

OCT 24 2011

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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SANTA CLARA**

17 **PEOPLE OF THE STATE OF CALIFORNIA,**

Case No.: 114CV272293

18 Plaintiff,

STIPULATED FINAL JUDGMENT

19
20 vs.

21
22 **JUST FABULOUS, INC., a Delaware**
23 **Corporation, SHOEDAZZLE.COM, INC., a**
24 **Delaware Corporation, and PERSONAL**
25 **RETAILING, INC., a Delaware Corporation,**

26 Defendants.
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1 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA ("THE PEOPLE"), having
2 filed its Complaint herein and appearing through its attorneys, JEFFREY F. ROSEN, District
3 Attorney of the County of Santa Clara, by Francisca B Allen, Deputy District Attorney; and
4 BOB LEE, District Attorney of the County of Santa Cruz, by Kelly J. Walker, Assistant District
5 Attorney; and Defendants JUST FABULOUS, INC., a Delaware Corporation doing business as
6 JustFab and Fabletics;, SHOEDAZZLE.COM, INC., a Delaware Corporation; and PERSONAL
7 RETAILING, INC., a Delaware Corporation doing business as FabKids; all with their principal
8 places of business at 2301 Rosecrans Avenue, Suite 5100, El Segundo, CA 90245,
9 ("DEFENDANTS"), appearing through their attorney Mr. Jeffrey L. Richardson of Mitchell,
10 Silberberg & Knupp, (hereinafter collectively referred to as the "PARTIES").
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12 It appearing to the Court that said PARTIES have stipulated and consented to the entry of
13 this Stipulated Final Judgment ("Final Judgment") without the taking of any proof and without
14 trial or adjudication of any factual or legal issue herein, and without said Final Judgment
15 constituting evidence of or an admission by DEFENDANTS regarding any issue of law or fact
16 alleged in the Complaint; the Court having considered the matter and good cause appearing
17 therefore;
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19 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

20
21 **I. JURISDICTION AND VENUE**

22 1. This action is brought under California law, and this Court has jurisdiction of the
23 subject matter and the PARTIES in that the DEFENDANTS and each of them sold consumer
24 goods in Santa Cruz and Santa Clara counties and throughout the State of California. Each party
25 hereto submits to the jurisdiction of this court and venue therein.

26 **II. EFFECTIVE DATE OF FINAL JUDGMENT**
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(4) The length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer.

(5) The minimum purchase obligation, if any.

C. "Clear and Conspicuous" or "Clearly And Conspicuously" means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language.

D. "Consumer" means any individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.

E. "Continuous Service" means a plan or arrangement in which a subscription or purchasing agreement continues until the consumer cancels the service.

F. "Membership Program" shall mean the automatic renewal and continuous service program marketed by DEFENDANTS to California residents.

IV. INJUNCTION

5. Beginning on November 10, 2014, pursuant to Business and Professions Code sections 17203, 17204 and 17535, DEFENDANTS shall be and are permanently enjoined and restrained within the State of California from:

A. Making oral or written statements concerning products or services that are untrue or misleading as set forth in California Business & Professions Code §17500 and as follows:

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- 1) The price of products and the discount on products without a qualifying description that VIP Membership is required, in a clearly readable font size and color;
- 2) If oral, the price of products and the discount on products without qualifying description that VIP Membership is required immediately following and in a volume and cadence sufficient to be readily audible and understandable or in a clearly readable font size and color;
- 3) When the home page displays the VIP membership pricing of products and/or discounts on products, failing to disclose on the home page of the website the Automatic Renewal Offer Terms; and
- 4) Failing to disclose Automatic Renewal Offer Terms in email and written correspondence advertising joining the VIP membership program.

B. Failing to present the Automatic Renewal Offer Terms or Continuous Service offer terms in a Clear and Conspicuous manner before the subscription or purchasing agreement for a Membership Program is fulfilled and in visual proximity as set forth in California Business and Professions Code §17602(a)(1);

C. In an offer conveyed on the telephone or in person, failing to present the Automatic Renewal Offer Terms or Continuous Service offer terms in a Clear and Conspicuous manner before the subscription or purchasing agreement for a Membership Program is fulfilled and in temporal proximity, to the request for consent to the offer as set forth in California Business and Professions Code §17602(a)(1);

D. Failing to obtain the consumer's affirmative consent to the agreement containing the Automatic Renewal Offer Terms or Continuous Service offer terms before

1 charging the consumer's credit or debit card or the consumer's account with a third party
2 as set forth in California Business and Professions Code §17602(a)(2);

3 E. Failing to provide an acknowledgment that includes the Automatic
4 Renewal or Continuous Service offer terms, the cancellation policy and how a consumer
5 can cancel the membership in a manner that is capable of being retained by the consumer
6 as set forth in California Business and Professions Code §17602(a)(3);

