7, 2022) (striking some of the defendant’s affirmative  
9 defenses, including the defendant’s prayer for costs of suit and attorneys’ fees);
- 10 c. *Burt v. Bd. of Trs. of the Univ. of R.I.*, No. 20-465-JJM-LDA, 2021 U.S. Dist.  
11 LEXIS 42059 (D.R.I. Mar. 4, 2021) (denying in part and granting in part motion  
12 to dismiss breach of contract claims involving putative class action for refund  
13 as a result of campus closure due to COVID-19);
- 14 a. *Hill v. Quicken Loans, Inc.*, No. ED CV 19-0163 FMO (SPx), 2020 U.S. Dist.  
15 LEXIS 140980 (C.D. Cal. Aug. 5, 2020) (denying defendant’s motion to  
16 dismiss and motion to compel arbitration of TCPA case);
- 17 b. *Delisle v. Speedy Cash*, No. 3:18-CV-2042-GPC-RBB, 2019 U.S. Dist. LEXIS  
18 96981 (S.D. Cal. June 10, 2019) (denying defendant’s motion to compel  
19 arbitration of claims for allegedly charging excessive APR; remanded on appeal  
20 to consider intervening law, decision pending);
- 21 c. *Rahmany v. T-Mobile USA Inc.*, 717 F.App’x 752 (9th Cir. 2018) (reversing  
22 order granting defendant’s motion to compel arbitration);
- 23 d. *Marks v. Crunch San Diego, LLC*, No. 14-56834, 2018 U.S. App. LEXIS 26883  
24 (9th Cir. Sep. 20, 2018) (unanimous three-panel decision on the meaning of an  
25 automatic telephone dialing system under the Telephone Consumer Protection  
26 Act);
- 27 e. *Meza v. Sirius XM Radio, Inc.*, No. 17-cv-2252-AJB-JMA, 2018 U.S. Dist.  
28 LEXIS 164601 (S.D. Cal. Sep. 25, 2018) (denying motion to dismiss, based in

part of challenge to constitutionality of the Telephone Consumer Protection Act);

- f. *Ahmed v. HSBC Bank USA, N.A.*, No. ED CV 15-2057 FMO (SPx), 2017 U.S. Dist. LEXIS 183910 (C.D.Cal. Nov. 6, 2017) (granting plaintiffs’ motion to strike some of the affirmative defenses);
- g. *Greenley v. Laborers' Int'l Union of N. Am.*, 271 F. Supp. 3d 1128 (D.Minn. 2017) (denying motion to dismiss on several grounds, including a challenge to the constitutionality of the Telephone Consumer Protection Act);
- h. *Ronquillo-Griffin v. Telus Communs., Inc.*, No. 17cv129 JM (BLM), 2017 U.S. Dist. LEXIS 99577 (S.D. Cal. June 27, 2017) (denying motion to dismiss claims for violation of California’s Invasion of Privacy Act);
- i. *Kline v. Iovate Health Scis. U.S.A., Inc.*, No. 3:15-cv-02387, 2017 U.S. Dist. LEXIS 44837 (S.D. Cal. Mar. 24, 2017);
- j. *Barrett v. Wesley Fin. Grp., LLC*, No. 3:13-cv-00554-LAB-KSC, 2016 U.S. Dist. LEXIS 16417 (S.D. Cal. Feb. 9, 2016);
- k. *Sherman v. Yahoo! Inc.*, 150 F. Supp. 3d 1213 (S.D. Cal. 2015);
- l. *Abdeljalil v. GE Capital Corp.*, 306 F.R.D. 303 (S.D. Cal. 2015);
- m. *Knutson v. Sirius XM Radio Inc.*, 771 F.3d 559 (9th Cir. 2014);
- n. *Couser v. Comenity Bank*, No. 12CV2484-MMA-BGS, 2014 U.S. Dist. LEXIS 189155 (S.D. Cal. Oct. 2, 2014);
- o. *Fox v. Asset Acceptance, LLC*, No. 13cv0922 DMS (BGS), 2013 U.S. Dist. LEXIS 197836 (S.D. Cal. Oct. 29, 2013);
- p. *Dake v. Receivables Performance Mgmt., LLC*, No. EDCV 12-01680 VAP (SPx), 2013 U.S. Dist. LEXIS 160341 (C.D. Cal. Apr. 16, 2013).

**PUBLICATIONS**

28. I wrote an article entitled, *Think twice before filing that Article III challenge*, which was published in the Daily Journal on November 1, 2016.

1 29. An article that I wrote on the Telephone Consumer Protection Act, entitled, *Those annoying*  
2 *robo calls and the changing standard of prior express consent*, was published in the March  
3 2015 edition of Plaintiff magazine.

4 30. I wrote an article entitled *California's Invasion of Privacy Act* that was published in the  
5 May 2018 edition of Plaintiff magazine, concerning Cal. Pen. Code § 630, *et seq.*

6 31. I wrote an article entitled, *Pay your arbitration fees on time or lose the right to arbitrate*,  
7 that was published in the Daily Journal on October 25, 2019.

8 **RECOGNITIONS**

9 32. I was selected to Rising Stars in 2018-2022 by Super Lawyers, for consumer law.

10 33. Selected in 2022 to be among Top 40 under 40, by The National Trial Lawyers.

11 **MEMBERSHIPS**

12 34. I am a member of the following organizations:

- 13 a. The National Association of Consumer Advocates;  
14 b. Consumer Attorneys of California; and  
15 c. The American Bar Association.

16 **EXHIBITS**

17 35. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts the United States  
18 Consumer Law's Attorney Fee Survey Report for 2017-2018, with the table of contents  
19 omitted.

20 36. Attached hereto as **Exhibit 2** is a true and correct copy of order in *Djoric v. Justin Brands*,  
21 No. BC574927 (Sup. Ct. Los Angeles, California Aug. 3, 2018).

22 37. Attached hereto as **Exhibit 3** is a true and correct copy of Order Approving Class Action  
23 Settlement and Approving Distribution from Common Fund in *Perez v. Barclays Capital*  
24 *Real Estate Inc.*, No. CGC-10-496374 (Sup. Ct. San Francisco, California Aug. 24, 2012).

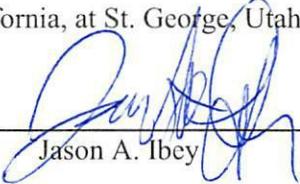
25 38. Attached hereto as **Exhibit 4** is a true and correct copy of Final Approval Order and  
26 Judgment in *Hinkle v. Sports Research Corp.*, No. 37-2020-00001422-CU-NP-NC (Sup.  
27 Ct. San Diego Mar. 26, 2021).

REACTION OF CLASS MEMBERS

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39. As of September 2, 2022, twenty-two (22) persons have requested exclusion and there are zero objections reported by the Settlement Administrator.

I declare under penalty of perjury that the foregoing is true and correct, executed on September 7, 2022, pursuant to the laws of the State of California, at St. George, Utah.

  
\_\_\_\_\_  
Jason A. Ibey



# EXHIBIT 1

**UNITED STATES  
CONSUMER LAW**

**ATTORNEY FEE SURVEY  
REPORT**

**2017-2018**



**Ronald L. Burdge, Esq.**



**United States Consumer Law  
Attorney Fee Survey Report 2017-2018**

Survey Conducted By  
and  
Survey Report Authored By

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September 10, 2019

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This publication was created to provide accurate and authoritative information concerning the subject matter covered. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney or expert. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

California

	This Survey
Average Number of Attorneys in Firm	2.73
Median Years in Practice	158.0
Average Concentration of Practice in Consumer Law	72.1
Primary Practice Area	Consumer Law
Secondary Practice Area	Bankruptcy
Average Number of Paralegals in Firm	1.21
Last Time Attorney Rate Changed (Average in Months)	16.92
Average Billable Paralegal Rate	143
Average Attorney Rate for All Attorneys	450
25% Median Attorney Rate for All Attorneys	350
Median Attorney Rate for All Attorneys	430
75% Median Attorney Rate for All Attorneys	513
95% Median Attorney Rate for All Attorneys	663
Median Metropolitan Attorney Rate	440
Median Non-Metropolitan Attorney Rate	450
Median Attorney Rate in Northern Area of State	450
Median Attorney Rate in Southern Area of State	425
Median Attorney Rate in Eastern Area of State	413
Median Attorney Rate in Western Area of State	475
Median Attorney Rate in Central Area of State	425

### Median Rates for Practice Areas

	25% Median	Median	95% Median
Attorneys Handling Bankruptcy Cases	338	413	631
Attorneys Handling Class Action Cases	350	488	700
Attorneys Handling Credit Rights Cases	325	412	663
Attorneys Handling Mortgage Cases	313	412	624
Attorneys Handling Vehicle Cases	338	450	663
Attorneys Handling TCPA Cases	350	425	725
Attorneys Handling Other Cases	263	350	600

### Experience Variable Table

Years Practicing Consumer Law	Average Attorney Hourly Rate
<1	225
1-3	286
3-5	291
6-10	307
11-15	406
16-20	422
21-25	507
26-30	514
31-35	505
36-40	370
41-44	400
45+	531

### Specialty Variable Table

Percentage of Consumer Law Practice	Average Attorney Hourly Rate
100	472
90	476
80	471
70	335
60	389
50	392

### Small Firm Size Variable Table

Years in Practice	Average Attorney Hourly Rate
<1	300
1-3	309
3-5	283
6-10	403
11-15	417
16-20	491
21-25	517
26-30	533
31-35	460
36-40	529
41-44	300
45+	531

# EXHIBIT 2

## Djoric v. Justin Brands

Superior Court of California, County of Los Angeles

August 3, 2018, Decided; August 3, 2018, Filed

Case No.: BC574927

### Reporter

2018 Cal. Super. LEXIS 11400 \*

MARKO DJORIC, an individual, on behalf of himself and all other similarly situated, Plaintiff, v. JUSTIN BRANDS, INC.; and Does 1 through 10, inclusive, Defendants.

### Core Terms

settlement, boots, advertising, manufactured, costs, notices, Handcrafted, parties, settlement agreement, class member, marketing, imported, flag, final approval, class representative, attorney's fees, retailers, damages, announcement, discovery, distribute, website, models, brand, preliminary approval, **class action**, instructions, Declaration, mediator, logo

**Counsel:** [\*1] For Plaintiff Marko Djoric and the Class: Gretchen Carpenter, Bar No. 180525, CARPENTER LAW, Manhattan Beach, CA; David C. Parisi, Bar No. 162248, Suzanne Havens Beckman, Bar No. 188814, PARISI & HAVENS LLP, Santa Monica, California.

For Defendant Justin Brands, Inc.: Robert J. Hicks, STREAM KIM HICKS WRAGE & ALFARO, PC.

**Judges:** Hon. Maren E. Nelson, Superior Court Judge.

**Opinion by:** Maren E. Nelson

### Opinion

#### CLASS ACTION

#### JUDGMENT

On July 31, 2018, the Court held a hearing on Plaintiff's motions for final approval of **class action** settlement and for an award of attorneys' fees and costs and an **incentive award** for the representative plaintiff. At the hearing, the Court granted the motions and entered its Order Granting Motion for Final Approval of **Class**

**Action** Settlement ("Final Approval Order"). A copy of the Final Approval Order is attached hereto as Exhibit 1.

#### IT IS THEREFORE ORDERED, ADJUDGED and DECREED that:

1. For purposes of this Judgment, "Settlement Class" shall mean all California persons who made a purchase in California (including an online purchase made while the purchaser is in California) of a Chippewa Product from March 1, 2011 to June 30, 2017. Specifically excluded from the Settlement Class are: (a) employees, [\*2] officers, directors, agents, and representatives of Defendant Justin Brands, Inc. ("Defendant") and its subsidiaries and affiliates; and (b) all mediators, judges and judicial staff who have presided over this action. For purposes of this Judgment, "Chippewa Products" means the models of Defendant's Chippewa boots attached hereto as Exhibit 2 which were manufactured, marketed, and/or distributed by Defendant with the designation "Handcrafted in the USA" or other designation of United States origin, but that contain one or more foreign-made component parts.

2. The Court grants class certification for purposes of settlement.

3. The Court approves the settlement of this action, as set forth in the Settlement Agreement, as being fair, adequate, and reasonable.

