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Superior Court of California
County of Los Angeles

MAR 12 2018

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

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**
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11 MARKO DJORIC, an individual, on behalf of
12 himself and all other similarly situated,

13 Plaintiff,

14 v.

15 JUSTIN BRANDS, INC.; and Does 1 through
16 10, inclusive,

17 Defendants.
18

Case No.: BC574927

ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: March 12, 2018
Time: 9:00 a.m.
Dept.: 307

19
20 **I. BACKGROUND**

21 On March 12, 2015, Plaintiff Marko Djoric filed the instant class action. Plaintiff alleges
22 that Defendant Justin Brands, Inc., in violation of the Unfair Competition Law, Bus. & Prof.
23 Code § 17200, et seq.; the Consumers Legal Remedies Act, Civil Code § 1750, et seq.; and the
24 False Advertising Law, Bus. & Prof Code § 17500, et seq., falsely advertised and labeled
25 thousands of its boots being sold in California as "handcrafted in the USA" when in fact,

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

5 On October 26, 2016, the parties attended the first of two in-person settlement
6 conferences with Ralph Williams, a private mediator. The parties made progress at this first
7 session of mediation but were unable to resolve the matter. On November 8, 2016, the parties
8 attended another settlement conference after an exchange of some mediator directed
9 information. At this second session, the parties were able to reach an agreement with respect to
10 some, but not all, of the terms of the settlement. With the on-going assistance of the mediator,
11 the parties eventually reached agreement on a comprehensive resolution of this action and on
12 June 30, 2017 the Settlement Agreement was executed by the parties. After reviewing the
13 settlement agreement, the Court issued a checklist and requested supplemental briefing. Class
14 Counsel filed supplemental briefing and an amended settlement agreement on January 10, 2018.
15 At hearing the Court asked the parties to supplement the plan of notice. The parties have done
16 so, as set forth in pleadings filed March 2, 2018. Accordingly, the parties now request
17 conditional certification of the Class; preliminary approval of the proposed settlement; and
18 approval of the Class notice.

19 **II. DISCUSSION**

20 **A. SETTLEMENT CLASS DEFINITION**

21 Settlement Class is defined as, “for settlement purposes only, all California persons who
22 made a Qualifying Transaction.” (Settlement Agreement, ¶29)

- 23 ○ “Qualifying Transaction” means a purchase in California (including an online
24 purchase made while the purchaser is in California) of a Chippewa Product
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1 during the Class Period. (¶24.) “Chippewa Products” means the models of Justin
2 Brand’s Chippewa boots (attached as Exhibit D to the Settlement Agreement)
3 which were manufactured, marketed, and/or distributed by Defendant with the
4 designation “Handcrafted in the USA” or other designation of United States
5 origin, but that contain one or more foreign-made component parts. (¶4)

- 6 ○ Specifically excluded from the Settlement Class are: (a) employees, officers,
7 directors, agents, and representatives of Defendant and its subsidiaries and
8 affiliates; (b) all mediators, judges and judicial staff who have presided over the
9 Action; and (c) all personal who timely opt-out. (¶29)

10 Class Period is the period from March 1, 2011 through June 30, 2017. (¶11, *asa mended*)

11
12 **B. TERMS OF SETTLEMENT AGREEMENT**

13 The essential terms are as follows:

- 14 ● The payment of attorneys’ fees, reimbursement of actual expenses, and an award of a
15 class representative incentive fee will be paid by Defendant in addition to the settlement
16 consideration to the Settlement Class (¶G.3):
 - 17 ○ Up to \$425,000 for attorney fees and costs (¶G.3);
 - 18 ○ Up to \$10,000 for a service award to the class representative (¶G.3);
 - 19 ○ Estimated \$159,637 for claims administration costs. (Declaration of Jennifer
20 Keough, ¶21 and Exhibit 7 thereto)
- 21 ● **Cash Benefit/Promotional Code:** Defendant, either directly or indirectly through the
22 Claims Administrator, will distribute to each Qualifying Claimant who timely submits a
23 fully executed Claim Form, at the Qualifying Claimant's election, either: (1) a Cash
24 Benefit in the amount of \$25 for each Chippewa Product claimed (in the form of a
25

1 check), or (2) a \$50 Promotional Code for each Chippewa Product claimed. (§D.2) The
2 Promotional Code shall expire two years after their date of issuance and shall be fully
3 transferrable. (§A.23.) Multiple Promotion Codes can be used per transaction. (Ibid.)