7 F. Failing to prominently identify the acknowledgment required above in
8 paragraph E in the subject line of the email (California Business and Professions Code
9 §§17500 and 17200);

10 G. Failing to conspicuously display their refund, exchange and return policy
11 on their order forms as set forth in California Civil Code § 1723, unless the company has
12 a policy of giving full cash or credit refunds, or of allowing equal exchanges, or any
13 combination thereof, for at least seven days following purchase of the goods if they are
14 returned;

15 H. Accepting any payment or processing any debit or credit charge or funds
16 transfer before disclosing to the buyer in writing or by electronic means of
17 communication, such as e-mail or an on-screen notice, their return and refund policy as
18 set forth in California Business and Professions Code § 17538;

19 I. Using the term "free shipping" without qualification in a misleading
20 manner as set forth in California Business and Professions Code §§17500, 17537(a) and
21 the FTC Guide §251.1 (c) regarding Section 5(c) of the FTC Act, 15 USCS § 45;

22 J. Failing to provide a timely cancellation mechanism as set forth in
23 California Business and Professions Code § 17602 (b). If cancellation is by phone, a
24 timely cancellation means on average, within ten total minutes;
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1 settlement, DEFENDANTS shall send through use of the independent third-party Claims
2 Administrator, by United States mail, a supplemental check to each Claimant whose then
3 current balance of unredeemed member credits, if any, exceeds the Claimant's cash
4 benefit under the Settlement. The amount of each supplemental check shall be the value
5 of the Claimant's unredeemed credits less the cash benefit under the Settlement. The
6 supplemental check shall be included with the Settlement Check and shall be enclosed in
7 an envelope that contains the Claims Administrator's name and return address in the
8 upper left hand portion, the customer's name and address in the middle portion, and
9 postage in the upper right hand portion.
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12 C. In the event that the court denies the motion for final approval of the Toney
13 Settlement (including any amendments thereto) or the Toney settlement does not become
14 final for any other reason, DEFENDANTS shall have 90 days from notice of either of
15 these triggering events to either enter into a new class settlement (that includes a notice
16 and claims process that will enable the implementation of the provisions in paragraph B
17 above) or cause a third party administrator to distribute a standalone notice to California
18 customers who are members of the proposed Toney Settlement class (and then
19 implement the provisions of paragraph B based on those who respond to the standalone
20 notice).
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23 D. Within 30 days after the distribution of the restitution amounts as provided in
24 paragraph A above and distribution of the supplemental checks as provided in paragraph
25 B or C above, DEFENDANTS shall provide to Francisca B. Allen, Deputy District
26 Attorney, at the Santa Clara County District Attorney's Office, 70 West Hedding Street,
27 San Jose, California 95110, an accounting of all California consumers who received a
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1 restitution payment under paragraph A above and a letter from the independent Claims
2 Administrator confirming the number and total dollar amount of supplemental checks
3 mailed to Claimants under paragraph B or C..

4 **VI. PENALTIES AND COSTS**

5 7. Pursuant to Business and Professions Code sections 17203, 17204, 17535 and 17536
6 DEFENDANTS shall pay fees, costs, and civil penalties pursuant to the following terms:
7

8 A. Upon signing the Stipulation for Entry of Final Judgment the
9 DEFENDANTS shall pay to the Santa Clara County District Attorney's Office civil
10 penalties in the sum of Nine Hundred Eighty Thousand Dollars (\$980,000) and costs in
11 the sum of Eight Hundred Ninety Five Thousand Dollars (\$895,000) which shall be sent
12 to Francisca B. Allen, Deputy District Attorney, at the Santa Clara County District
13 Attorney's Office, 70 West Hedding Street, San Jose, California 95110.
14

15 B. DEFENDANTS shall pay to the Santa Clara County Court Clerk upon
16 signing this Stipulation for Entry of Final Judgment, as the filing fee, the sum of one
17 thousand three hundred and five dollars (\$1,305.00), by check made payable to the
18 "Clerk of the Superior Court" and delivered to Francisca B. Allen, Deputy District
19 Attorney, at the Santa Clara County District Attorney's Office, 70 West Hedding Street,
20 San Jose, California 95110.
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22 **VII. COMPLIANCE**

23 8. For the purpose of securing compliance with the terms of this Final Judgment, the
24 DEFENDANTS shall, to the extent they continue to market Membership Programs to California
25 consumers and enroll new California members, do each of the following:

26 A. Maintain and upon request produce to representatives of the Prosecuting
27 Offices representing the State of California in this action, within thirty (30) days of any
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written request, copies of any documents showing compliance with the terms of this Final Judgment.