4. In addition to the other benefits provided by the settlement, the Defendant shall implement the following injunctive relief, as set forth in the Settlement Agreement:

a. Agree to maintain the changes Defendant made in or about March 2016 to its Chippewa Products and their marketing, advertising, and promotional materials, including revision of Defendant's country

of origin representations and use of the United States flag without [\*3] qualifying language, to comply with California law, including but not limited to [Business & Professions Code Section 17533.7](#). This injunctive relief will become effective as part of this Judgment on the Effective Date and will remain in effect for five years, unless new or amended federal or California laws expressly allow or require further changes. In either case Defendant expressly agrees to conform its marketing, advertising, and promotional materials to such additional or different requirements imposed by subsequent law.

b. Publish a corrective announcement on the home page of Defendant's website ([www.chippewaboots.com](http://www.chippewaboots.com)), in the same sized font as the rest of its home page, disclosing that the Chippewa Products include parts that are manufactured outside the United States, and including a link to a web page that lists the specific Chippewa Products affected. The announcement will be in substantially the following form: "Notice to California Consumers: Chippewa boots that were previously advertised as 'Handcrafted in the U.S.A.' were constructed by workers here in the U.S.A., but also contained parts manufactured outside the United States. We now include 'with imported parts' or like notices with our advertising. Chippewa [\*4] apologizes if this caused any confusion to its valued customers. California consumers click [here](#) for a list of specific boot models affected." The announcement will remain on the homepage of Defendant's website for at least six (6) months.

c. Publish a corrective announcement in California newspapers of general circulation within California disclosing that the Chippewa Products include parts that are manufactured outside the United States. The announcement will be in substantially the following form: "Chippewa boots that were previously advertised as 'Handcrafted in the U.S.A.' were constructed by workers here in the U.S.A., but also contained parts manufactured outside the United States. We now include 'with imported parts' or like notices with our advertising. Chippewa apologizes if this caused any confusion to its valued customers. Go to [www.chippewaboots.com](http://www.chippewaboots.com) for a list of specific boot models affected."

d. Notify in writing all known parties who sell, distribute, or market the Chippewa brand boots in California, including online retailers outside of California who sell to California residents, that although the boots were advertised as "Handcrafted

in the U.S.A.," they include parts [\*5] that were manufactured outside the United States, and providing a list of specific boot models affected.

e. Instruct in writing and require all known parties who sell, distribute or market Chippewa brand boots in California, including online retailers outside of California who sell to California residents, to:

i. Only represent or advertise to California residents that Chippewa Products are "Handcrafted in the U.S.A." when using the additional representation that the boots include parts that are manufactured outside the United States. Defendant shall instruct such retailers to use the language "Assembled in the USA with imported parts" and/or "Handcrafted in the USA with imported materials," or substantially similar language referencing the use of imported parts and materials;

ii. For known parties who sell, distribute, or market the Chippewa brand boots in California through interne websites, Defendant shall provide them with explicit instruction with regard to the change of language on the websites in compliance with subparagraph (i), above;

iii. Only advertise for Chippewa boots using a United States flag by further representing in the flag logo itself that the boots include parts that [\*6] are manufactured outside the United States, such as the flag currently being used by Defendant, which includes the following language in the flag logo itself: "Assembled in the USA with imported parts or Handcrafted in the USA with imported materials.";

iv. Return to Defendant, at Defendant's expense, all of the retailer's current inventory of Chippewa boots that have the "Handcrafted in the U.S.A." logo embossed in leather on the boots;

v. Return to Defendant, at Defendant's expense, or destroy all marketing and packaging materials that advertise the boots as "Handcrafted in the U.S.A." without further representing that the boots include parts that are manufactured outside the United States; and

vi. Destroy all marketing and packaging materials that advertise the boots with a United States flag which does not further represent in the flag logo itself that the boots include parts that are manufactured outside the United States.

f. Follow up with retailers regarding their compliance with the provisions set forth in subparagraph (e) above, three (3) months after the initial instructions are sent; and

g. Report to Class Counsel as to the number of boots returned to Defendant pursuant to subparagraph [\*7] (d)(iv), above, four (4) months after the initial instructions are sent.

5. The relief set forth in Paragraphs 3(a), (b), (c), and (d), above, shall be completely implemented within six (6) months after the Effective Date. Notice of completion must be filed with the Court and provided to Class Counsel within seven (7) months after the Effective Date.

6. Upon the settlement becoming final, Defendant and the Released Persons (Defendant and its past and present subsidiaries and affiliates, parent companies, divisions, as well as their distributors, wholesalers, retailers, customers and licensors, including the officers, directors, trustees, employees, shareholders, agents, insurers, spokespersons, legal representatives, attorneys, public relations firms, advertising and production agencies and assigns of all such persons or entities) will be released and forever discharged from any and all actions, claims, demands, rights, suits, and causes of action of any kind or nature whatsoever against the Released Persons, including damages, costs, expenses, penalties, and attorneys' fees, whether at law or equity, known or unknown, foreseen or unforeseen, developed or undeveloped, direct, indirect [\*8] or consequential, liquidated or unliquidated, arising under common law, regulatory law, statutory law, or otherwise, based on federal, state, or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Plaintiff or Settlement Class Members ever had, now have, may have, or hereafter can, shall or may ever have against the Released Persons in any court, tribunal, arbitration panel, commission, agency or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising from or in any way whatsoever relating to actions or omissions in manufacturing, advertising, marketing, labeling, packaging, promotion, selling and distribution of Chippewa Products with a "Handcrafted in USA" or equivalent country of origin label, from March 1, 2011 to June 30, 2017, including those which have been asserted or which could reasonably have been asserted by the Settlement Class members against Defendant in this action or any other threatened or pending litigation

asserting claims of the nature encompassed by this release, and any claims asserted after the date of final approval. This release is [\*9] limited to claims that arose or could have been asserted based on labels or marketing in existence as of the date of final approval of the Settlement Agreement and excludes any claims for personal injury.

7. Defendant and its parents, subsidiaries and affiliated corporations, partnerships and businesses, past, present and future, and all of their past, present and future trustees, directors, officers, shareholders, partners, agents, employees, representatives, attorneys, insurers, hereby release Plaintiff Djoric and his counsel from any claims of abuse of process, malicious prosecution, or any other claims arising out of the institution, prosecution, assertion, or resolution of this Action, including, but not limited to, claims for attorneys' fees, costs of suit, or sanctions of any kind.

8. Defendant and Plaintiff Djoric, on his own behalf only, and not on behalf of the Settlement Class Members, expressly waive the provisions of [Section 1542 of the California Civil Code](#) (and all other like provisions of law) to the full extent that these provisions may be applicable to the releases set forth above. [California Civil Code, Section 1542](#), provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor [\*10] at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Subject to the above, Djoric or Defendant may hereafter discover facts other than or different from those which he or it knows or believes to be true with respect to the claims being released. Nevertheless, Djoric and Defendant expressly waive and fully, finally and forever settle and release, upon this Settlement becoming final, any known or unknown, contingent or non-contingent claim in any way relating to the subject matter of the claims being released above, whether or not concealed or hidden, without regard to subsequent discovery or existence of such different or additional facts.

9. The Court awards \$425,000.00 in attorneys' fees and costs to Class Counsel, Carpenter Law and Parisi & Havens LLP.

10. The Court awards \$10,000 as a Class Representative Service Award to Plaintiff Marko Djoric.

11. The Court awards \$161,061.19 in claims

administration costs to JND Legal Administration, to be updated by further Order if necessary.

Dated: 8/3/18

/s/ Maren E. Nelson

Hon. Maren E. Nelson

Superior Court Judge

issued a checklist and requested supplemental briefing. Class Counsel filed supplemental briefing and an amended settlement agreement on January 10, 2018 and March 2, 2018.

The Court granted preliminary approval on March 12, 2018. Now before the Court is the motion for final approval of the settlement.

## II. DISCUSSION

### EXHIBIT 1

#### ORDER GRANTING MOTION FOR FINAL APPROVAL [\*11] OF CLASS ACTION SETTLEMENT

### I. BACKGROUND

On March 12, 2015, Plaintiff Marko Djoric filed the instant class action. Plaintiff alleges that Defendant Justin Brands, Inc., in violation of the Unfair Competition Law, Bus. & Prof. Code § 17200, et seq.; the Consumers Legal Remedies Act, Civil Code § 1750, et seq.; and the False Advertising Law, Bus. & Prof Code § 17500, et seq., falsely advertised and labeled thousands of its boots being sold in California as "handcrafted in the USA" when in fact, significant portions of the boots and/or their component parts were manufactured outside of the United States. Through the course of discovery and negotiations with Defendant, it has been determined that 394 models totaling 76,423 pairs of allegedly mislabeled boots (for net revenue of \$7,191,183.96) were shipped to the California market.

On October 26, 2016, the parties attended the first of two in-person settlement conferences with Ralph Williams, a private mediator. The parties made progress at this first session of mediation but were unable to resolve the matter. On November 8, 2016, the parties attended another settlement conference after an exchange of some mediator directed information. At this second session, the parties were able to reach an agreement with respect to some, but not [\*12] all, of the terms of the settlement. With the on-going assistance of the mediator, the parties eventually reached agreement on a comprehensive resolution of this action and on June 30, 2017 the Settlement Agreement was executed by the parties. Accordingly, the parties requested conditional certification of the Class; preliminary approval of the proposed settlement; and approval of the Class notice.

After reviewing the settlement agreement, the Court

### A. SETTLEMENT CLASS DEFINITION

Under the terms of the operative Settlement Agreement the Settlement Class is defined as, "for settlement purposes only, all California persons who made a Qualifying Transaction." (Settlement Agreement, ¶29)

- "Qualifying Transaction" means a purchase in California (including an online purchase made while the purchaser is in California) of a Chippewa Product during the Class Period. (¶24.) "Chippewa [\*13] Products" means the models of Justin Brand's Chippewa boots (attached as Exhibit D to the Settlement Agreement) which were manufactured, marketed, and/or distributed by Defendant with the designation "Handcrafted in the USA" or other designation of United States origin, but that contain one or more foreign-made component parts. (¶4)
- Specifically excluded from the Settlement Class are: (a) employees, officers, directors, agents, and representatives of Defendant and its subsidiaries and affiliates; (b) all mediators, judges and judicial staff who have presided over the Action; and (c) all persons who timely opt-out. (11¶29)

Class Period is the period from March 1, 2011 through June 30, 2017. (1111, as amended)

### B. TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The payment of attorneys' fees, reimbursement of actual expenses, and an award of a class representative incentive fee will be paid by Defendant in addition to the settlement consideration to the Settlement Class (¶G.3):
  - Up to \$425,000 for attorney fees and costs (¶G.3);

- Up to \$10,000 for a service award to the class representative (§G.3);

- Estimated \$159,637 for claims administration costs. (Declaration of Jennifer [\*14] Keough ISO Preliminary Approval, ¶21 and Exhibit 7 thereto)

- **Cash Benefit/Promotional Code:** Defendant, either directly or indirectly through the Claims Administrator, will distribute to each Qualifying Claimant who timely submits a fully executed Claim Form, at the Qualifying Claimant's election, either: (1) a Cash Benefit in the amount of \$25 for each Chippewa Product claimed (in the form of a check), or (2) a \$50 Promotional Code for each Chippewa Product claimed. (§D.2) The Promotional Code shall expire two years after their date of issuance and shall be fully transferrable. (§A.23.) Multiple Promotion Codes can be used per transaction. (*Ibid.*)

- **Injunctive Relief:** Defendant shall: (§D.3)

- (a) agree to maintain the changes Defendant made in or about March 2016 to its Chippewa Products and their marketing, advertising, and promotional materials, including revision of Defendant's country of origin representations and use of the United States flag without qualifying language, to comply with California law, including but not limited to [Business & Professions Code Section 17533.7](#). This injunctive relief will become effective as part of the Judgment on the Effective Date and will remain in effect for five years, unless new or amended [\*15] federal or California laws expressly allow or require further changes. In either case Defendant expressly agrees to conform its marketing, advertising, and promotional materials to such additional or different requirements imposed by subsequent law.

- (b) publish a corrective announcement on the home page of Defendant's website ([www.chippewaboos.com](http://www.chippewaboos.com)), in the same sized font as the rest of its home page, disclosing that the Chippewa Products include parts that are manufactured outside the United States, and including a link to a web page that lists the specific Chippewa Products affected. The announcement will be in substantially the following form: "Notice to California

Consumers: Chippewa boots that were previously advertised as, 'Handcrafted in the U.S.A.' were constructed by workers here in the U.S.A., but also contained parts manufactured outside the United States. We now include 'with imported parts' or like notices with our advertising. Chippewa apologizes if this caused any confusion to its valued customers. California consumers click here for a list of specific boot models affected." The announcement will remain on the homepage of Defendant's website for at least six (6) months. [\*16]

- (c) publish a corrective announcement in the twenty-one (21) California newspapers of general circulation within California (set forth in Exhibit F to the Settlement Agreement) disclosing that the Chippewa Products include parts that are manufactured outside the United States. The announcement will be in the following form: "Chippewa boots that were previously advertised as 'Handcrafted in the U.S.A.' were constructed by workers here in the U.S.A., but also contained parts manufactured outside the United States. We now include 'with imported parts' or like notices with our advertising. Chippewa apologizes if this caused any confusion to its valued customers. Go to [www.chippewaboos.com](http://www.chippewaboos.com) for a list of specific boot models affected."

- (d) notify in writing all known parties who sell, distribute, or market the Chippewa brand boots in California, including online retailers outside of California who sell to California residents, that although the boots were advertise. as "Handcrafted in the U.S.A.," they include parts that were manufactured outside the United States, and providing a list of specific boot models affected.