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

- 5 ○ (a) agree to maintain the changes Defendant made in or about March 2016 to its
6 Chippewa Products and their marketing, advertising, and promotional materials,
7 including revision of Defendant's country of origin representations and use of the
8 United States flag without qualifying language, to comply with California law,
9 including but not limited to Business & Professions Code Section 17533.7. This
10 injunctive relief will become effective as part of the Judgment on the Effective
11 Date and will remain in effect for five years, unless new or amended federal or
12 California laws expressly allow or require further changes. In either case
13 Defendant expressly agrees to conform its marketing, advertising, and
14 promotional materials to such additional or different requirements imposed by
15 subsequent law.
16
17 ○ (b) publish a corrective announcement on the home page of Defendant's website
18 (www.chippewaboos.com), in the same sized font as the rest of its home page,
19 disclosing that the Chippewa Products include parts that are manufactured outside
20 the United States, and including a link to a web page that lists the specific
21 Chippewa Products affected. The announcement will be in substantially the
22 following form: "Notice to California Consumers: Chippewa boots that were
23 previously advertised as, 'Handcrafted in the U.S.A.' were constructed by workers
24 here in the U.S.A., but also contained parts manufactured outside the United
25

1 States. We now include 'with imported parts' or like notices with our advertising.

2 Chippewa apologizes if this caused any confusion to its valued customers.

3 California consumers click here for a list of specific boot models affected." The
4 announcement will remain on the homepage of Defendant's website for at least
5 six (6) months.

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

1 California residents that Chippewa Products are "Handcrafted in the U.S.A."
2 when using the additional representation that the boots include parts that are
3 manufactured outside the United States, Defendant shall instruct such retailers to
4 use the language "Assembled in the USA with imported parts" and/or
5 "Handcrafted in the USA with imported materials," or substantially similar
6 language referencing the use of imported parts and materials; (ii) for known
7 parties who sell, distribute, or market the Chippewa brand boots in California
8 through Internet websites, Defendant shall provide them with explicit instruction
9 with regard to the change of language on the websites in compliance with
10 subparagraph (i), above; (iii) only advertise for Chippewa boots using a United
11 States flag by further representing in the flag logo itself that the boots include
12 parts that are manufactured outside the United States, such as the flag currently
13 being used by Defendant, which includes the following language in the flag logo
14 itself. "Assembled in the USA with imported parts or Handcrafted in the USA
15 with imported materials."; (iv) return to Defendant, at Defendant's expense, all of
16 the retailer's current inventory of Chippewa boots that have the "Handcrafted in
17 the U.S.A." logo embossed in leather on the boots; (v) return to Defendant, at
18 Defendant's expense, or destroy all marketing and packaging materials that
19 advertise the boots as "Handcrafted in the U.S.A." without further representing
20 that the boots include parts that are manufactured outside the United States; and
21 (vi) Destroy all marketing and packaging materials that advertise the boots with a
22 United States flag which does not further represent in the flag logo itself that the
23 boots include parts that are manufactured outside the United States.
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- 1 ○ (f) follow up with retailers regarding their compliance with the provisions set
2 forth in subparagraph (e) above, 3 months after the initial instructions are sent;
3 and
4 ○ (g) report to Class Counsel as to the number of boots returned to Defendant
5 pursuant to subparagraph (d)(iv), above, 4 months after the initial instructions are
6 sent.
7 ○ The relief set forth in Paragraphs 3(a), (b), (c), and (d) above shall be completely
8 implemented within 6 months after the Effective Date. Notice of completion must
9 be filed with the Court and provided to Class Counsel within 7 months after the
10 Effective Date. (¶D.4)
11
12 • This is a claims-made settlement.
13 ○ The claims period commences 20 days after the Court enters the Preliminary
14 Approval Order and ending on the 180th day thereafter. (¶9, as amended)
15 ○ Claim forms can be submitted electronically through the Settlement Website or
16 via mail. (¶F.3)
17 • The response deadline to submit objections and opt-outs is 120 days after the claims
18 administrator mails notice packets to class members. (¶¶ I.2, J)
19 • The settlement administrator is JND Legal Administration. (¶8)
20 • All class members who do not opt out will release certain claims against Defendant.
21 (See further discussion below)

22 **C. SETTLEMENT STANDARDS AND PROCEDURE**

23 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise of an
24 entire class action, or of a cause of action in a class action, or as to a party, requires the approval
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1 of the court after hearing.” “Any party to a settlement agreement may serve and file a written
2 notice of motion for preliminary approval of the settlement. The settlement agreement and
3 proposed notice to class members must be filed with the motion, and the proposed order must be
4 lodged with the motion.” See CRC rule 3.769(c).

