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ORIGINAL FILED
Superior Court of California
County of Los Angeles

AUG 03 2018

Sherril R. Carter, Executive Officer/Clerk
By: Nancy Navarro, Deputy

Attorneys for Plaintiff Marko Djoric and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

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LOS ANGELES SUPERIOR COURT

COUNTY OF LOS ANGELES

AUG 02 2018

MARKO DJORIC, an individual, on behalf of
himself and all others similarly situated,

Case No. BC574927

R. NAZARYAN

Plaintiff,

CLASS ACTION

[REDACTED] JUDGMENT

v.

JUSTIN BRANDS, INC.; and DOES 1
through 10, inclusive.

Assigned to: Hon. Maren Nelson, Dept. SSC
17

Action Filed: March 12, 2015

Defendants.

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1 **JUDGMENT**

2 On July 31, 2018, the Court held a hearing on Plaintiff’s motions for final approval of
3 class action settlement and for an award of attorneys’ fees and costs and an incentive award for
4 the representative plaintiff. At the hearing, the Court granted the motions and entered its Order
5 Granting Motion for Final Approval of Class Action Settlement (“Final Approval Order”). A
6 copy of the Final Approval Order is attached hereto as Exhibit 1.

7 **IT IS THEREFORE ORDERED, ADJUDGED and DECREED that:**

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

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

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

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

- 23 a. Agree to maintain the changes Defendant made in or about March 2016 to its
24 Chippewa Products and their marketing, advertising, and promotional
25 materials, including revision of Defendant’s country of origin representations
26 and use of the United States flag without qualifying language, to comply with
27 California law, including but not limited to Business & Professions Code
28 Section 17533.7. This injunctive relief will become effective as part of this

1 Judgment on the Effective Date and will remain in effect for five years,
2 unless new or amended federal or California laws expressly allow or require
3 further changes. In either case Defendant expressly agrees to conform its
4 marketing, advertising, and promotional materials to such additional or
5 different requirements imposed by subsequent law.

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

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

1 affected.”

- 2 d. Notify in writing all known parties who sell, distribute, or market the
3 Chippewa brand boots in California, including online retailers outside of
4 California who sell to California residents, that although the boots were
5 advertised as “Handcrafted in the U.S.A.” they include parts that were
6 manufactured outside the United States, and providing a list of specific boot
7 models affected.
- 8 e. Instruct in writing and require all known parties who sell, distribute or
9 market Chippewa brand boots in California, including online retailers outside
10 of California who sell to California residents, to:
- 11 i. Only represent or advertise to California residents that Chippewa
12 Products are “Handcrafted in the U.S.A.” when using the additional
13 representation that the boots include parts that are manufactured
14 outside the United States. Defendant shall instruct such retailers to
15 use the language “Assembled in the USA with imported parts” and/or
16 “Handcrafted in the USA with imported materials,” or substantially
17 similar language referencing the use of imported parts and materials;
 - 18 ii. For known parties who sell, distribute, or market the Chippewa brand
19 boots in California through internet websites, Defendant shall provide
20 them with explicit instruction with regard to the change of language
21 on the websites in compliance with subparagraph (i), above;
 - 22 iii. Only advertise for Chippewa boots using a United States flag by
23 further representing in the flag logo itself that the boots include parts
24 that are manufactured outside the United States, such as the flag
25 currently being used by Defendant, which includes the following
26 language in the flag logo itself: “Assembled in the USA with
27 imported parts or Handcrafted in the USA with imported materials.”;
 - 28 iv. Return to Defendant, at Defendant’s expense, all of the retailer’s

1 current inventory of Chippewa boots that have the “Handcrafted in
2 the U.S.A.” logo embossed in leather on the boots;

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

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

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

14 g. Report to Class Counsel as to the number of boots returned to Defendant
15 pursuant to subparagraph (d)(iv), above, four (4) months after the initial
16 instructions are sent.