- (e) instruct in writing and require all known parties who sell, distribute [\*17] or market Chippewa brand boots in California, including online retailers outside of California who sell to California residents, to: (i) only represent or advertise to California residents that Chippewa Products are "Handcrafted in the U.S.A." when using the additional representation that the boots include parts that are manufactured outside the United States, Defendant shall instruct such retailers to use the language "Assembled in the USA with imported parts" and/or "Handcrafted in the USA with imported

materials," or substantially similar language referencing the use of imported parts and materials; (ii) for known parties who sell, distribute, or market the Chippewa brand boots in California through Internet websites, Defendant shall provide them with explicit instruction with regard to the change of language on the websites in compliance with subparagraph (i), above; (iii) only advertise for Chippewa boots using a United States flag by further representing in the flag logo itself that the boots include parts that are manufactured outside the United States, such as the flag currently being used by Defendant, which includes the following language in the flag logo itself. "Assembled [\*18] in the USA with imported parts or Handcrafted in the USA with imported materials."; (iv) return to Defendant, at Defendant's expense, all of the retailer's current inventory of Chippewa boots that have the "Handcrafted in the U.S.A." logo embossed in leather on the boots; (v) return to Defendant, at Defendant's expense, or destroy all marketing and packaging materials that advertise the boots as "Handcrafted in the U.S.A." without further representing that the boots include parts that are manufactured outside the United States; and vi. Destroy all marketing and packaging materials that advertise the boots with a United States flag which does not further represent in the flag logo itself that the boots include parts that are manufactured outside the United States.

○ (f) follow up with retailers regarding their compliance with the provisions set forth in subparagraph (e) above, 3 months after the initial instructions are sent; and

○ (g) report to Class Counsel as to the number of boots returned to Defendant pursuant to subparagraph (d)(iv), above, 4 months after the initial instructions are sent.

○ The relief set forth in Paragraphs 3(a), (b), (c), and (d) above shall be completely implemented [\*19] within 6 months after the Effective Date. Notice of completion must be filed with the Court and provided to Class Counsel within 7 months after the Effective Date. (¶D.4)

• This is a claims-made settlement.

○ The claims period commences 20 days after the Court enters the Preliminary Approval Order and ending on the 1806 day thereafter.

(¶9, as amended)

○ Claim forms can be submitted electronically through the Settlement Website or via mail.

(¶F.3)

• The response deadline to submit objections and opt-outs is 120 days after the claims administrator mails notice packets to class members. (¶¶ I.2, J)

• The settlement administrator is JND Legal Administration. (¶8)

**Scope of Release:** In addition to the effect of any final judgment entered in accordance with this Settlement Agreement, upon this Settlement becoming final, Defendant and the Released Persons will be released and forever discharged from any and all actions, claims, demands, rights, suits, and causes of action of any kind or nature whatsoever against the Released Persons, including damages, costs, expenses, penalties, and attorneys' fees, whether at law or equity, known or unknown, foreseen or unforeseen, developed or undeveloped, direct, [\*20] indirect or consequential, liquidated or unliquidated, arising under common law, regulatory law, statutory law, or otherwise, based on federal, state, or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Plaintiff or Settlement Class Members ever had, now have, may have, or hereafter can, shall or may ever have against the Released Persons in any court, tribunal, arbitration panel, commission, agency or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising from or in any way whatsoever relating to actions or omissions in manufacturing, advertising, marketing, labeling, packaging, promotion, selling and distribution of Chippewa Products with a "Handcrafted in USA" or equivalent country of origin label, from March 1, 2011 to June 30, 2017, including those which have been asserted or which could reasonably have been asserted by the Settlement Class Members against Defendant in this Action or any other threatened or pending litigation asserting claims of the nature encompassed by this release, and any claims asserted after the date of final approval which arose [\*21] or could have been asserted based on labels or marketing in existence as of the date of final approval of the Settlement Agreement. (¶K.1, as amended.)

Defendant...hereby release Djoric and his counsel from any claims of abuse of process, malicious prosecution, or any other claims arising out of the institution, prosecution, assertion, or resolution of this Action, including, but not limited to, claims for attorneys' fees,

costs of suit, or sanctions of any kind. (¶K.2)

Plaintiff will provide a general release as well as a [CCP § 1542](#) waiver. (¶¶K.3, K.4)

## C. ANALYSIS OF SETTLEMENT AGREEMENT

### 1. Standards for Final Fairness Determination

"Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (*Cal. Rules of Court, rule 3.769(g)*.) "If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment." (*Cal. Rules of Court, rule 3.769(h)*.)

"In a **class action** lawsuit, the court undertakes the responsibility to assess fairness in order [\*22] to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a **class action**. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." (See [Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America \(2006\) 141 Cal. App.4th 46, 60](#) [internal quotation marks omitted]; see also [Wershba v. Apple Computer, Inc. \(2001\) 91 Cal.App.4th 224, 245](#) ("*Wershba*") [Court needs to "scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned"] [internal quotation marks omitted].)

"The burden is on the proponent of the settlement to show that it is fair and reasonable. However 'a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.'" (See [Wershba, supra, 91 Cal.App.4th at 245](#) [citing [Dunk v. Ford Motor Co. \(1996\) 48 Cal.App.4th 1794, 1802](#). ("*Dunk*")].) Notwithstanding an initial presumption of fairness, [\*23]

"the court should not give rubber-stamp approval." (See [Kullar v. Foot Locker Retail, Inc. \(2008\) 168 Cal.App.4th 116, 130](#) ("*Kullar*").) "Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished." (*Ibid.*) In that determination, the court should consider factors such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining **class action** status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Id. at 128.*) "Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba supra*, 91 Cal.App.4th at pg. 245.)

Nevertheless, "[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement [\*24] process. Thus, even if 'the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,' this is no bar to a class settlement because 'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'" ([Wershba, supra, 91 Cal.App.4th at 250.](#))

### 2. Does a presumption of fairness exist?

a. Was the settlement reached through arm's-length bargaining? Yes. On October 26, 2016, the parties mediated this case before Ralph Williams at the ADR Services offices in Los Angeles, California. At and after mediation, the Parties reached an agreement on a settlement proposal. (Settlement Agreement, pg. 1, ¶D.)

b. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel represent they conducted significant discovery and a thorough examination and investigation of the facts and law relating to the matters in the Action, including but not limited to examining confidential and competitively sensitive information provided by Defendant. (Settlement

Agreement, pg. 2, ¶E.)

c. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced [\*25] in class action litigation, including consumer actions. (Declaration of Gretchen Carpenter ISO Preliminary Approval, ¶¶9-10.)

d. What percentage of the class has objected? One person has objected. (Supp. Declaration of Jennifer Keough ISO Final ¶3.)

CONCLUSION: The settlement is entitled to a presumption of fairness.

## 2. Is the settlement fair, adequate, and reasonable?

a. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." (*Kullar, supra*, 168 Cal.App.4th at pg. 130.) Plaintiff's counsel estimates that if Plaintiff were to prevail on the merits, he could recover injunctive relief along the same lines as that agreed to by Defendant in the settlement, as well as restitution or monetary damages. While damages have been approached in different ways in similar cases, some cases have measured damages as a percentage of the purchase price, based upon the corresponding percentage value of foreign made components, for example. Using a \$250 purchase price for boots with a foreign-made upper consisting of approximately 50% of a boot's value, Plaintiffs counsel estimates that the high range of recoverable [\*26] damages is \$125 per purchase. Even under this high measure of damages, many Class members' damages would be substantially less, based on lower purchase prices and/or less substantial foreign made components. Further, a different damages model could ultimately be applied, such as one based on Defendant's significantly lower wholesale prices. Based on this comparison, and given the costs and risks of further litigation (including the risks that the Class will not be certified and that damages will be difficult to prove), Class Counsel believes the settlement, providing for monetary relief of either \$25 in cash or \$50 in Promotional Codes per boot purchase, is an excellent result. (Declaration of Gretchen Carpenter ISO Preliminary Approval, ¶8.)

b. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class

claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

c. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (*Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226* ["Our Supreme [\*27] Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate."].)

d. Amount offered in settlement. As indicated above, Defendant has agreed to settle for both monetary and injunctive relief.

e. Extent of discovery completed and stage of the proceedings. As discussed above, at the time of the settlement, Class Counsel had conducted extensive discovery.

f. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including consumer cases.

g. Presence of a governmental participant. This factor is not applicable here.

h. Reaction of the class members to the proposed settlement.

Number of class members: Unknown.

76,423 pairs of boots were shipped to the California market.

Total Number of notices mailed: 7,363

*Number of notices mailed to Class Members: 6,008*

*Number of notices mailed to Retailers: 204*

*Number of notices e-mailed: 1,151*

Number of undeliverable notices: 51

*Number of undeliverable [\*28] notices via Mail: 21*

*Number of undeliverable notices via e-mail: 30*

Number of opt-outs: 0  
 Number of objections: 1  
 Number of Claims Received: 27,258

(Keough Decl. ISO Final, ¶¶3-8; 19-25; Keough Supp. Decl. ISO Final ¶¶3-4.)

JND represents it investigated the validity of 7,976 claims submitted. Many of these were duplicative and the correct claim count is 2,242. (Keough Supp. Decl. ISO Final ¶7.) 10,870 claims were submitted from a state other than California. The parties propose sending a supplemental request for information to these claimants. (Keough Decl. ISO Final, ¶26, Keough Supp. Decl. ISO Final ¶9.) [ILLEGIBLE TEXT]

Based on the number of claims submitted the Court concludes that the notice was adequate and the best available means under the circumstances.

Further, the vast majority of class members did not oppose the settlement. The sole objector, Patrick S. Sweeney, represents he is a class members but presents a Wisconsin address. He objects that the cash settlement is "exceedingly low." He does not specify why he believes the settlement amount inadequate. For the reasons stated above and given that the settlement includes injunctive relief, this objection is without merit and is [\*29] overruled.

CONCLUSION: The settlement can be deemed "fair, adequate, and reasonable." The Court finds that the notice was adequate and conforms to due process requirements.

#### **D. ATTORNEY FEES AND COSTS**

Class Counsel request **\$425,000.00** for fees and costs. (Motion ISO Fees, 7:20-22.) Sweeney objects to the fees but does not indicate why he believes them to be inappropriate. For the reasons set forth below, his objection on this basis is overruled and the fees and cost request is approved.

In determining the appropriate amount of a fee award, courts may use the lodestar method, applying a multiplier where appropriate. (*PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-96.*) A percentage calculation is permitted in common fund cases. (*Laffitte v. Robert Half Intl, Inc. (2016) 1 Cal.5th 480, 503.*) Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it

determines is reasonable. (*Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.*)

In the instant case, fees are sought pursuant to the lodestar method. (Motion ISO Fees, 7:20-22.) Counsel provided a summary of each attorney and paralegal who worked on this case, through June 27, 2018 as follows:

 [Go to table 1](#)

(Motion, ISO Fees, 8:3-17.)

If costs of \$25,568.78 are sought from the total requested fee award, Counsel are seeking \$399,431.22 in attorney's fees. Class Counsel's lodestar is \$534,360.00, so the multiplier sought by Class Counsel is approximately 0.75 (\$399,431.22 /\$534,360.00). (Motion ISO Fees, 7:27- 8:2, fn. 3.)

This analysis assumes that the hourly rates charged are appropriate given the experience of counsel and the legal market in question. Counsel provide the Court with some indicia as to rates for lawyers with comparable experience. Plaintiff's MPA ISO Motion for Attorneys' Fees at page 8:19-page 11:2. There is no indication that counsels' attributed rates are market tested. However, even if a discount is attributed, the requested fees are at or below lodestar.

All counsel and Plaintiff Djoric have agreed in writing to the following fee split among counsel: 47.5% to [\*31] Carpenter Law; 47.5% to Parisi & Havens, LLP; and 5% to Brian R. Strange, APC (formerly of Strange & Carpenter, the firm who initially filed this case.) (Carpenter Decl. ISO Final, ¶ 18.).

As for costs, Class Counsel has incurred \$25,568.78 in costs. (Motion for Fees, 13:20- 21.) Carpenter Law has incurred \$9,478.71 in costs, Strange and Carpenter incurred \$2,821.01 in costs, and Parisi & Havens, LLP have incurred \$13,269.06 in costs. (Carpenter Decl. ISO Final, ¶¶ 21, 34; Declaration of Suzanne Havens Beckman ("Havens Beckman Decl. ISO Final"), ¶18.) The costs appear to be reasonable and necessary to the litigation and are reasonable in amount.

Counsel's request for \$425,000.00 in costs and fees is equal to the amount preliminarily approved. Further, the notice expressly advised class members of the cost and fees request, the only objection is without specification and is overruled. (See Keough Supp. Decl. ISO Final, Ex A.) Accordingly, the Court awards costs and fees in the amount of **\$425,000.00**.

### **E. INCENTIVE AWARD TO CLASS REPRESENTATIVE**

An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and [\*32] a reasoned explanation of financial or other risks undertaken by the class representative. (See [Clark v. American Residential Services LLC \(2009\) 175 Cal.App.4th 785, 806-807](#); see also [Cellphone Termination Cases \(2010\) 186 Cal.App.4th 1380, 1394-1395](#) ["Criteria courts may consider in determining whether to make an ***incentive award*** include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. (Citations.)"].)

Here, Class Representative Marko Djoric requests an ***incentive award*** of \$10,000. (Motion ISO Fees, 14:4-5.)