5 “In a class action lawsuit, the court undertakes the responsibility to assess fairness in
6 order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
7 action. The purpose of the requirement [of court review] is the protection of those class
8 members, including the named plaintiff, whose rights may not have been given due regard by
9 the negotiating parties.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America*
10 (2006) 141 Cal. App.4th 46, 60 (internal quotation marks omitted); *Wershba v. Apple Computer,*
11 *Inc.* (2001) 91 Cal.App.4th 224, 245 (“*Wershba*”): Court needs to “scrutinize the proposed
12 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is
13 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and
14 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned,” internal
15 quotation marks omitted.)
16

17 “The burden is on the proponent of the settlement to show that it is fair and reasonable.
18 However ‘a presumption of fairness exists where: (1) the settlement is reached through arm's-
19 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court
20 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
21 objectors is small.’” (*Wershba* at 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
22 1794, 1802 (“*Dunk*”).) Notwithstanding an initial presumption of fairness, “the court should not
23 give rubber-stamp approval.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
24 130 (“*Kullar*”). “Rather, to protect the interests of absent class members, the court must
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1 independently and objectively analyze the evidence and circumstances before it in order to
2 determine whether the settlement is in the best interests of those whose claims will be
3 extinguished.” Id. In that determination, the court should consider factors such as “the strength
4 of plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk
5 of maintaining class action status through trial, the amount offered in settlement, the extent of
6 discovery completed and stage of the proceedings, the experience and views of counsel, the
7 presence of a governmental participant, and the reaction of the class members to the proposed
8 settlement.” Id. at 128. “Th[is] list of factors is not exclusive and the court is free to engage in
9 a balancing and weighing of factors depending on the circumstances of each case.” (*Wershba* at
10 245.)

11 “A settlement need not obtain 100 percent of the damages sought in order to be fair and
12 reasonable. Compromise is inherent and necessary in the settlement process. Thus, even if ‘the
13 relief afforded by the proposed settlement is substantially narrower than it would be if the suits
14 were to be successfully litigated,’ this is no bar to a class settlement because ‘the public interest
15 may indeed be served by a voluntary settlement in which each side gives ground in the interest
16 of avoiding litigation.’” (Id. at 250.)

18 **D. ANALYSIS OF SETTLEMENT AGREEMENT**

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

- 20 a. Was the settlement reached through arm’s-length bargaining? Yes. On October
21 26, 2016, the parties mediated this case before Ralph Williams at the ADR
22 Services offices in Los Angeles, California. At and after mediation, the Parties
23 reached an agreement on a settlement proposal. (Settlement Agreement, pg. 1,
24 ¶D.)
25

- 1 b. Were investigation and discovery sufficient to allow counsel and the court to act
2 intelligently? Yes. Class Counsel conducted discovery and an examination and
3 investigation of the facts and law relating to the matters in the Action, including
4 but not limited to examining confidential and competitively sensitive information
5 provided by Defendant. (Settlement Agreement, pg. 2, ¶E.)
- 6 c. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced
7 in consumer class action litigation. (Declaration of Gretchen Carpenter, ¶9-10.)
- 8 d. What percentage of the class has objected? This cannot be determined until the
9 fairness hearing. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before
10 Trial (The Rutter Group 2014) ¶ 14:139.18: “Should the court receive objections
11 to the proposed settlement, it will consider and either sustain or overrule them at
12 the fairness hearing.”)