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

21 6. Upon the settlement becoming final, Defendant and the Released Persons
22 (Defendant and its past and present subsidiaries and affiliates, parent companies, divisions, as
23 well as their distributors, wholesalers, retailers, customers and licensors, including the officers,
24 directors, trustees, employees, shareholders, agents, insurers, spokespersons, legal
25 representatives, attorneys, public relations firms, advertising and production agencies and
26 assigns of all such persons or entities) will be released and forever discharged from any and all
27 actions, claims, demands, rights, suits, and causes of action of any kind or nature whatsoever
28 against the Released Persons, including damages, costs, expenses, penalties, and attorneys’ fees,

1 whether at law or equity, known or unknown, foreseen or unforeseen, developed or
2 undeveloped, direct, indirect or consequential, liquidated or unliquidated, arising under
3 common law, regulatory law, statutory law, or otherwise, based on federal, state, or local law,
4 statute, ordinance, regulation, code, contract, common law, or any other source, or any claim
5 that Plaintiff or Settlement Class Members ever had, now have, may have, or hereafter can,
6 shall or may ever have against the Released Persons in any court, tribunal, arbitration panel,
7 commission, agency or before any governmental and/or administrative body, or any other
8 adjudicatory body, on the basis of, connected with, arising from or in any way whatsoever
9 relating to actions or omissions in manufacturing, advertising, marketing, labeling, packaging,
10 promotion, selling and distribution of Chippewa Products with a "Handcrafted in USA" or
11 equivalent country of origin label, from March 1, 2011 to June 30, 2017, including those which
12 have been asserted or which could reasonably have been asserted by the Settlement Class
13 members against Defendant in this action or any other threatened or pending litigation asserting
14 claims of the nature encompassed by this release, and any claims asserted after the date of final
15 approval. This release is limited to claims that arose or could have been asserted based on
16 labels or marketing in existence as of the date of final approval of the Settlement Agreement
17 and excludes any claims for personal injury.

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

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

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A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor 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

Maren E. Nelson
Hon. Maren E. Nelson
Superior Court Judge

Approved as to form:

Dated: 8/1/18

Robert J. Hicks
Robert J. Hicks
STREAM KIM HICKS WRAGE &
ALFARO, PC

Attorneys for Defendant
Justin Brands, Inc.

EXHIBIT 1

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Superior Court of California
County of Los Angeles

JUL 31 2018

Sherri R. Carter, Executive Officer/Clerk
By: Nancy Navarro, Deputy

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

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.

Case No.: BC574927

~~(Proposed)~~ ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

Date: July 31, 2018
Time: 9:00 a.m.
Dept.: SSC-17

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

1 thousands of its boots being sold in California as "handcrafted in the USA" when in fact,
2 significant portions of the boots and/or their component parts were manufactured outside of the
3 United States. Through the course of discovery and negotiations with Defendant, it has been
4 determined that 394 models totaling 76,423 pairs of allegedly mislabeled boots (for net revenue
5 of \$7,191,183.96) were shipped to the California market.

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

16 After reviewing the settlement agreement, the Court issued a checklist and requested
17 supplemental briefing. Class Counsel filed supplemental briefing and an amended settlement
18 agreement on January 10, 2018 and March 2, 2018.

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

21 **II. DISCUSSION**

22 **A. SETTLEMENT CLASS DEFINITION**

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

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

12
13 Class Period is the period from March 1, 2011 through June 30, 2017. (¶11, as amended)

14 **B. TERMS OF SETTLEMENT AGREEMENT**

15
16 The essential terms are as follows:

- 17 • The payment of attorneys’ fees, reimbursement of actual expenses, and an award of a
18 class representative incentive fee will be paid by Defendant in addition to the settlement
19 consideration to the Settlement Class (¶G.3):
- 20 ○ Up to \$425,000 for attorney fees and costs (¶G.3);
 - 21 ○ Up to \$10,000 for a service award to the class representative (¶G.3);
 - 22 ○ Estimated \$159,637 for claims administration costs. (Declaration of Jennifer
23 Keough ISO Preliminary Approval, ¶21 and Exhibit 7 thereto)
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1 • **Cash Benefit/Promotional Code:** Defendant, either directly or indirectly through the
2 Claims Administrator, will distribute to each Qualifying Claimant who timely submits a
3 fully executed Claim Form, at the Qualifying Claimant's election, either: (1) a Cash
4 Benefit in the amount of \$25 for each Chippewa Product claimed (in the form of a
5 check), or (2) a \$50 Promotional Code for each Chippewa Product claimed. (§D.2) The
6 Promotional Code shall expire two years after their date of issuance and shall be fully
7 transferrable. (§A.23.) Multiple Promotion Codes can be used per transaction. (*Ibid.*)