Mr. Djoric's contributions to litigation of this matter included: discovering the misrepresentations on his own in the first place, researching and retaining attorneys to file this lawsuit, meeting with class counsel in person, communicating with class counsel by telephone and email, educating class counsel about the underlying facts, reviewing and providing input to numerous documents filed with the court (including the complaints, class certification papers, and settlement-related [\*33] documents), providing input and submitting a declaration in support of class certification, assisting in the preparation of and reviewing discovery responses (including responses to form interrogatories, special interrogatories, and requests for production of documents), gathering and producing documents in discovery, and participating at all stages of the lengthy settlement negotiations, including reviewing multiple settlement drafts. (Declaration of Marko Djoric ("Djoric Deck"), ¶10.) Mr., Djoric estimates he spent approximately 100 hours on matters related to this litigation. (*Ibid.*) Mr. Djoric also agreed to a general release and [CCP section 1542](#) waiver against Defendants. (*Id.* at 11.)

In light of the above, as well as the significant benefits obtained on behalf of the class, and the fact that there was no objection to the ***incentive award***, **\$10,000.00** appears to be reasonable inducement for Plaintiffs

participation in the case. Accordingly, the ***Incentive Award*** is approved in the amount requested.

### **F. CLAIMS ADMINISTRATION COSTS**

Claims administrator, JND Legal Administration LLC requests **\$145,499.59** in compensation for its work in administering this case. (Keough Decl. ISO Final ¶27.) At the time of [\*34] preliminary approval, Class Counsel represented that costs for settlement administration *were estimated* \$159,637.00. (Declaration of Jennifer Keough ISO Preliminary Approval, ¶21 and Exhibit 7 thereto). The Settlement Agreement provides that Defendant shall pay all notice and class administration fees. (Settlement Agreement, ¶F.8.) The supplemental declaration filed July 27, 2018 indicates this amount is \$161,061.19. (Keough Supp. Decl. ISO Final ¶10.). This amount, to be paid separately by Defendant, was not objected to and appears in order given the work needed to be done to determine the number of valid claims. It is the Court's expectation that this number may increase. The court retains jurisdiction to supplement this payment if necessary.

## **III. CONCLUSION AND ORDER**

### **A. RULING**

The Court hereby:

- (1) Grants class certification for purposes of settlement;
- (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- (3) Awards **\$425,000.00** in attorney fees and costs to Class Counsel, Carpenter Law and Parisi & Havens LLP;
- (4) Awards **\$10,000** as Class Representative Service Awards to Marko Djoric;
- (5) Awards **\$161,061.19** in claims administration costs to JND Legal Administration, [\*35] to be updated by further Order if necessary;
- (6) Orders class counsel to lodge a proposed Judgment, consistent with this ruling and containing the injunctive language, class definition, and full release language by 8/3, 2018;
- (7) Orders class counsel to provide notice to the class members pursuant to [California Rules of](#)

[Court, rule 3.771\(b\)](#); and

(8) Sets a Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds for 11/14/18, at 830. Final Report is to be filed by [ILLEGIBLE TEXT].

Dated: 7/31/18

/s/ Maren E. Nelson

MAREN E. NELSON

Judge of the Superior Court

## EXHIBIT 2

### BOOT MODEL EXHIBIT



[Go to table2](#)



[Go to table3](#)

**Table1** ([Return to related document text](#))

Attorney/Staff	Hourly Rate	Hours Billed	Total
Brian R. Strange	\$950	4	\$3,800.00
Gretchen Carpenter	\$725 (while at Strange & Carpenter) [*30]	12	\$8,700.00
Gretchen Carpenter	\$650 (while at Carpenter Law)	277.1	\$180,115.00
David Parisi	\$550	94.4	\$51,920.00
Suzanne Havens			
Beckman	\$525	471.6	\$247,590.00
Pablo Orozco	\$425	42.5	\$18,062.50
Jill Hood (paralegal)	\$280	6.5	\$1,820.00
Greg Tatum (paralegal)	\$235	5.5	\$1,292.50
Carlo Aguilar (paralegal)	\$200	105.3	\$21,060.00
TOTAL		1,018.90	\$534,360.00

**Table1** ([Return to related document text](#))**Table2** ([Return to related document text](#))

1. 20012	66. 25264	131. 29416	196. 91096	261. 1901G40	326. 1901M64
2. 20017	67. 25266	132. 29435	197. 91097	262. 1901G42	327. 1901M72
3. 20028	68. 25268	133. 29437	198. 91113	263. 1901G45	328. 1901M73
4. 20040	69. 25269	134. 29465	199. 91114	264. 1901G47	329. 1901M74
5. 20048	70. 25270	135. 29550	200. 91116	265. 1901G48	330. 1901M75
6. 20049	71. 25290	136. 29553	201. 92344	266. 1901G56	331. 1901M77
7. 20065	72. 25372	137. 29555	202. 92346	267. 1901124	332. 1901M78
8. 20066	73. 25381	138. 29558	203. 93420	268. 1901125	333. 1901M79
9. 20067	74. 25387	139. 30101	204. 93428	269. 1901127	334. 1901M80
10. 20068	75. 25388	140. 30102	205. 93430	270. 1901133	335. 1901M81
11. 20070	76. 25402	141. [*36] 30103	206. 95553	271. 1901M00	336. 1901M82
12. 20071	77. 25405	142. 30106	207. 95556	272. 1901M01	337. 1901M84
13. 20072	78. 25406	143. 30200	208. 95568	273. 1901M02	338. 1901M85
14. 20073	79. 25407	144. 30201	209. 95591	274. 1901M03	339. 1901W08
15. 20075	80. 25408	145. 30204	210. 95593	275. 1901M04	340. 1901W09
16. 20076	81. 25410	146. 43513	211. 95595	276. 1901M05	341. 1901W10
17. 20077	82. 25411	147. 70303	212. 96640	277. 1901M06	342. 1901W11
18. 20078	83. 25415	148. 70304	213. 97060	278. 1901M07	343. 1901W12
19. 20080	84. 25420	149. 70305	214. 97061	279. 1901M08	344. 1901W13
20. 20081	85. 25466	150. 70306	215. 97062	280. 1901M09	345. 1901W14
21. 20082	86. 25492	151. 70307	216. 97063	281. 1901M10	346. 1901W15
22. 20083	87. 25510	152. 70605	217. 97064	282. 1901M11	347. 1901W16
23. 20085	88. 26326	153. 70623	218. 97863	283. 1901M12	348. 1901W17
24. 20086	89. 26327	154. 70668	219. 97868	284. 1901M13	349. 1901W23
25. 20087	90. 26330	155. 70904	220. 97875	285. 1901M15	350. 1901W24
26. 20090	91. 26791	156. 70905	221. 97876	286. 1901M16	351. 1901W25
27. 20091	92. 27422	157. 71418	222. 97879	287. 1901M17	352. 1901W60
28. 20092	93. 27862	158. 71419	223. 97910	288. 1901M18	353. 1901W62
29. 20093	94. 27863	159. 71420	224. 97911	289. 1901M19	354. 1901W63
30. 20242	95. 27868	160. 90026	225. 97912	290.	355. 1901W64

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				1901M20 [*37]	
31. 23907	96. 27872	161. 90028	226. 99402	291. 1901M22	356. 1901W65
32. 23908	97. 27892	162. 90044	227. 99405	292. 1901M23	357. 1901W66
33. 23909	98. 27893	163. 90045	228. 99407	293. 1901M24	358. 4020BLK
34. 23913	99. 27894	164. 90047	229. 99445	294. 1901M25	359. 4020COF
35. 23922	100. 27895	165. 90048	230. 99569	295. 1901M26	360. 4020SAD
36. 23932	101. 27896	166. 90049	231. 99706	296. 1901M27	361. 4025BLK
37. 23938	102. 27899	167. 90052	232. 99822	297. 1901M28	362. 4025BUR
38. 24017	103. 27908	168. 90055	233. 99936	298. 1901M29	363. 4025TAN
39. 24018	104. 27909	169. 90056	234. 99941	299. 1901M30	364. 4353BLK
40. 24019	105. 27911	170. 90059	235. 99950	300. 1901M31	365. 4353BUR
41. 24020	106. 27914	171. 90062	236. 99951	301. 1901M32	366. 4353TAN
42. 25061	107. 27921	172. 90091	237. 99952	302. 1901M33	367. 4363BLK
43. 25118	108. 27950	173. 90092	238. 99953	303. 1901M34	368. 4363BUR
44. 25202	109. 29300	174. 90093	239. 99954	304. 1901M35	369. 4578BLK
45. 25203	110. 29311	175. 90094	240. 99958	305. 1901M36	370. 4578CHO
46. 25216	111. 29312	176. 90095	241. 99969	306. 1901M37	371. 5154CHO
47. 25220	112. 29313	177. 90096	242. 1042BLK	307. 1901M38	372. 5251BLK
48. 25222	113. 29314	178. 90222	243. 1042CHO	308. 1901M39	373. 5251MPL
49. 25223	114. 29320	179. 90224	244. 1901G05	309. 1901M41	374. [*38] 5309BLK
50. 25225	115. 29321	180. 91002	245. 1901G06	310. 1901M42	375. 5309MPL
51. 25226	116. 29322	181. 91065	246. 1901G07	311. 1901M43	376. 6068BLK
52. 25227	117. 29323	182. 91066	247. 1901G08	312. 1901M44	377. 6068TAN
53. 25228	118. 29324	183. 91067	248. 1901G15	313. 1901M46	378. 70622W
54. 25229	119. 29325	184. 91068	249. 1901G20	314. 1901M47	379. 9GCL7
55. 25230	120. 29326	185. 91069	250. 1901G21	315. 1901M48	380. 9MSU3
56. 25240	121. 29327	186. 91070	251. 1901G22	316. 1901M49	381. 9PGL1
57. 25250	122. 29328	187. 91071	252. 1901G25	317. 1901M50	382. L23913
58. 25251	123. 29329	188. 91072	253. 1901G26	318. 1901M51	383. L25118
59. 25255	124. 29331	189. 91073	254. 1901G27	319. 1901M52	384. L27862
60. 25256	125. 29332	190. 91074	255. 1901G30	320. 1901M53	385. L29300
61. 25257	126. 29370	191. 91075	256. 1901G31	321. 1901M54	386. L29301
62. 25258	127. 29405	192. 91091	257. 1901G32	322. 1901M55	387. L29302
63. 25260	128. 29406	193. 91092	258. 1901G35	323. 1901M57	388. L97880
64. 25261	129. 29408	194. 91093	259. 1901G37	324. 1901M58	389. OCM305001
65. 25262	130. 29409	195. 91095	260. 1901G38	325. 1901M62	390. OCM305005

**Table2** ([Return to related document text](#))

**Table3** ([Return to related document text](#))

1. 20012	66. 25264	391. OCM305006
2. 20017	67. 25266	392. OCM501001
3. 20028	68. 25268	393. OCM501005
4. 20040	69. 25269	394. OCM501006
5. 20048	70. 25270	
6. 20049	71. 25290	
7.	72. 25372	
20065 [*39]		
8. 20066	73. 25381	
9. 20067	74. 25387	

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10. 20068	75. 25388
11. 20070	76. 25402
12. 20071	77. 25405
13. 20072	78. 25406
14. 20073	79. 25407
15. 20075	80. 25408
16. 20076	81. 25410
17. 20077	82. 25411
18. 20078	83. 25415
19. 20080	84. 25420
20. 20081	85. 25466
21. 20082	86. 25492
22. 20083	87. 25510
23. 20085	88. 26326
24. 20086	89. 26327
25. 20087	90. 26330
26. 20090	91. 26791
27. 20091	92. 27422
28. 20092	93. 27862
29. 20093	94. 27863
30. 20242	95. 27868
31. 23907	96. 27872
32. 23908	97. 27892
33. 23909	98. 27893
34. 23913	99. 27894
35. 23922	100. 27895
36. 23932	101. 27896
37. 23938	102. 27899
38. 24017	103. 27908
39. 24018	104. 27909
40. 24019	105. 27911
41. 24020	106. 27914
42. 25061	107. 27921
43. 25118	108. 27950
44. 25202	109. 29300
45. 25203	110. 29311
46. 25216	111. 29312
47. 25220	112. 29313
48. 25222	113. 29314
49. 25223	114. 29320
50. 25225	115. 29321
51. 25226	116. 29322
52. 25227	117. 29323

## 2018 Cal. Super. LEXIS 11400, \*39

53. 25228	118. 29324
54. 25229	119. 29325
55. 25230	120. 29326
56. 25240	121. 29327
57. 25250	122. 29328
58. 25251	123. 29329
59. 25255	124. 29331
60. 25256	125. 29332
61. 25257	126. 29370
62. 25258	127. 29405
63. 25260	128. 29406
64. 25261	129. 29408
65. 25262	130. 29409

**Table3** ([Return to related document text](#))

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End of Document

# EXHIBIT 3

## Perez v. Barclays Capital Real Estate Inc.

Superior Court of California, County of San Francisco

August 24, 2012, Filed

No. CGC-10-496374

### Reporter

2012 Cal. Super. LEXIS 9900 \*

LOUISE PEREZ, individually and on behalf of All Others Similarly Situated, Plaintiff, v. BARCLAYS CAPITAL REAL ESTATE INC. dba HOMEQ SERVICING, a Delaware corporation; and DOES 1 through 20, Defendants.