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

14
15 **2. Is the settlement fair, adequate, and reasonable?**

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

- 12 b. Risk, expense, complexity and likely duration of further litigation. Given the
13 nature of the class claims, the case is likely to be expensive and lengthy to try.
14 Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong
15 the litigation as well as any recovery by the class members.
- 16 c. Risk of maintaining class action status through trial. Even if a class is certified,
17 there is always a risk of decertification. (*Weinstat v. Dentsply Intern., Inc.*
18 (2010) 180 Cal.App.4th 1213, 1226: "Our Supreme Court has recognized that
19 trial courts should retain some flexibility in conducting class actions, which
20 means, under suitable circumstances, entertaining successive motions on
21 certification if the court subsequently discovers that the propriety of a class action
22 is not appropriate.")
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- 1 d. Amount offered in settlement. As indicated above, Defendant has agreed to settle
2 for both monetary and injunctive relief.
- 3 e. Extent of discovery completed and stage of the proceedings. As discussed above,
4 at the time of the settlement, Class Counsel had conducted significant discovery.
- 5 f. Experience and views of counsel. The settlement was negotiated and endorsed
6 by Class Counsel who, as indicated above, is experienced in consumer class
7 action litigation.
- 8 g. Presence of a governmental participant. This factor is not applicable here.
- 9 h. Reaction of the class members to the proposed settlement. The class members'
10 reactions will not be known until they receive notice and are afforded an
11 opportunity to opt out or object. This factor becomes relevant during the fairness
12 hearing.

13 CONCLUSION: The settlement can be preliminarily deemed "fair, adequate, and
14 reasonable."
15

16 **3. Scope of release**

17 In addition to the effect of any final judgment entered in accordance with this Settlement
18 Agreement, upon this Settlement becoming final, Defendant and the Released Persons will be
19 released and forever discharged from any and all actions, claims, demands, rights, suits, and
20 causes of action of any kind or nature whatsoever against the Released Persons, including
21 damages, costs, expenses, penalties, and attorneys' fees, whether at law or equity, known or
22 unknown, foreseen or unforeseen, developed or undeveloped, direct, indirect or consequential,
23 liquidated or unliquidated, arising under common law, regulatory law, statutory law, or
24 otherwise, based on federal, state, or local law, statute, ordinance, regulation, code, contract,
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1 common law, or any other source, or any claim that Plaintiff or Settlement Class Members ever
2 had, now have, may have, or hereafter can, shall or may ever have against the Released Persons
3 in any court, tribunal, arbitration panel, commission, agency or before any governmental and/or
4 administrative body, or any other adjudicatory body, on the basis of, connected with, arising
5 from or in any way whatsoever relating to actions or omissions in manufacturing, advertising,
6 marketing, labeling, packaging, promotion, selling and distribution of Chippewa Products with a
7 "Handcrafted in USA" or equivalent country of origin label, from March 1, 2011 to June 30,
8 2017, including those which have been asserted or which could reasonably have been asserted
9 by the Settlement Class Members against Defendant in this Action or any other threatened or
10 pending litigation asserting claims of the nature encompassed by the release, and any claims
11 asserted after the date of final approval which arose or could have been asserted based on labels
12 or marketing in existence as of the date of final approval of the Settlement Agreement. (¶K.1, as
13 amended.).

14
15 At hearing the Court expressed concern that the scope of the release could release claims
16 for personal injury or work related injury resulting from manufacture of the products. Counsel
17 shall clarify this by amendment to the Settlement Agreement, in the form discussed at hearing.

18 Defendant will release Djoric and his counsel from any claims of abuse of process,
19 malicious prosecution, or any other claims arising out of the institution, prosecution, assertion,
20 or resolution of this Action, including, but not limited to, claims for attorneys' fees, costs of suit,
21 or sanctions of any kind. (¶K.2)

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

23 **4. May conditional class certification be granted?**

24 a. Standards

1 A detailed analysis of the elements required for class certification is not required, but it
2 is advisable to review each element when a class is being conditionally certified. (*Amchem*
3 *Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627.) The trial court can appropriately
4 utilize a different standard to determine the propriety of a settlement class as opposed to a
5 litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement
6 cases. (*Dunk* at 1807, FN 19.) Finally, the Court is under no “ironclad requirement” to conduct
7 an evidentiary hearing to consider whether the prerequisites for class certification have been
8 satisfied. (*Wershba* at 240.)