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

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

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

- 10 ○ (c) publish a corrective announcement in the twenty-one (21) California
11 newspapers of general circulation within California (set forth in Exhibit F to the
12 Settlement Agreement) disclosing that the Chippewa Products include parts that
13 are manufactured outside the United States. The announcement will be in the
14 following form: "Chippewa boots that were previously advertised as 'Handcrafted
15 in the U.S.A.' were constructed by workers here in the U.S.A., but also contained
16 parts manufactured outside the United States. We now include 'with imported
17 parts' or like notices with our advertising. Chippewa apologizes if this caused any
18 confusion to its valued customers. Go to www.chippewaboos.com for a list of
19 specific boot models affected."
20
21 ○ (d) notify in writing all known parties who sell, distribute, or market the
22 Chippewa brand boots in California, including online retailers outside of
23 California who sell to California residents, that although the boots were advertised
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1 as "Handcrafted in the U.S.A.," they include parts that were manufactured outside
2 the United States, and providing a list of specific boot models affected.

- 3 ○ (e) instruct in writing and require all known parties who sell, distribute or market
4 Chippewa brand boots in California, including online retailers outside of
5 California who sell to California residents, to: (i) only represent or advertise to
6 California residents that Chippewa Products are "Handcrafted in the U.S.A."
7 when using the additional representation that the boots include parts that are
8 manufactured outside the United States, Defendant shall instruct such retailers to
9 use the language "Assembled in the USA with imported parts" and/or
10 "Handcrafted in the USA with imported materials," or substantially similar
11 language referencing the use of imported parts and materials; (ii) for known
12 parties who sell, distribute, or market the Chippewa brand boots in California
13 through Internet websites, Defendant shall provide them with explicit instruction
14 with regard to the change of language on the websites in compliance with
15 subparagraph (i), above; (iii) only advertise for Chippewa boots using a United
16 States flag by further representing in the flag logo itself that the boots include
17 parts that are manufactured outside the United States, such as the flag currently
18 being used by Defendant, which includes the following language in the flag logo
19 itself. "Assembled in the USA with imported parts or Handcrafted in the USA
20 with imported materials."; (iv) return to Defendant, at Defendant's expense, all of
21 the retailer's current inventory of Chippewa boots that have the "Handcrafted in
22 the U.S.A." logo embossed in leather on the boots; (v) return to Defendant, at
23 Defendant's expense, or destroy all marketing and packaging materials that
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1 advertise the boots as "Handcrafted in the U.S.A." without further representing
2 that the boots include parts that are manufactured outside the United States; and
3 vi. Destroy all marketing and packaging materials that advertise the boots with a
4 United States flag which does not further represent in the flag logo itself that the
5 boots include parts that are manufactured outside the United States.

- 6 ○ (f) follow up with retailers regarding their compliance with the provisions set
7 forth in subparagraph (e) above, 3 months after the initial instructions are sent;
8 and
- 9 ○ (g) report to Class Counsel as to the number of boots returned to Defendant
10 pursuant to subparagraph (d)(iv), above, 4 months after the initial instructions are
11 sent.
- 12 ○ The relief set forth in Paragraphs 3(a), (b), (c), and (d) above shall be completely
13 implemented within 6 months after the Effective Date. Notice of completion must
14 be filed with the Court and provided to Class Counsel within 7 months after the
15 Effective Date. (§D.4)

- 16 ● This is a claims-made settlement.
 - 17 ○ The claims period commences 20 days after the Court enters the Preliminary
18 Approval Order and ending on the 180th day thereafter. (§9, as amended)
 - 19 ○ Claim forms can be submitted electronically through the Settlement Website or
20 via mail. (§F.3)
- 21 ● The response deadline to submit objections and opt-outs is 120 days after the claims
22 administrator mails notice packets to class members. (§§ I.2, J)
- 23 ● The settlement administrator is JND Legal Administration. (§8)
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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, 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 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,