### Core Terms

Settlement, Parties, class member, Modification, notice, preliminary approval, Repayment, settlement check, attorney's fees, common fund, mailing, costs, terms, benefits, Subclass, Letters, opt-out, final approval, **class action**, certification, requests, **incentive award**, negotiated, postmarked, void, social security number, telephone number, opt out, distributions, provisions

### Opinion

#### [\*1] CLASS ACTION

#### **ORDER APPROVING CLASS ACTION SETTLEMENT AND APPROVING DISTRIBUTIONS FROM COMMON FUND**

On August 24, 2012, the Court heard Plaintiff Louise Perez's ("Plaintiff") Application under *Cal. Rules of Court, Rule 3.769*, for an Order granting final approval of a **class action** settlement (the "Application"). Having reviewed and considered all submissions both in connection with preliminary approval of settlement and this hearing, notice having been given to the Settlement Class in compliance with the Court's Order Granting Preliminary Approval of Class Settlement and Class Notice and Conditionally Certifying a Settlement Class, entered May 30, 2012, there being no objections to the settlement from members of the Settlement Class and only three exclusion requests by class members, having heard and considered the arguments, comments and

evidence submitted by the Parties, and having found that the Parties are entitled to the relief they seek; and for good cause shown;

The Court has independently reviewed the record and proceedings in this case and makes the following findings of fact and conclusions of law:

1. The Court hereby certifies the following Settlement Class for settlement purposes only:

All natural persons who, [\*2] while residing in California, obtained a home mortgage loan serviced by HomeEq and to whom at any time between January 28, 2006, inclusive, and May 29, 2012, inclusive, HomeEq sent a written letter asking for a downpayment to proceed with review for a home mortgage modification or repayment plan in the form of Exhibit A ("Modification Letter") or Exhibit B ("Repayment Plan/Modification Letters") attached to the Settlement Agreement, and does not opt-out of the Settlement Class.

2. With respect to the Settlement Class, <sup>1</sup> the Court finally finds and concludes, for settlement purposes only, that: (a) the Settlement Class Members are so numerous as to make joinder of them impracticable; (b) there are questions of law and fact common to the Settlement Class, and such questions predominate over any questions affecting only individual Settlement Class Members; (c) the Class Representative's claims and the defenses asserted thereto are typical of the claims of Settlement Class Members and the defenses asserted thereto; (d) Class Representative and Settlement Class Counsel have fairly and adequately protected the

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<sup>1</sup> Unless otherwise specified, all defined terms in this Order have the same meaning as the meaning described in the Settlement Agreement and the Preliminary Approval Order, and those terms are incorporated here by this reference. To the extent there is any conflict between the definitions of those terms, the definitions in the Settlement Agreement will control.

interests of Settlement Class Members throughout this action; and (e) a **class action** [\*3] is superior to all other available methods for fairly and efficiently resolving this action and provides substantial benefits to both the litigants, the Settlement Class Members and the Court. The Court therefore determines that this action satisfies the prerequisites for class certification for settlement purposes under [California Code of Civil Procedure Section 382](#) and California Rules of Court, Chapter 6, *Rules 3.769 et seq.*, as applicable, and finally certifies the Settlement Class for settlement purposes.

3. Notice to the Settlement Class of the terms of this settlement and of their options has been provided to members of the Settlement Class in accordance with the terms of the Preliminary Approval Order. Such settlement notice has been provided in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances and satisfies the requirements of due process. [\*4]

4. The Settlement Administrator, Kurtzman Carson Consultants, LLP, ("KCC" or "Settlement Administrator") has reported that notices of the settlement have been returned undeliverable for 51 members of the UCL subclass. Their addresses are unknown. The settlement payments to this group total \$156,000, or approximately \$3,000 to each member. Plaintiff has asked for the Court's assistance in ordering HomEq to provide this group's Social Security numbers to KCC. KCC reports that by utilizing the social security numbers of the members of this group through a third party address search vendor, the average success rate in locating the class members will be approximately 90%. Defendant has not agreed to provide these class members' social security numbers absent an Order from the Court. Against this background the Court hereby orders defendant HomEq to provide the social security numbers for these 51 UCL subclass members directly to KCC, for the sole purpose of attempting to obtain ' valid mailing addresses for these 51 members. Once this attempt has been completed, KCC shall return the social security numbers for these 51 subclass members to HomEq and shall destroy any other copies of this information [\*5] in the KCC's possession. KCC shall use its best efforts under its Information Security Program to ensure the security and confidentiality of these social security numbers, and those numbers shall not be used for any purpose than that herein stated.

5. The settlement notice program approved by the Court adequately apprised the members of the Settlement

Class of the pendency of the litigation, of all material elements of the proposed settlement, of the effect of final approval of the settlement on the members of the Settlement Class, and of their opportunity to opt out of the settlement, to comment on and object to the settlement, and to appear at the Fairness Hearing. Full opportunity has been afforded to the members of the Settlement Class to participate in this Fairness Hearing. Accordingly, the Court determines that all members of the Settlement Class who have not opted out of the Settlement Agreement are bound by the Settlement Agreement and this Order and by Final Judgment in this action.

6. By operation of this Order and the Judgment entered under it, upon the Settlement Effective Date, Plaintiff and the Settlement Class (other than those listed on Exhibit 2), on behalf of themselves [\*6] and their past, present, and future agents, insurers, attorneys, trusts, beneficiaries, heirs, devisees, legatees, spouses, family members, predecessors-and successors-in-interest and assigns (all collectively referred to as "Releasers"), hereby release, discharge, and dismiss with prejudice the Released Parties, as defined in the Settlement Agreement and Release attached hereto a Exhibit 1 ("The Settlement Agreement"), of any and all known and unknown claims for relief, causes of action, suits, rights of action, or demands, at law or in equity, whether sounding in contract, tort, equity, or any violation of law or regulation, including, without limitation, claims for injunctive or other equitable relief, damages, debts, indemnity, contribution, or for costs, expenses and attorney's fees, that were or could have been brought, which arise from or relate to the Modification Letter or the Repayment Plan/Modification Letters, or the delivery of or language contained in such letters, including but not limited to any claim based on an allegation that the Modification Letter or the Repayment Plan/Modification Letters violated the Fair Debt Collection Practices Act, the Rosenthal Fair Debt [\*7] Collection Practices Act, the Unfair Competition Law, the **False Advertising Law**, any other state or federal consumer protection statute, or any common law rule (hereinafter, but subject to the following exclusion, the "Released Claims"). "Released Claims" does not include any claim by a member of the Settlement Class that both (1) challenges any impending or past foreclosure and (2) is based on an allegation that a loan modification or repayment plan agreement entered into by the Released Parties with a member of the Settlement Class was breached. Except for this express exclusion, the Parties agree that the release shall apply to all Released Claims alleged by a Settlement Class

member even if alleged as part of an action challenging a foreclosure undertaken by the Released Parties.

7. The Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class and is finally approved. The settlement is fair, reasonable and adequate in light of the complexity, expense and duration of this litigation, and the risks inherent and involved in establishing liability, restitution, and damages, and in maintaining the class action through trial and appeal. [\*8] This litigation presents difficult and complex issues as to liability and the relief to be afforded members of the Settlement Class, as to which there are substantial grounds for difference of opinion. It is also fair, reasonable and adequate when weighing the benefits afforded to the Settlement Class against the uncertainties associated with obtaining class certification for merits purposes, the expense and length of time necessary to prosecute this action through trial, the uncertainties of the outcome of this action, and the fact that resolution of the class claims, whenever and however determined, could be submitted for appellate review. In addition, the parties have conducted significant discovery and investigation, including the exchange of detailed information about the loan modification and repayment plan letters. There have been extensive arm's length negotiations between counsel for all Parties in this action, including a mediation conducted before Hon. Charles Legge (Ret.) of the Judicial Arbitration and Mediation Services ("JAMS"). The promises and commitments of the Parties under the terms of the Settlement Agreement thus constitute fair value given in exchange for the [\*9] releases of the Released Claims against the Released Parties in the light of such factors and the information in the Parties' possession at the time the settlement was negotiated and agreed to by the Parties.

8. There are no objections to the settlement.

9. As of the last date by which requests for exclusion were to be postmarked in accordance with the terms of the Preliminary Approval Order, the Settlement Class Members who have opted out of the Settlement Class are few when compared to the total number of members of the Settlement Class. The terms of this Final Judgment do not apply to the persons who properly and timely opted out of the Settlement Agreement, identified on Exhibit 2 attached hereto.

10. Defendant is hereby ordered to fund the Common Fund by paying the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00) to KCC by the date

provided in the Settlement Agreement, to be administered in accordance with the Settlement Agreement and this Final Judgment. Under no circumstance will HomEq's obligation under the Settlement Agreement or this Final Judgment ever exceed the amount of the Common Fund (\$1,500,000).

11. An incentive award to plaintiff Louise Perez in the amount [\*10] of \$5,000 is approved and shall be paid from the Common Fund at the time settlement checks are mailed to the Settlement Class.

12. Costs of notice and administration not to exceed \$30,000 are approved and shall be paid from the Common Fund to KCC at the time settlement checks are mailed to the Settlement Class.

13. The Settlement Administrator is ordered to distribute settlement benefits to the members of the Settlement Class who have not excluded themselves from the settlement in the amounts provided in the Settlement Agreement by the date provided in the Settlement Agreement. The Settlement Administrator shall provide Defendant with a list of names and addresses of the UCL Subclass members who cash their settlement checks based on the Settlement Administrator's records, and the amount of the settlement check for each such member. The Settlement Administrator shall provide this list to Defendant in electronic format no later than 20 days after the last day Settlement Class members are required to cash the settlement checks.

14. Any amount of the Common Fund remaining after of the distributions authorized by this Order and the Order Awarding Class Counsel Attorney's Fees and Expenses, [\*11] including any settlement checks due any member of the Settlement Class that remain unclaimed or unpaid 60 days after the settlement checks are mailed, shall, to the extent funds remain, be paid first to plaintiff's counsel on account of the awards of attorney's fees and expenses that remain unpaid, and then to the following cy pres beneficiaries in the following percentages:

Housing and Economic Rights Advocates (50%)

Central California Legal Services, Inc. (50%).

15. Upon completion of the administration of the Settlement, KCC shall prepare, and cause to be filed with this Court, a declaration regarding the distribution of all of the settlement funds, including any administrative costs, additional distributions to class counsel, or distributions to the cy pres recipients.

IT IS SO ORDERED.

Dated: August 24, 2012

/s/ [Signature]

John E. Munter

Judge of the San Francisco Superior Court

## EXHIBIT 1

### CLASS SETTLEMENT AGREEMENT AND RELEASE

This Class Settlement Agreement and Release ("Settlement Agreement") is made and entered into by and between Plaintiff Louise Perez ("Plaintiff"), individually, and on behalf of all members of the Settlement Class (as defined below), and Barclays Capital Real Estate, [\*12] Inc. dba HomEq Servicing ("HomEq").

#### I. RECITALS

A. On or about January 28, 2010, Plaintiff filed a putative ***class action*** complaint ("Complaint") against HomEq, entitled *Perez v. Barclays Capital Real Estate, Inc. dba HomEq Servicing*, San Francisco Superior Court, Case No. CGC-10-496374 (the "Action"), alleging that HomEq violated various consumer protection statutes by sending Plaintiff and the putative class a letter requesting a downpayment to proceed with review for a home mortgage modification. The Complaint was brought on behalf of Plaintiff and similarly situated individuals.

B. HomEq denies any and all allegations of wrongdoing in the Action. Neither the settlement provided for herein nor the settlement consideration as provided below is, or shall in any way be construed as, deemed to be evidence of, or be admissible in any action or proceeding of any kind whatsoever (including, without limitation, litigation, arbitration and administrative proceedings) as an admission or concession of any fault, liability, fact or amount of damages on the part of HomEq. Nonetheless, HomEq has concluded that continuation of the Action would be protracted and expensive, and that it is desirable that [\*13] the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. HomEq also has taken into account the

uncertainty and risks inherent in any litigation, especially in complex cases like the Action. Accordingly, HomEq enters into this Settlement Agreement solely to avoid further substantial expense and inconvenience of potential litigation and finally put to rest all Released Claims, as defined below.

C. Plaintiff and her counsel (Arthur D. Levy, Esq. and William Krieg of Kemnitzer, Barron & Krieg, LLP) ("Class Counsel") believe that the claims asserted in the Action have merit and that evidence developed to date supports the claims. However, Plaintiff and Class Counsel recognize and acknowledge the length of continued proceedings necessary to prosecute the Action against HomEq through trial and appeal. Class Counsel have taken into account the uncertain outcome and the risk of any litigation, especially in complex cases such as the Action, as well as the difficulties and delays inherent in such litigation. They are also mindful of the problems of proof under, and possible defenses to, the causes of action asserted in the [\*14] Action.

D. To assist the Parties to settle this Action, the Parties engaged the services of the Honorable Judge Charles Legge (Ret.) to act as mediator. Based on their evaluation of the Action after an exchange of information, and as a result of the mediation conducted by Judge Legge and follow up discussions between the Parties and Judge Legge, Class Counsel have determined that the settlement set forth in this Settlement Agreement is in the best interests of the Settlement Class.