9 b. Analysis

10 i. Numerosity. The parties have identified 394 boot models distributed in
11 California during the Class period that were allegedly mislabeled and
12 thus, fall within the definition of a "Chippewa Product". More than
13 76,423 pairs of these Chippewa Products were distributed in California
14 during the class period. Thus, even if multiple Class members purchased
15 multiple pairs of boots such that the size of the Class is smaller than the
16 more than 76,423 pairs of boots, the Class is nonetheless sufficiently
17 numerous and consists of tens of thousands of members. (Motion at pg.
18 16.) Thus, numerosity has been established. (*Rose v. City of Hayward*
19 (1981) 126 Cal.App.3d 926, 934, stating that “[n]o set number is required
20 as a matter of law for the maintenance of a class action” and citing
21 examples wherein classes of as little as 10 [*Bowles v. Superior Court*
22 (1955) 44 Cal.2d 574] and 28 [*Hebbard v. Colgrove* (1972) 28
23 Cal.App.3d 1017] were upheld).

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- ii. Ascertainability. The class is defined above. The class definition is “precise, objective and presently ascertainable.” (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919.) Some class members are identifiable from Defendant’s records (¶E.5). However, many are not as the products were sold through third party retailers, both in “brick and mortar” stores and on-line.
 - iii. Community of interest. “The community of interest requirement involves three factors: ‘(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.’” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) All Class members were subject to the same practice and were allegedly deceived in the same way about the origin and production of the products they purchased. There are no individual issues which distinguish Plaintiff from the Class. (Motion at pg. 18)
 - iv. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in consumer class action litigation.
 - v. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

CONCLUSION: The class may be conditionally certified since the prerequisites of class certification have been satisfied.

5. Is the notice proper?

1 a. Method of class notice.

2 The long form Notice and summary Notice shall be in the forms attached as Exhibit A to
3 the settlement agreement (also included in Exhibit A are samples of the banner ads).

4 The Claims Administrator will arrange for publication of the summary Notice in the
5 twenty-one (21) printed publications set forth in Exhibit F to the Settlement Agreement. The
6 printed publication will include one weekday inserts per newspaper per week, for two weeks. At
7 least the first weekly printed publications shall occur within 20 days of the entry of the
8 Preliminary Approval Order, if reasonably possible. (¶E.3, as amended.)

9 The Claims Administrator will also arrange for publication of the banner ads on the
10 websites of the newspapers set forth in Exhibit F to the Settlement Agreement. Over 1.1 million
11 impressions will be served over a one month period on these websites, beginning within twenty
12 (20) days of the entry of the Preliminary Approval Order. (¶E.4.)

13 The Claims Administrator will also arrange for banner ads across the Google Display
14 Network. Up to four million impressions will be served to California online users, 18 years and
15 older. A two-pronged approach will be used, including behavioral targeting to reach
16 Californians 18 years and older and Chippewa Product purchasers based on their browsing
17 history anywhere on the internet, and contextual targeting to reach Californians 18 years and
18 older by placing the banner ads within webpage content related to Chippewa Products and
19 retailers that sell Chippewa Products. The banner ads will be placed over a one month period,
20 beginning within twenty (20) days of the entry of the Preliminary Approval Order. (¶E.5.)

21 The Claims Administrator will also arrange for publication of the summary Notice in the
22 June 2018 California edition of Popular Mechanics magazine, sold beginning on May 15, 2018.
23 (¶E.6.)
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1 The Claims Administrator will also send a letter and summary Notice to all retail stores
2 in California that sold Chippewa Products during the Class Period in the form of Exhibit G to
3 the Settlement Agreement, asking them to post the Notice at their point of sale or near their
4 display of Chippewa Products. The letter will be sent to the retail stores within twenty (20) days
5 of the entry of the Preliminary Approval Order. (§E.7.)

6 The Settlement Website shall be active within 20 days after the Preliminary Approval
7 Order is entered and shall remain active until 90 days after the Court enters Judgment. (§E.10.)
8 Defendant will post a link to the Settlement Website on its website for the duration of the claims
9 period. (§E.8.) The URL is www.ChippewaMadeinUSASettlement.com. (§A.31.)

10 To the extent that Defendant has California end-user identifying information in its
11 corporate books and records that establish that a particular person is or would be a Settlement
12 Class Member, Defendant will provide such information to the Claims Administrator and direct
13 the Claims Administrator to email or mail the long form Notice to those persons. All such
14 emails and mailings shall be emailed or mailed within 20 days of the entry of the Preliminary
15 Approval Order. For any and all Notices returned to the Claims Administrator that have
16 forwarding addresses provided by the postal service, the Claims Administrator shall re-mail the
17 Notices to the new addresses, except that the Claims Administrator will have no obligation to
18 re-mail returned Notices that it receives from the postal service later than 60 days after Notice.
19 (§E.9.)