1 or resolution of this Action, including, but not limited to, claims for attorneys' fees, costs of suit,
2 or sanctions of any kind. (¶K.2)

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

4 **C. ANALYSIS OF SETTLEMENT AGREEMENT**

5 **1. Standards for Final Fairness Determination**

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

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

23 “The burden is on the proponent of the settlement to show that it is fair and reasonable.
24 However ‘a presumption of fairness exists where: (1) the settlement is reached through arm’s-
25 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to

1 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
2 objectors is small.” (See *Wershba, supra*, 91 Cal.App.4th at 245 [citing *Dunk v. Ford Motor*
3 *Co.* (1996) 48 Cal.App.4th 1794, 1802. (“*Dunk*”).) Notwithstanding an initial presumption of
4 fairness, “the court should not give rubber-stamp approval.” (See *Kullar v. Foot Locker Retail,*
5 *Inc.* (2008) 168 Cal.App.4th 116, 130 (“*Kullar*”).) “Rather, to protect the interests of absent
6 class members, the court must independently and objectively analyze the evidence and
7 circumstances before it in order to determine whether the settlement is in the best interests of
8 those whose claims will be extinguished.” (*Ibid.*) In that determination, the court should
9 consider factors such as “the strength of plaintiffs’ case, the risk, expense, complexity and likely
10 duration of further litigation, the risk of maintaining class action status through trial, the amount
11 offered in settlement, the extent of discovery completed and stage of the proceedings, the
12 experience and views of counsel, the presence of a governmental participant, and the reaction of
13 the class members to the proposed settlement.” (*Id.* at 128.) “Th[is] list of factors is not
14 exclusive and the court is free to engage in a balancing and weighing of factors depending on the
15 circumstances of each case.” (*Wershba supra*, 91 Cal.App.4th at pg. 245.)

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

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1 **2. Does a presumption of fairness exist?**

2
3 a. Was the settlement reached through arm's-length bargaining? Yes. On October
4 26, 2016, the parties mediated this case before Ralph Williams at the ADR
5 Services offices in Los Angeles, California. At and after mediation, the Parties
6 reached an agreement on a settlement proposal. (Settlement Agreement, pg. 1,
7 ¶D.)

8 b. Were investigation and discovery sufficient to allow counsel and the court to act
9 intelligently? Yes. Class Counsel represent they conducted significant discovery
10 and a thorough examination and investigation of the facts and law relating to the
11 matters in the Action, including but not limited to examining confidential and
12 competitively sensitive information provided by Defendant. (Settlement
13 Agreement, pg. 2, ¶E.)

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

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

19
20 CONCLUSION: The settlement is entitled to a presumption of fairness.

21
22 **2. Is the settlement fair, adequate, and reasonable?**

23
24 a. Strength of Plaintiff's case. "The most important factor is the strength of the case
25 for plaintiff on the merits, balanced against the amount offered in settlement."

1 (Kullar, supra, 168 Cal.App.4th at pg. 130.) Plaintiff's counsel estimates that if
2 Plaintiff were to prevail on the merits, he could recover injunctive relief along the
3 same lines as that agreed to by Defendant in the settlement, as well as restitution
4 or monetary damages. While damages have been approached in different ways in
5 similar cases, some cases have measured damages as a percentage of the purchase
6 price, based upon the corresponding percentage value of foreign made
7 components, for example. Using a \$250 purchase price for boots with a foreign-
8 made upper consisting of approximately 50% of a boot's value, Plaintiff's counsel
9 estimates that the high range of recoverable damages is \$125 per purchase. Even
10 under this high measure of damages, many Class members' damages would be
11 substantially less, based on lower purchase prices and/or less substantial foreign
12 made components. Further, a different damages model could ultimately be
13 applied, such as one based on Defendant's significantly lower wholesale prices.
14 Based on this comparison, and given the costs and risks of further litigation
15 (including the risks that the Class will not be certified and that damages will be
16 difficult to prove), Class Counsel believes the settlement, providing for monetary
17 relief of either \$25 in cash or \$50 in Promotional Codes per boot purchase, is an
18 excellent result. (Declaration of Gretchen Carpenter ISO Preliminary Approval,
19 ¶8.)
20