#### II. DEFINITIONS

In addition to any definitions set forth above or elsewhere in this Settlement Agreement, the following terms as used in this Settlement Agreement have the meaning set forth below.

A. "**HomEq**" means Defendant Barclays Capital Real Estate, Inc. dba HomEq Servicing.

B. "**Class Counsel**" means Arthur D. Levy, Esq. and William Krieg of Kemnitzer, Barron & Krieg, LLP.

C. "**Class Settlement Administrator**" means Kurtzman Carson Consultants or any other ***class action*** claims administrator to which the Parties might jointly agree or that the Court might appoint to administrator this Settlement Agreement.

D. "**Final Order and Judgment**" means the Order of

the Court entering a Judgment granting final approval of the [\*15] Settlement Agreement, in substantially the form attached as **Exhibit D** hereto, or as modified or approved by the Court.

E. **"Party"** or **"Parties"** means HomEq and/or Plaintiff.

F. **"Plaintiff"** means Plaintiff Louise Perez.

G. **"Released Parties"** means (1) HomEq and each of its predecessor and successor firms, affiliated companies, current and former parents and subsidiaries, and their parents and subsidiaries, and all of their respective shareholders, directors, officers, employees, agents, attorneys, insurers, mutual assurance entities; and (2) any assignee or transferee of any servicing right of, or beneficiary interest or other interest in (and any investor in), any of the loans made to the Settlement Class members related to the letters challenged in the Action.

H. **"Settlement Class"** means all natural persons who, while residing in California, obtained a home mortgage loan serviced by HomEq and to whom on or after January 28, 2006 HomEq sent a written letter asking for a downpayment to proceed with review for a home mortgage modification or repayment plan in the form of Exhibit A ("Modification Letter") or Exhibit B ("Repayment Plan/Modification Letters") attached to this Settlement Agreement, [\*16] and does not opt-out of the Settlement Class.

I. **"Settlement Effective Date"** means the later of: (1) the day immediately following the expiration of any time for appeal from the Final Order and Judgment; or (2), if appealed, then the day on which the appeal from the Final Order and Judgment has been dismissed with prejudice or the Final Judgment and Order is affirmed by the California Court of Appeal and such affirmance is no longer subject to further review or appeal to the California or United States Supreme Court or, if reviewed by the California or United States Supreme Court, that the Final Order and Judgment have been affirmed by such court.

### **III. TERMS OF SETTLEMENT AGREEMENT**

NOW, THEREFORE, IT IS HEREBY AGREED, by and among Plaintiff, the Settlement Class, and HomEq that the Action and Released Claims as defined below are settled and compromised on the following terms and conditions:

**A. Incorporation of Recitals.** Each of the foregoing recitals is incorporated by reference herein and made a part hereof.

**B. Certification of Settlement Class.** For purpose of settlement only, and not for purposes of liability, and subject to Court approval, the claims against HomEq in the Complaint in [\*17] the Action will be certified to proceed as a **class action**, under [California Code of Civil Procedure Section 382](#) and California Rules of Court, Chapter 6, *Rules 3.769 et seq.*, as applicable, with its members to comprise only those individuals who are within Settlement Class as defined above. Subject to terms and conditions of this Settlement Agreement, the Parties agree not to oppose any efforts to certify such a class for purposes of effectuating this Settlement Agreement only. Any certification under this Section shall not constitute, in this or any other proceeding, an admission, finding or evidence that any requirement for class certification is otherwise satisfied, except for the expressly enumerated purpose in this Settlement Agreement.

**C. Preliminary Approval.** No later than May 3, 2012 (unless such time is extended or modified by mutual agreement of the Parties), Plaintiff, through Class Counsel, shall present this Settlement Agreement to the Court by way of motion or application seeking certification of the Settlement Class for purposes of this settlement, and preliminary approval of this Settlement Agreement (the "Submission for Preliminary Approval"). In connection with the Submission for Preliminary Approval, Plaintiff, through Class Counsel, [\*18] shall apply for entry by the Court of an order substantially in the form of **Exhibit C** to this Settlement Agreement ("Preliminary Approval Order"). The Submission for Preliminary Approval shall request entry of the Order of Preliminary Approval providing for:

1. Preliminary approval of the Settlement Agreement;
2. Certification for settlement purposes of the Settlement Class under [California Code of Civil Procedure Section 382](#) and California Rules of Court, Chapter 6, *Rules 3.769 et seq.*, as applicable;
3. Appointment of Class Counsel as counsel for the Settlement Class;
4. Appointment of Plaintiff as class representative for the Settlement Class;
5. Approval of the proposed Class Notice in form substantially similar to that attached hereto as **Exhibit E**

and **F** and the settlement notice program; and

6 Establishment of a schedule for submitting papers in support of the Plaintiffs motion for entry of the Final Order and Judgment, for Settlement Class members to object or request exclusion from the Settlement, and for the Court to hear the joint motion for entry of the Final Order and Judgment ("Final Fairness Hearing").

#### **D. Class Notice.**

1. Through the course of formal and informal discovery in the Action, HomEq has taken diligent steps and used its best effort [\*19] to identify members of the Settlement Class. Within five days of the execution of this Agreement, HomEq will provide the Class Settlement Administrator and Class Counsel with a list of individuals it has identified as members of the Settlement Class based on a reasonable and diligent review of its records ("Class List"). The Class List will contain each member's name and last known address. For any Settlement Class member who submitted money to HomEq in the amount or approximate amount of a requested downpayment after being sent a Modification and/or Modification/Repayment Plan Letter and did not receive a loan modification, the list will also provide the amount of money that the member paid, as determined by HomEq's records. For all other Settlement Class members, the list will specify whether the class member was sent any Modification and/or Modification/Repayment Plan Letter on or after January 28, 2009. HomEq's preparation of the Class Lists, and/or designation or classification of any individual Settlement Class in the Class List, in no way impacts the release provided in this Agreement or the binding effect of any the Final Judgment and Order as to any Settlement Class member. [\*20]

2. No later than the date specified in **Exhibit C** or as otherwise allowed by the Preliminary Approval Order, the Class Settlement Administrator will mail the Class Notice postcard (in substantially the form attached as **Exhibit E** hereto, as approved or modified by the Court) to each member of the Settlement Class to that member's last known address. Any cost associated with the mailing of Class Notice will be paid from the Settlement Amount, as explained below. The Class Notice will advise Settlement Class members of the date of the Final Fairness Hearing, and the deadlines to submit objections to the Settlement, opt-out of the Settlement, or request an opportunity to be heard at the Final Fairness Hearing.

3. No later than the date specified in **Exhibit C** or as otherwise allowed by the Court, the Parties agree that a copy of **Exhibit E** (the "Full Settlement Notice") to this Settlement Agreement will be made available to the public through a settlement web site created by the Class Settlement Administrator. For those Settlement Class members who cannot access the Full Settlement Notice in such a manner, the Plaintiff, through Class Counsel, will on or before the same date activate a toll-free [\*21] number that Settlement Class members can call to request a mailed copy of **Exhibit E**.

4. The Class Settlement Administrator shall perform the notice plan in accordance with the Kurtzman Carson Proposal attached as **Exhibit G** and comply with the terms of this Agreement and all Orders of the Court in the Action as they relate to class notice and settlement administration. The Parties agree that the method of notice set forth in this Section constitute the best form of notice to the Settlement Class that is practicable under the circumstance.

#### **E. Final Approval.**

All papers in support of the Parties' request for final approval of the terms of this settlement shall be filed no later than 21 days before the Fairness Hearing or on such earlier date the Court may specify in the Preliminary Approval Order. The Parties shall request that the Court hold the Final Fairness Hearing no later than 100 days from entry of the Preliminary Approval Order, unless otherwise ordered by the Court. At the Fairness Hearing, the Parties shall jointly request that the Court enter an order and judgment under [California Code of Civil Procedure Section 382](#) and California Rules of Court, Chapter 6, *Rules 3.769 et seq.*, as applicable, in the form of **Exhibit D** to this Settlement Agreement [\*22] (the "Final Order and Judgment").

Except for HomEq's failure to fund the Common Fund, as described below, in compliance with this Agreement, following entry by the Court of the Final Order and Judgment, no default by any person in the performance of any covenant or any obligation arising under this Settlement Agreement, or any order of judgment entered in connection therewith, shall affect the Judgment in the Action, the discharge and release of the Released Parties, or any other provision of this Settlement Agreement. The above notwithstanding, nothing in this sub-section shall prevent a Party from seeking enforcement of or compliance with the terms of this Settlement Agreement, or the intervention of the

Court to compel any such default to be cured.

#### **F. Settlement Consideration.**

1. HomEq shall establish an "all in" common fund of \$ 1,500,000 (the "Common Fund") to pay all class benefits to all non-opt-out Settlement Class members under this Settlement Agreement, including an **incentive award** to Plaintiff not to exceed \$5,000 in addition to Plaintiffs settlement benefit as a class member; to pay any and all attorney's fees and costs that might be awarded to Class Counsel by the Court; and [\*23] to pay any and all administrative costs incurred to administer this Settlement, including but not limited to the cost for preparing, mailing and processing mail related to Class Notice or individual settlement checks and maintaining the settlement website and 1-800 number. Under no circumstance will HomEq's obligation under this Settlement Agreement ever exceed \$1,500,000.

2. Within 5 business days after the Settlement Effective Date, HomEq will deliver to the Court approved and appointed Class Settlement Administrator a check in the amount of the Common Fund or otherwise make provisions for wire transfer of the amount to the Class Settlement Administrator to retain the funds in a trust account from which class benefits, Plaintiffs **incentive award**, any and all attorney fees and costs, and all administrative cost will be disbursed.

3. As class benefits, the Class Settlement Administrator will distribute settlement checks to the non-opt-out Settlement Class members by mailing checks directly to those Settlement Class members within 10 days of the Settlement Effective Date, in the following amounts:

a. Each non-opt-out member of the Settlement Class who was sent a Modification or Repayment [\*24] Plan/Modification Letter at any time on or after January 28, 2006 and who made a payment to HomEq in the amount or approximate amount of a requested downpayment and did not receive a loan modification ("the UCL Subclass") will receive 50% of the amount paid by that member as stated on the Class List. Such Settlement Class members are not entitled to any additional benefits under Section F.3.(b) or F.3.(c), below.

b. Each non-opt out member of the Settlement Class who is not a member of the UCL Subclass and who was sent a Modification or Repayment Plan/Modification Letter on or after January 28, 2009 will receive a check

for \$43.50 as settlement of this action. Such Settlement Class members are not entitled to any additional benefits under Section F.3.(a) above, or F.3.(c), below;

c Each non-opt out member of the Settlement Class who is not a member of the UCL Subclass and who was sent a Modification or Repayment Plan/Modification Letter between January 28, 2006 and January 27, 2009, inclusive, will receive a check for \$15 as settlement of this action. Such Settlement Class members are not entitled to any additional benefits under Section F.3.(b) or F.3.(c), above.

d. Failure to receive [\*25] the benefits described above, or erroneous distribution of benefits (whether inadvertently by the Class Settlement Administrator, or because of misdesignation of a class members on the Class List) in no way limits, voids, nullifies, waives, or otherwise affects the release provided in this Agreement against the Released Parties, and the effectiveness of the Final Judgment and Order as to any Settlement Class member.

4. Settlement Class members will have 60 days from the date of mailing to cash the settlement checks. In the event that one or more non-opt-out Settlement Class member refuses payment of a settlement check or otherwise fails to cash the check within 60 days of mailing, or in the event the check is returned due to an undeliverable address, the check will be voided by the Class Settlement Administrator. The Class Settlement Administrator shall provide HomEq with a list of names and addresses of the UCL Subclass members who cash their settlement checks based on the Class Settlement Administrator's records, and the amount of the settlement checks for each such member. The Class Settlement Administrator shall provide this list to HomEq in electronic format no later than 20 days [\*26] after the last day Settlement Class members are required to cash the settlement checks. The amounts of the uncashed and voided checks and monies earmarked for a Settlement Class member who subsequently opts out of the Settlement as provided in the Settlement Agreement will be paid by the Class Settlement Administrator first to Class Counsel to cover any balance of the award of attorney's fees and expenses that remains unpaid and then to non-profit organizations nominated by the Parties and approved by the Court as a charitable *cy pres* fund (the "Cy Pres Fund") 90 days after the date of mailing of the settlement checks. Notwithstanding the failure or refusal to cash a settlement check, or the failure to receive a settlement check, all Settlement Class members who did not timely opt-out of the

Settlement will be bound by the release provided in this Agreement against the Released Parties and the Court's Final Order and Judgment entered in this case.