20
21 b. Content of class notice.

22 The proposed class notice is attached to the Settlement Agreement as Exhibit A. The
23 notice appears to be acceptable. It includes information such as: a summary of the litigation; the
24 nature of the settlement; the terms of the settlement agreement; the maximum deductions to be
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1 made from the gross settlement amount (i.e., attorney fees and costs, the enhancement award,
2 and claims administration costs); the procedures and deadlines for participating in (do nothing),
3 opting out of, or objecting to, the settlement; the consequences of participating in, opting out of,
4 or objecting to, the settlement; and the date, time, and place of the final approval hearing.

5 Cost of class notice.

6 As indicated above, settlement administration costs are estimated to be \$159,637.
7 (Declaration of Jennifer Keough, ¶21 and Exhibit 7 thereto.) Prior to the time of the final fairness
8 hearing, the settlement administrator must submit a declaration attesting to the total costs
9 incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

10
11 Based on the nature of the claims and the products at issue the forms of Notice appear to
12 meet the requirements of due process.

13 **6. Attorney fees and costs**

14 CRC rule 3.769(b) states: “Any agreement, express or implied, that has been entered into
15 with respect to the payment of attorney fees or the submission of an application for the approval
16 of attorney fees must be set forth in full in any application for approval of the dismissal or
17 settlement of an action that has been certified as a class action.”

18
19 Ultimately, the award of attorney fees is made by the court at the fairness hearing, using
20 the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22
21 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615,
22 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-1136.) In common fund cases, the
23 court may use the percentage method. (*Laffitte v. Robert Half International, Inc.* (2016) 1
24 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, “the court ha[s] an
25 independent right and responsibility to review the attorney fee provision of the settlement

1 agreement and award only so much as it determined reasonable.” (*Garabedian v. Los Angeles*
2 *Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

3 The question of class counsel’s entitlement to \$425,000 in attorney fees and costs will be
4 addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees.
5 Class counsel must provide the court with billing information so that it can properly apply the
6 lodestar method, and must indicate what multiplier (if applicable) is being sought.

7 The parties discussed attorneys’ fees after the settlement was reached. Class Counsel
8 have agreed to split attorneys’ fees: 47.5% to Carpenter Law, 47.5% to Parisi & Havens, LLP,
9 and 5% to Brian R. Strange, APC (formerly of Strange & Carpenter, the firm who initially filed
10 this case.) According to Class Counsel, all counsel have agreed to this fee split arrangement and
11 Plaintiff has agreed in writing to this division of fees. (Carpenter Decl., ¶11.)

12 Class counsel should also be prepared to justify the costs sought by detailing how they
13 were incurred.

14 **7. Enhancement Award to Class Representatives**

15 The Settlement Agreement provides for an enhancement award of \$10,000 to the sole
16 class representative. In connection with the final fairness hearing, the named Plaintiff must
17 submit a declaration attesting to why he should be entitled to an enhancement award in the
18 proposed amount. The named Plaintiff must explain why he “should be compensated for the
19 expense or risk he has incurred in conferring a benefit on other members of the class.” (*Clark v.*
20 *American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) Trial courts should not
21 sanction enhancement awards of thousands of dollars with “nothing more than *pro forma* claims
22 as to ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more
23 specificity, in the form of quantification of time and effort expended on the litigation, and in the
24
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1 form of reasoned explanation of financial or other risks incurred by the named plaintiff, is
2 required in order for the trial court to conclude that an enhancement was 'necessary to induce
3 [the named plaintiff] to participate in the suit' (Id. at 806-807, italics and ellipsis in
4 original.)

5 The Court will decide the issue of the enhancement award at the time of final approval.

6 **III. CONCLUSION AND ORDER**

7 Contingent on the following:

- 8 (1) The Parties providing a fully executed, signed copy of the Settlement Agreement, with
9 language clarifying the scope of the Release language to omit claims for personal injury,
10 as agreed on the record on March 12, 2018;
- 11 (2) The long form Notice and summary Notice being modified to include the case name and
12 case number at the top;
- 13 (3) The Notices being modified to state that after April 15, 2018 the file may be examined at
14 at 312 North Spring Street, Los Angeles, CA 90012 in Department 17 and that the Final
15 Fairness Hearing will take place at that address,
16