- 21 b. Risk, expense, complexity and likely duration of further litigation. Given the
22 nature of the class claims, the case is likely to be expensive and lengthy to try.
23 Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong
24 the litigation as well as any recovery by the class members.
25

- 1 c. Risk of maintaining class action status through trial. Even if a class is certified,
 2 there is always a risk of decertification. (*Weinstat v. Dentsply Intern., Inc.*
 3 (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that
 4 trial courts should retain some flexibility in conducting class actions, which
 5 means, under suitable circumstances, entertaining successive motions on
 6 certification if the court subsequently discovers that the propriety of a class action
 7 is not appropriate.”].)
- 8 d. Amount offered in settlement. As indicated above, Defendant has agreed to settle
 9 for both monetary and injunctive relief.
- 10 e. Extent of discovery completed and stage of the proceedings. As discussed above,
 11 at the time of the settlement, Class Counsel had conducted extensive discovery.
- 12 f. Experience and views of counsel. The settlement was negotiated and endorsed
 13 by Class Counsel who, as indicated above, is experienced in class action
 14 litigation, including consumer cases.
- 15 g. Presence of a governmental participant. This factor is not applicable here.
- 16 h. Reaction of the class members to the proposed settlement.

18 Number of class members: Unknown.

19 76,423 pairs of boots were shipped to the California market.

20 Total Number of notices mailed: 7,363

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

22 *Number of notices mailed to Retailers:* 204

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

24 Number of undeliverable notices: 51

25 *Number of undeliverable notices via Mail:* 21

1	<i>Number of undeliverable notices via e-mail:</i>	30
2	Number of opt-outs:	0
3	Number of objections:	1
4	Number of Claims Received:	27,258

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

6 JND represents it investigated the validity of 7,976 claims submitted. Many of these
7 were duplicative and the correct claim count is 2,242. (Keough Supp. Decl. ISO Final ¶7.)
8 10,870 claims were submitted from a state other than California. The parties propose sending a
9 supplemental request for information to these claimants. (Keough Decl. ISO Final, ¶26,

10 Keough Supp. Decl. ISO Final ¶9.) *The form of supplemental request attached to the supp. Decl. of Keough is approved,*
11 Based on the number of claims submitted the Court concludes that the notice was *provided*
12 adequate and the best available means under the circumstances. *space is placed in the form so that consumers can fill it.*

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

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

20 **D. ATTORNEY FEES AND COSTS**

21 Class Counsel request \$425,000.00 for fees and costs. (Motion ISO Fees, 7:20-22.)
22 Sweeney objects to the fees but does not indicate why he believes them to be inappropriate. For
23 the reasons set forth below, his objection on this basis is overruled and the fees and cost request
24 is approved.
25

1 In determining the appropriate amount of a fee award, courts may use the lodestar
 2 method, applying a multiplier where appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22
 3 Cal.4th 1084, 1095-96.) A percentage calculation is permitted in common fund cases. (*Laffitte v.*
 4 *Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the
 5 contrary, courts have an independent responsibility to review an attorney fee provision and
 6 award only what it determines is reasonable. (*Garabedian v. Los Angeles Cellular Telephone*
 7 *Company* (2004) 118 Cal.App.4th 123, 128.)

8 In the instant case, fees are sought pursuant to the lodestar method. (Motion ISO Fees,
 9 7:20-22.) Counsel provided a summary of each attorney and paralegal who worked on this case,
 10 through June 27, 2018 as follows:

Attorney/Staff	Hourly Rate	Hours Billed	Total
Brian R. Strange	\$950	4	\$3,800.00
Gretchen Carpenter	\$725 (while at Strange & Carpenter)	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

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

21 If costs of \$25,568.78 are sought from the total requested fee award, Counsel are seeking
 22 \$399,431.22 in attorney's fees. Class Counsel's lodestar is \$534,360.00, so the multiplier sought
 23 by Class Counsel is approximately 0.75 (\$399,431.22 / \$534,360.00). (Motion ISO Fees, 7:27-
 24 8:2, fn. 3.)