**G. Objections to Settlement Agreement.** Any Settlement Class member may object to the fairness, reasonableness or adequacy of the proposed settlement. Each Settlement Class member who wishes to object to any term of this Settlement Agreement [\*27] must do so in writing by timely mailing a written objection to the Class Settlement Administrator. Any such objection must be postmarked no later than the date specified in **Exhibit C** or as otherwise allowed by the Preliminary Approval Order. Any such objection must (a) identify the person as a Settlement Class member, (b) attach copies of any materials that will be submitted to the Court or presented at the Final Fairness Hearing, (c) be signed by the Settlement Class member, and (d) clearly state in detail (i) the legal and factual ground(s) for the objection, (ii) the Settlement Class member's, name, address and, if available, telephone number, and (iii) if represented by counsel, such counsel's name, address and telephone number. The Class Settlement Administrator will provide copies of all objections to HomEq's counsel and Class Counsel immediately upon receipt. The Parties will advise the Court of any objections in conjunction with Plaintiffs motion for final approval of the Settlement. Any objection that fails to satisfy the requirements of this Section, or that is not properly and timely postmarked by the deadline set forth in the Preliminary Approval Order shall be deemed ineffective, [\*28] and the Settlement Class Member asserting such objection shall be bound by the final determination of the Court.

**H. Requests to Appear at Fairness Hearing.**

Settlement Class members or their counsel who wish to appear at the Final Fairness Hearing must make such request by notifying in writing the Class Settlement Administrator. Any such request must be postmarked no later than no later than the date specified in **Exhibit C** or as otherwise allowed by the Preliminary Approval Order, and must state the name, address, and, if available, telephone number of the Settlement Class member, as well as the name, address, and telephone number of the person who will appear on his or her behalf. Any such request must further include a detailed statement of the ground(s) for comment or issues that the Settlement Class Member intends to raise at the Final Fairness Hearing. The Class Settlement Administrator will provide copies of all requests for appearances to HomEq's counsel and Class Counsel immediately upon receipt.

The Parties will advise the Court of any objections in conjunction with Plaintiff's motion for final approval of the Settlement. Any request for appearance that fails to satisfy the requirements [\*29] of this Section, or that has not been properly or postmarked by the deadline set forth in the Preliminary Approval Order shall be deemed ineffective, may not be considered by the Court, and constitutes a waiver of such Settlement Class member's rights to appear and to comment on the settlement at the Final Fairness Hearing.

**I. Requests for Exclusion ("Opt-Out") from Settlement Class.**

1. Any person included within the Settlement Class who wishes to be excluded from the Settlement Class must do so in writing by mailing a written request for exclusion from the Settlement to the Class Settlement Administrator. Such request must be postmarked no later than the date specified in **Exhibit C** or as otherwise allowed by the Preliminary Approval Order. The request must (a) be signed by the Settlement Class member, (b) clearly express the person's desire to be excluded (or to "opt out") from the Settlement Class, and (c) include the Settlement Class member's name, address and, if available, telephone number and, if represented by counsel, counsel's name, address and telephone number. Any person within the Settlement Class who wishes to be excluded from the Settlement Class can only opt out for himself [\*30] or herself and cannot opt out for any other person, nor can any person within the Settlement Class authorize any other person to opt out on his or her behalf. Any request for exclusion that fails to satisfy the requirements of this Section, or that has not been timely postmarked by the deadline set forth in the Preliminary Approval Order, shall be deemed ineffective, and any person included within the Settlement Class who does not properly and timely submit a request for exclusion shall be deemed to have waived all rights to opt out and shall be deemed a Settlement Class member for all purposes under this Settlement Agreement.

2. The Class Settlement Administrator will provide copies of all requests to opt-out to HomEq's counsel and Class Counsel immediately upon receipt. The Parties will advise the Court of any objections in conjunction with Plaintiff s joint motion for final approval of the Settlement. In the event that the number of opt-outs from the Settlement Class exceeds either 5% of the members of the UCL Subclass or 2% of the Settlement Class, HomEq, at its sole and absolute discretion, may void this Settlement Agreement. HomEq may exercise

its option to void this Settlement Agreement [\*31] by giving notice, in writing, to Class Counsel and the Court within 10 days after the deadline for Settlement Class members to opt-out or object.

**J. Failure of Court to Approve this Agreement.**

If (i) preliminary or final approval of this Settlement Agreement and the Settlement is not obtained from the Court; or (ii) the Final Order and Judgment substantially in the form attached as **Exhibit D** to this Agreement is modified by the Court, and any of the Parties objects to such modification; or (iii) the number of timely and valid requests for exclusion exceeds either 5% of the members of the UCL Subclass or 2% of the Settlement Class and, HomEq timely provides written notice of its election to void this Settlement Agreement as provided in this Settlement Agreement; or (iv) anyone appeals from the Court's entry of the Final Order and Judgment and such order is reversed in whole or in material part by a final decision of an appellate court (in the event of a partial reversal, the Parties shall have the right to elect to be bound by this Settlement Agreement as modified or partially reversed by the appellate court); or (v) this Settlement Agreement is otherwise terminated or fails to become [\*32] effective in accordance with its terms, then this Settlement Agreement shall be null and void, shall have no further force and effect with respect to any Party, and shall not be offered in evidence or used in the Action (or in any other matter to the extent permitted by law) for any purpose, including that relating to the existence, certification or maintenance of any purported class of plaintiffs. In such event, this Settlement Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Parties, shall not be deemed or construed to be an admission or confession by any Party of any fact, matter or proposition of law, and shall not be used in any matter for any purpose, and all Parties shall stand in the same position as if this Settlement Agreement had not been negotiated, made, or filed with the Court. In such event, if any order entered by the Court under the terms of this Settlement Agreement is not vacated by its own terms, any Party may move the Court to vacate any and all orders entered by the Court under the provisions of this Settlement Agreement, and no Party shall object thereto. To the extent [\*33] feasible, the Parties shall be returned to their respective positions in the Action as the date of this Settlement Agreement. The Action shall then proceed in all material respects as if this Settlement Agreement and any related orders had never been executed. No order of the Court or modification or

reversal on appeal of any order of the Court concerning any application for attorney's fees or costs awarded by the Court to any of the Class Counsel shall constitute grounds for cancellation, modification or termination of this Settlement Agreement, and neither the Parties nor Class Counsel shall request or suggest any such relief.

**K. Attorneys' Fees and Reimbursement of Expenses.**

1. The Parties acknowledge that in prosecuting and settling the Action, Class Counsel have conferred a benefit on the public. Class Counsel will petition the Court for attorney fees pursuant to [California Civil Procedure Code Section 1021.5](#). Class Counsel agree that they will not seek more than 30% of the Common Fund in fees and costs, and will limit payment of that award prior to payments to Settlement Class members to \$400,000, any such balance of the award to be paid from any unclaimed residual before payment of the Cy Pres Fund. The Parties and Class [\*34] Counsel agree that any award of attorney's fees and costs will be paid solely out of the Common Fund. An award of less than 30% of the Common Fund in attorney fees and costs in no way will impact the other terms and conditions of this Settlement Agreement. Class Counsel's fees and costs shall be paid within 10 business days after the Settlement Effective Date. The amount of Class Counsel fees and cost will be deducted from the Common Fund.

2. HomEq shall bear its own attorney's fees and costs.

3. The procedure for and the allowance or disallowance by the Court of any application by Class Counsel for attorney fees and costs, and any contemporaneous or subsequent application concerning distribution thereof among Class Counsel are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement set forth in this Settlement Agreement. Any order or proceedings relating to any such application for attorney fees and costs, or any appeal from any order relating to, or any reversal or modification of any such order, shall not operate to terminate or cancel this Settlement Agreement, or affect or delay the finality of the Final [\*35] Order and Judgment approving this Settlement Agreement and the settlement of the Action.

**L. Incentive Awards to Plaintiff.** HomEq agrees not to oppose Class Counsel's request that the Court approve an additional payment to Plaintiff as an **incentive award** in an amount not to exceed \$5,000.00 (five thousand dollars), subject to Court approval. All **incentive award**

payments shall be paid from the Common Fund by the Class Settlement Administrator no later than 10 days after the Settlement Effective Date. The Parties represent that their negotiation of and agreement to the **incentive awards** did not occur until after the substantive terms of the Settlement Agreement had been negotiated and agreed to in principle.

**M. Release, Waiver and Covenant Not to Sue.**

1. **Release:** Upon the Settlement Effective Date, Plaintiff and the Settlement Class (other than those who timely and validly opt-out of the Settlement Class), on behalf of themselves and their past, present, and future agents, insurers, attorneys, trusts, beneficiaries, heirs, devisees, legatees, spouses, family members, predecessors-and successors-in-interest and assigns (all collectively referred to as "Releasors"), hereby release, discharge, [\*36] and dismiss with prejudice the Released Parties, as defined above, of any and all known and unknown claims for relief, causes of action, suits, rights of action, or demands, at law or in equity, whether sounding in contract, tort, equity, or any violation of law or regulation, including, without limitation, claims for injunctive or other equitable relief, damages, debts, indemnity, contribution, or for costs, expenses and attorney's fees, that were or could have been brought, which arise from or relate to the Modification Letter or the Repayment Plan/Modification Letters, or the delivery of or language contained in such letters, including but not limited to any claim based on an allegation that the Modification Letter or the Repayment Plan/Modification Letters violated the Fair Debt Collection Practices Act, the Rosenthal Fair Debt Collection Practices Act, the Unfair Competition Law, the **False Advertising Law**, any other state or federal consumer protection statute, or any common law rule (hereinafter, but subject to the following exclusion, the "Released Claims").

2. "Released Claims" does not include any claim by a member of the Settlement Class that both (1) challenges any impending [\*37] or past foreclosure and (2) is based on an allegation that a loan modification or repayment plan agreement entered into by the Released Parties with a member of the Settlement Class was breached. Except for this express exclusion, the Parties agree that the release shall apply to all Released Claims alleged by a Settlement Class member even if alleged as part of an action challenging a foreclosure undertaken by the Released Parties.

3. It is a condition of the consideration hereof, and is the

intention of the Settlement Class, that this Settlement Agreement shall be effective as a complete release and settlement of all Released Claims as defined above that the Settlement Class now have or have had in the past. All Parties hereto expressly understand and acknowledge that certain state statutes and principles of common law provides that a "general release" does not extend to claims that a creditor does not know or suspect to exist in his, her, or its favor. In furtherance of this intention, which may be asserted by and between the Parties hereto and/or their successors, heirs and/or assigns, the Settlement Class expressly, knowingly and voluntarily waive any and all rights and/or benefits [\*38] conferred upon the Settlement Class by such statutes including [Section 1542 of the California Civil Code](#).

[Section 1542 of the California Civil Code](#) reads as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.**

Plaintiff, on her behalf and behalf of the Settlement Class acknowledges that Class Counsel have advised her of and that she is familiar with the provisions of [Section 1542 of the California Civil Code](#), as well as the provisions of any and all comparable or similar statutes or principles of law of any other state or federal jurisdiction might otherwise be deemed applicable, and that, being aware of that Section and other similar statutes or principles of law, she and the Settlement Class expressly waive any and all rights and benefits conferred by that Section or other similar statutes or principles of law on behalf of themselves individually, and on behalf of the Settlement Class. Plaintiff admits to full knowledge and understanding of the consequences and effect of this waiver.

**N. Additional Terms.**

1. **Assertion of Claims.** Plaintiff and the Settlement Class shall be forever barred from asserting any Released Claims against [\*39] any Released Parties on behalf of themselves or the Settlement Class or any other of the Releasors.

2. **Commitment to Support Settlement and**

Communications with Class Members. The Parties agree that it is in their best interests to consummate this Settlement Agreement and all the terms and conditions contained herein and to cooperate with each other and to take all actions reasonably necessary to obtain Court approval of this Settlement Agreement and entry of the orders of the Court that are required to implement its provisions. Class Counsel agree not to solicit or encourage, directly or indirectly, Settlement Class members to opt-out of this Settlement Agreement. The Parties also agree to support this Settlement Agreement in accordance with and subject to the provisions of this Agreement.

3. No Reliance On Representations By Other Parties. This Settlement Agreement is executed without reliance upon any representation by the Plaintiff, and the Settlement Class or their agents on the one hand, and HomEq and its agents on the other hand, concerning the nature or extent of any damages or legal liability, and all Parties have read the contents hereof, have been fully advised by counsel as [\*40] to the consequences thereof, and have signed the same as a free act.

4. No Admission. This Settlement Agreement is entered into for purposes of settlement and compromise only. Neither this Settlement Agreement nor anything contained herein, nor any act or thing done in connection herewith, is intended to be nor shall be construed or deemed to be an admission by any Party of liability, fault or wrongdoing, or an admission by any Party of any fact, allegation, or claim whatsoever or a declaration against interest by any Party.

5. Independent Legal Advice And Authority. Plaintiff and HomEq have received independent legal advice from their counsel regarding the meaning and legal effect of this Settlement Agreement, the advisability of making the agreements provided for herein, and the execution of this Settlement Agreement, and fully understand the same. Each Party executing this Agreement has the full right and authority to enter into this Settlement Agreement on behalf of herself or itself, or any person or entity on behalf of whom it enters into this Settlement Agreement in a representative capacity, and to bind fully such person or entity to the terms and obligations of this Settlement [\*41] Agreement. The Parties executing this Agreement have full power to enter into this Settlement Agreement and have not heretofore assigned, transferred, or encumbered, or purported to assign, transfer, or encumber, voluntarily or involuntarily, to any person or entity, all or any portion of the Released

Claims, obligations or rights which are the subject of this Agreement.

6. Notices. Any notices or statements to be given under this Settlement Agreement shall be addressed as follows:

If to the Plaintiff:

Arthur D. Levy, Esq.