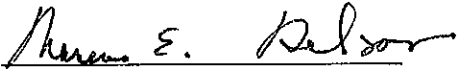
17 The Court hereby:

- 18 (1) Grants preliminary approval of the settlement as fair, adequate, and reasonable;
- 19 (2) Grants conditional class certification;
- 20 (3) Appoints Marko Djoric as Class Representative;
- 21 (4) Appoints Carpenter Law and Parisi & Havens LLP as Class Counsel;
- 22 (5) Appoints JND Legal Administration as Settlement Administrator;
- 23 (6) Approves the proposed notice plan;
- 24 (7) Approves the proposed schedule of settlement proceedings, attached hereto.
- 25

1 (8) Sets the last day for class counsel to file a motion for final approval of the
2 settlement as July 9, 2018; and

3 (9) Sets the final fairness hearing for July 31, 2018 at 9:00 a.m. at 312 North Spring
4 Street, Dept. 17, Los Angeles CA 90012.

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6 Dated: 3/12/18


7 MAREN E. NELSON
8 Judge of the Superior Court
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**SCHEDULE OF SETTLEMENT EVENTS (ASSUMING PRELIMINARY APPROVAL
ON MARCH 12, 2018 AND FINAL APPROVAL ON JULY 31, 2018)**

Preliminary approval hearing	March 12, 2018
Class notice by printed newspaper publication	Once a week for two consecutive weeks, starting no later than April 1, 2018 (20 days after Preliminary Approval Order)
Direct class notice by email and mail	April 1, 2018 (20 days after Preliminary Approval Order)
Banner advertisements to appear in the digital, online version of newspapers	For one month, starting no later than April 1, 2018 (20 days after Preliminary Approval Order)
Digital advertisements using the Google Display Network	For one month, starting no later than April 1, 2018 (20 days after Preliminary Approval Order)
Letter to retail stores in California that sold Chippewa products asking them to post an in-store notice	April 1, 2018 (20 days after Preliminary Approval Order)
Publication notice in California edition of Popular Mechanics magazine	June 2018 edition (on sale on May 15, 2018)
Settlement Website	April 1, 2018-October 29, 2018 (20 days after Preliminary Approval Order until 90 days after Judgment)
Defendant to post a link to the Settlement Website on its Website	April 1, 2018-September 7, 2018 (Claims Period)
Deadline to opt out	July 9, 2018 (120 days after Preliminary Approval Order)
Deadline for objections	July 9, 2018 (120 days after Preliminary Approval Order)
Response to objections	July 16, 2018
Claims Period	April 1, 2018-September 7, 2018 (20 days after Preliminary Approval Order until 180 th day thereafter)
Claims Administrator deadline to reject claims	October 7, 2018 (30 days after end of Claims Period)
Claims Administrator to notify rejected claimants of reasons for rejection	October 22, 2018 (45 days after expiration of Claims Period)
Deadline for Claimants to cure defects in Claim Forms	October 30, 2018 (15 days after notice is mailed)
Deadline to file Motions for final approval and for an award of attorneys' fees and class representative incentive award	July 9, 2018 (16 court days before Final Approval Hearing)
Claims Administrator to provide declaration that it complied with notice provisions of settlement	July 9, 2018 (16 court days before Final Approval Hearing)
List of opt outs filed with court	July 30, 2018 (before Final Approval Hearing)

Final Approval Hearing	July 31, 2018, or as soon thereafter as the Court is available
Effective Date	October 4, 2018 (65 calendar days after notice of entry of Final Approval Order and Judgment if no appeals filed)
Attorneys' fees and incentive award to be paid	October 24, 2018 (20 days of Effective Date)
Claims to be paid	November 3, 2018 (within 30 days of Effective Date)
Injunctive relief implemented	April 4, 2019 (within 6 months after Effective Date)
Notice of completion of injunctive relief filed with Court and provided to Class Counsel	May 4, 2019 (7 months after Effective Date)
Defendant to follow up with retailers re compliance with injunctive relief	July 4, 2019 (3 months after instructions are sent)
Report to Class Counsel as to number of boots returned to Defendant	August 4, 2019 (4 months after instructions are sent)
Corrective announcement on homepage of Defendant's website	posted from April 4, 2019 until October 4, 2019 (six months)
Promotional Codes expire	November 3, 2020 (2 years after issuance)
Injunctive relief provided in March 2016 in effect	until April 4, 2024 (five years)