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

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

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

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

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

21 An incentive fee award to a named class representative must be supported by evidence
22 that quantifies time and effort expended by the individual and a reasoned explanation of
23 financial or other risks undertaken by the class representative. (See *Clark v. American*
24 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone*
25 *Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 ["Criteria courts may consider in

1 determining whether to make an incentive award include: (1) the risk to the class representative
2 in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties
3 encountered by the class representative; (3) the amount of time and effort spent by the class
4 representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof)
5 enjoyed by the class representative as a result of the litigation. (Citations.)”].)

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

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

21 In light of the above, as well as the significant benefits obtained on behalf of the class,
22 and the fact that there was no objection to the incentive award, \$10,000.00 appears to be
23 reasonable inducement for Plaintiff’s participation in the case. Accordingly, the Incentive
24 Award is approved in the amount requested.

25 ///

1 **F. CLAIMS ADMINISTRATION COSTS**

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

13 **III. CONCLUSION AND ORDER**

14 **A. RULING**

15 The Court hereby:

- 16 (1) Grants class certification for purposes of settlement;
- 17 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 18 (3) Awards **\$425,000.00** in attorney fees and costs to Class Counsel, Carpenter Law and
19 Parisi & Havens LLP;
- 20 (4) Awards **\$10,000** as Class Representative Service Awards to Marko Djoric;
- 21 (5) Awards **\$161,061.19** in claims administration costs to JND Legal Administration, to be
22 updated by further Order if necessary;
- 23 (6) Orders class counsel to lodge a proposed Judgment, consistent with this ruling and
24 containing the injunctive language, class definition, and full release language by
25 8/3, 2018;

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(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-Appearence Case Review re: Final Report re: Distribution of Settlement

Funds for 11/17/18, at

830. Final Report is to be filed by

11/17/18

Dated: 7/21/18

(2)

Maren E. Nelson

MAREN E. NELSON

Judge of the Superior Court

EXHIBIT 2

BOOT MODEL EXHIBIT

1.	20012	66.	25264	131.	29416	196.	91096	261.	1901G40	326.	1901M64	391.	OCM305006
2.	20017	67.	25266	132.	29435	197.	91097	262.	1901G42	327.	1901M72	392.	OCM501001
3.	20028	68.	25268	133.	29437	198.	91113	263.	1901G45	328.	1901M73	393.	OCM501005
4.	20040	69.	25269	134.	29465	199.	91114	264.	1901G47	329.	1901M74	394.	OCM501006
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.	1901J24	332.	1901M78		
8.	20066	73.	25381	138.	29558	203.	93420	268.	1901J25	333.	1901M79		
9.	20067	74.	25387	139.	30101	204.	93428	269.	1901J27	334.	1901M80		
10.	20068	75.	25388	140.	30102	205.	93430	270.	1901J33	335.	1901M81		
11.	20070	76.	25402	141.	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.	1901M20	355.	1901W64		

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.	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

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is:

5 CARPENTER LAW
1230 Rosecrans Ave., Suite 300
6 Manhattan Beach, CA 90266

7 On August 2, 2018, I served the foregoing documents, described:

8 **[PROPOSED] JUDGMENT**

9 via electronic transmission addressed as follows:

10 Robert Hicks
robert.hicks@streamkim.com
11 Theodore K. Stream
ted.stream@streamkim.com
12 STREAM KIM HICKS WRAGE &
ALFARO, PC
13 3403 Tenth St., Suite 700
Riverside, CA 92501
14 Tel: (951) 783-9470
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15 *Counsel for Defendant*

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17 Tel: (818) 990-1299
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Co-Counsel for Plaintiff

18 **VIA ELECTRONIC TRANSMISSION TO CASE ANYWHERE AT**
WWW.CASEANYWHERE.COM

19 **VIA ELECTRONIC MAIL**

20 Executed on August 2, 2018, at Anaheim, California.

21 I declare under penalty of perjury under the laws of the State of California that the above
22 is true and correct.

23 
24 _____
25 Carlo Aguilar