Pacific States Building

445 Bush Street, Sixth Floor

San Francisco, California, 94108

William M. Krieg, Esq.

Kemnitzer, Barron & Krieg, LLP

2014 Tulare Street Suite 700

Fresno, California 93721

If to HomEq:

Abraham J. Colman, Esq.

Amir Shlesinger, Esq.

Reed Smith LLP

355 S. Grand Ave., Suite 2900

Los Angeles, CA 90071

7. Integrated Agreement. This Settlement Agreement constitutes and contains the entire agreement and understanding between the Parties hereto, and supersedes and replaces all prior statements, representations, negotiations, and agreements, proposed or otherwise, whether written or oral, concerning the subject matter hereof. This is an integrated document.

8. No Presumption [\*42] Against Drafter. None of the Parties shall be considered to be the drafter of this Settlement Agreement or any provision hereof 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 hereof. This Settlement Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein.

9. Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single instrument. Photographic or facsimile copies of signed counterparts may be used in lieu of the originals for any purpose and shall have the same force and effect as an original ink signature.

10. Jurisdiction. The Court shall retain continuing and exclusive jurisdiction over the Parties, including all Settlement Class members and Released Parties, over the administration and enforcement of the Settlement and this Settlement Agreement, and over the provision of benefits to the Settlement Class under [California Code of Civil Procedure Section 664.6](#).

IN WITNESS WHEREOF, the Parties have caused this [\*43] Settlement Agreement to be executed, by the Plaintiff, HomEq, and their respective duly authorized attorneys:

Dated: April \_\_, 2012

Louise Perez, Plaintiff and Class Representative

Dated: April \_\_, 2012

Barclays Capital Real Estate, Inc. dba HomEq Servicing

By: \_\_

Its: \_\_

# EXHIBIT 4

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~~ELECTRONICALLY RECEIVED~~  
Superior Court of California,  
County of San Diego

~~03/10/2021~~



MAR 26 2021 *mg*

By: L. Melin-Alvarez, Deputy

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO  
NORTH COUNTY DIVISION**

MARK HINKLE and DANIEL ROSSI,  
Individually and on Behalf of All Others  
Similarly Situated,

Plaintiffs,

v.

SPORTS RESEARCH CORPORATION,

Defendant.

Case No. 37-2020-00001422-CU-NP-NC

~~PROPOSED~~ FINAL APPROVAL  
ORDER AND JUDGMENT

Judge: Hon. Timothy M. Casserly

The Court having held a Final Approval Hearing on March 26, 2021, notice of the Final Approval Hearing having been duly given in accordance with this Court's order (1) preliminarily approving class action settlement, (2) conditionally certifying Settlement Class, (3) approving Notice Program, and (4) setting Final Approval Hearing ("Preliminary Approval Order"), and having considered all matters submitted to it at the Final Approval Hearing and otherwise, and finding no just reason for delay in entry of this Final Approval Order and good cause appearing therefore,

It is ORDERED, ADJUDGED AND DECREED as follows:

1. The Settlement Agreement and Release, including its exhibits, fully executed on June 17, 2020 (the "Agreement"), and the definitions contained therein are incorporated by

1 reference in this Final Approval Order. The terms of this Court’s Preliminary Approval Order  
2 issued on October 23, 2020 are also incorporated by reference in this Final Approval Order.

3 2. This Court has jurisdiction over the subject matter of this Action and over the  
4 Parties, including all members of the Settlement Class certified for settlement purposes in this  
5 Court’s Preliminary Approval Order.

6 3. The Settlement Class is defined as follows:

7 All residents of the United States and its territories who purchased  
8 for personal use, and not resale or distribution, a Covered Product  
9 between January 9, 2016 through January 9, 2020.

10 Specifically excluded from the Settlement Class are the following Persons:

11 A. SRC and its respective affiliates, employees, officers, directors, agents,  
12 and representatives, and their immediate family members;

13 B. Settlement Class Counsel and partners, attorneys, and employees of their  
14 law firms; and

15 C. The judges who have presided over the Action, the case identified in  
16 Paragraph I.A of the Agreement, or the mediations referenced in Paragraph I.F of the  
17 Agreement, and their immediate family members.

18 4. The deadline for Settlement Class Members to request exclusion from the  
19 settlement contemplated by the Agreement (the “Settlement”) was February 23, 2021. The two  
20 persons who timely and validly excluded themselves from the Settlement Class include Monica  
21 Martinez of Texas and Jan Toomer of New Mexico.

22 5. The deadline for Settlement Class Members to file an objection was February 23,  
23 2021. No objections to the Settlement were received.

24 6. The Court finds that the Agreement is the product of arm’s-length settlement  
25 negotiations between the Plaintiffs and Settlement Class Counsel, on the one hand, and Defendant  
26 and Defendant’s Counsel, on the other hand, including following private mediation with the  
27 Honorable Gail Andler (Ret.) of JAMS and several months of further negotiations between the  
28 Parties.

1           7.       The Court finds that Class Notice was disseminated to the Settlement Class  
2 Members in accordance with the terms set forth in the Agreement and this Court's Preliminary  
3 Approval Order. The Court further finds that the Class Notice was provided in accordance with  
4 the terms set forth in the Agreement.

5           8.       The Court finds that the Notice Program and claims submission procedures fully  
6 satisfy the requirements of due process, and constitute the best notice practicable under the  
7 circumstances.

8           9.       The Court finds that the Agreement's terms constitute, in all respects, a fair,  
9 reasonable, and adequate settlement as to all Settlement Class Members in accordance with  
10 Section 382 of the Code of Civil Procedure, and directs consummation of the Settlement pursuant  
11 to the terms and conditions of the Agreement. The Plaintiffs, Mark Hinkle and Daniel Rossi, in  
12 their role as Class Representatives, and Settlement Class Counsel (Abbas Kazerounian and Jason  
13 A. Ibey) adequately represented the Settlement Class for purposes of entering into and  
14 implementing the Agreement. Accordingly, the Agreement is finally approved in all respects,  
15 and the Parties are directed to perform its terms. The Parties and Settlement Class Members who  
16 were not excluded from the Settlement Class are bound by the terms and conditions of the  
17 Agreement.

18           10.      The Court approves Class Counsel's application for attorneys' fees and litigation  
19 costs, which the Court finds to be fair and reasonable according to the lodestar method. The also  
20 Court finds Plaintiffs' counsel's hourly rates are reasonable. Accordingly, Class Counsel is  
21 awarded a total of \$325,000 (in attorneys' fees and costs combined), and such amount is to be  
22 paid by Defendant pursuant to and in the manner provided by the terms of the Agreement.

23           11.      The Court finds the payment of a Service Award in the amount of \$2,500 to each  
24 of the two Named Plaintiffs, Mark Hinkle and Daniel Rossi, is fair and reasonable. Accordingly,  
25 each Class Representative is awarded \$2,500, paid by Defendant pursuant to and in the manner  
26 provided by the terms of the Agreement.

27           12.      The Settlement Administrator shall be paid reasonable notice and claims  
28 administration expenses by Defendant, not to exceed \$104,192.50.

1           13.    The Court approves the 14,862 valid and timely claims.

2           14.    The Court denies the duplicative claims and any untimely claims.

3           15.    The Settlement Class Members who submitted a timely and valid claim shall be  
4 paid in accordance with the Agreement.

5           16.    To the extent required under the terms of the Agreement, the Court approves the  
6 National Consumer Law Center and the Constitutional Rights Foundation Orange County as the  
7 *cypres* beneficiaries, to share equally in any *cypres* distribution of unclaimed settlement funds.  
8 The Settlement Administrator shall certify to this Court what, if any amount is donated to the *cy*  
9 *pres* beneficiaries and on what date that donation was transmitted and file the certification with  
10 the Court.

11          17.    The Settlement Class described in paragraph 3 above is finally certified, solely for  
12 purposes of effectuating the Agreement and this Final Approval Order.

13          18.    The requirements of Section 382 of the Code of Civil Procedure have been  
14 satisfied for settlement purposes.

15          19.    The Settlement Administrator is directed to distribute the settlement awards to the  
16 Settlement Class pursuant to the terms of the Agreement, following the Effective Date.

17          20.    Defendant shall commence the labeling changes required by the Agreement,  
18 following the Effective Date.

19          21.    Plaintiffs and each and every one of the Settlement Class Members  
20 unconditionally, fully, and finally release and forever discharge the Released Persons from the  
21 Released Claims as provided for in the Agreement. In addition, any rights of the Class  
22 Representative and each and every one of the Settlement Class Members to the protections  
23 afforded under Section 1542 of the California Civil Code and/or any other similar, comparable, or  
24 equivalent laws, are terminated pursuant to IX.B.3 of the Settlement Agreement.

25          22.    The Agreement (including, without limitation, its exhibits), and any and all  
26 negotiations, documents, and discussions associated with it, shall not be deemed or construed to  
27 be an admission or evidence of any violation of any statute, law, rule, regulation, or principle of  
28 common law or equity, of any liability or wrongdoing, by Defendant, or of the truth of any of the

1 claims asserted by Plaintiffs, and evidence relating to the Agreement shall not be discoverable or  
2 used, directly or indirectly, in any way, whether in this Action or in any other action or  
3 proceeding, except for purposes of enforcing the terms and conditions of the Agreement, the  
4 Preliminary Approval Order, and/or this Order.

5 23. Solely for purposes of such suit, action, or other proceeding, to the fullest extent  
6 they may effectively do so under applicable law, the Parties irrevocably waive and agree not to  
7 assert, by way of motion, as a defense or otherwise, any claim or objection that they are not  
8 subject to the jurisdiction of the Court, or that the Court is, in any way, an improper venue or an  
9 inconvenient forum. These provisions are necessary to protect the Agreement, this Final  
10 Approval Order and this Court's authority to effectuate the Agreement, and are ordered in aid of  
11 this Court's jurisdiction and to protect its judgment.

12 24. As of the Effective Date, the Plaintiffs and all Settlement Class Members, whether  
13 or not they have returned a Claim Form within the time and in the manner provided for, shall be  
14 barred from asserting any Released Claims against SRC and/or any Released Persons, and all  
15 Settlement Class Members shall have released any and all Released Claims as against SRC and  
16 all Released Persons.

17 25. The Settlement Agreement and the Final Approval Order are binding on and  
18 have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings  
19 encompassed by the Release, maintained by or on behalf of the Plaintiffs and any or all  
20 Settlement Class Members.

21 26. The Court hereby bars and permanently enjoins all Settlement Class Members  
22 from (a) filing, commencing, prosecuting, intervening in, or participating in any way (as class  
23 members or otherwise) in any other lawsuit or administrative, regulatory, arbitration or other  
24 proceeding in any jurisdiction based on, relating to, or arising out of the claims and causes of  
25 action or the facts and circumstances giving rise to the Action and/or the Released Claims, and (b)  
26 organizing Settlement Class Members (or any subgroup thereof) into a separate class for purposes  
27 of pursuing as a purported class action any lawsuit or arbitration or other proceeding (including,  
28 without limitation, by seeking to amend a pending complaint to include class allegations or

1 seeking class certification in a pending action) based on, relating to, or arising out of the claims  
2 and causes of action or the facts and circumstances giving rise to the Action and/or the Released  
3 Claims, except that Settlement Class Members are not precluded from participating in any  
4 investigation or suit initiated by a state or federal agency.

5 27. If an appeal is filed as to this Final Approval Order, and if thereafter the Final  
6 Approval Order is not ultimately upheld, all orders entered, stipulations made and releases  
7 delivered in connection herewith, or in the Agreement or in connection therewith, shall be null  
8 and void to the extent provided by and in accordance with the Agreement. If for any reason  
9 whatsoever this Settlement is not finalized or there is no Effective Date of the Settlement as  
10 detailed in the Agreement, the certification of the Settlement Class shall be void and the Parties  
11 and the Action will return to the status quo as it existed prior to the Agreement, and no doctrine of  
12 waiver, estoppel or preclusion will be asserted in any proceedings, in response to any motion  
13 seeking class certification, any motion seeking to compel arbitration or otherwise asserted at any  
14 other stage of the Action or in any other proceeding. No agreements, documents or statements  
15 made by or entered into by any Party in connection with the Settlement may be used by Plaintiffs,  
16 any person in the proposed Settlement Class, Defendant or any other person to establish liability,  
17 any defense and/or any of the elements of class certification, whether in the Action or in any other  
18 proceeding.

19 28. Finding that there is no just reason for delay, the Court orders that this Final  
20 Approval Order shall constitute a final judgment pursuant to Section 904.1 of the Code of Civil  
21 Procedure. The Court orders that, upon the Effective Date, the Agreement shall be the exclusive  
22 remedy for any and all Released Claims of the Plaintiffs and each and every Settlement Class  
23 Member against the Released Persons. The Clerk of the Court is directed to enter this Final  
24 Approval Order on the docket forthwith.

25 29. The Court retains jurisdiction over the Parties and the Settlement to enforce the  
26 Settlement and terms of this Final Approval Order, pursuant to California Rules of Court, rule  
27 3.769(h).

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30. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement.

IT IS SO ORDERED.

Dated: 3-26, 2021