B. Provide DEFENDANTS' present and future officers (chief and senior vice president levels) and board of directors with a copy of this Final Judgment and maintain records memorializing that such provisions of the Final Judgment have been provided to the employees of the DEFENDANTS.

VIII. JURISDICTION RETAINED

9. The Court retains jurisdiction for the purpose of enabling any party to this Final Judgment to apply to the Court at any time for such further orders and directions as may be necessary and appropriate for the construction or carrying out of this Final Judgment; for the modification or termination of any of its injunctive provisions; and for the enforcement of, compliance with, and punishment of violations of the Final Judgment. The parties waive the right to appeal this Final Judgment as to form and content.

IX. EFFECT

10. This Final Judgment shall take effect immediately upon its filing and without the filing of a Notice of Entry of Final Judgment.

11. The Clerk is directed to immediately enter this Final Judgment.

DATED: OCT 24 2014

James L. Stoelker
JUDGE OF THE SUPERIOR COURT

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

Kyla Toney, an individual, on behalf of herself
and all others similarly situated,

Plaintiffs,

v.

Just Fabulous, Inc., a Delaware corporation,

Defendants.

CASE NO.: BC 533943

Judge: John S. Wiley
Mediator: Hon. Peter D. Lichtman (Ret.)

CLASS SETTLEMENT AGREEMENT

EXHIBIT B

CLASS SETTLEMENT AGREEMENT

1 **SETTLEMENT AGREEMENT**

2 This Agreement is entered into by and between: (i) the proposed Settlement Class
3 Representative, for herself and on behalf of the Settlement Class; and (ii) Defendant. (All
4 capitalized terms used herein are as defined in Section 2.)

5 **1. RECITALS**

6 **1.1** The Settlement Class Representative believes that the Settled Claims have merit.
7 However, the Settlement Class Representative and Settlement Class Counsel recognize and
8 acknowledge the expense and length of continued proceedings necessary to prosecute the claims
9 through trial, appeals, and ancillary actions. They also have taken into account the uncertain
10 outcome and the risk of any litigation, as well as the difficulties and delays inherent in such
11 litigation. They believe that the settlement set forth in this Agreement, confers substantial benefits
12 upon the Settlement Class. Based upon their evaluation, they have determined that the settlement
13 set forth in this Agreement is in the best interest of the Settlement Class.

14 **1.2** Defendant has denied and continues to deny all liability with respect to any and all
15 of the Settled Claims or the facts alleged in support thereof and has denied and continues to deny
16 all charges of wrongdoing or liability against it arising out of or relating to any conduct, acts, or
17 omissions alleged or that could have been alleged in the Action. Defendant's willingness to
18 resolve the Settled Claims on the terms and conditions embodied in this Agreement is based on,
19 among other things: (i) the time and expense associated with litigating the Settled Claims through
20 trials and any appeals; (ii) the benefits of resolving the Settled Claims, including limiting further
21 expense, inconvenience, and distraction, disposing of burdensome litigation, and permitting
22 Defendant to conduct its business unhampered by the distractions of continued litigation; and (iii)
23 the uncertainty and risks inherent in any litigation.

24 **1.3** This Agreement is the product of arms-length settlement discussions, including
25 mediation with the Honorable Peter D. Lichtman. The Parties here had an arms'-length exchange
26 of sufficient information to permit the Settlement Class Representative and Settlement Class
27 Counsel to evaluate the claims and potential defenses and to meaningfully conduct informed
28 settlement discussions.

1 **1.4** **NOW THEREFORE**, subject to Court approval, as hereinafter provided, it is
2 hereby stipulated and agreed by the Parties that, in consideration of the promises and covenants set
3 forth in this Agreement, this Action shall be settled and compromised upon the terms and
4 conditions contained herein.

5 **2. DEFINITIONS**

6 The definitions contained herein shall apply only to this Agreement and shall not apply to
7 any other agreement, including, without limitation, any other settlement agreement, nor shall they
8 be used as evidence, except with respect to this Agreement, of the meaning of any term.
9 Furthermore, each defined term stated in a singular form shall include the plural form, and each
10 defined term stated in a plural form shall include the singular form. As used in this Agreement, in
11 addition to any definitions elsewhere in this Agreement, the following terms shall have the
12 meanings set forth below:

13 **2.1** “**Action**” means and refers to *Kyla Toney v. Just Fabulous, Inc.* pending in the Los
14 Angeles County Superior Court, Case No. BC533943.

15 **2.2** “**Agreement**” means and refers to this settlement agreement.

16 **2.3** “**Claim Form**” means and refers to a claim form approved by the Court.

17 **2.4** “**Claims Administrator(s)**” means and refers to the administrator approved by the
18 Court to implement the Notice Program and distribute the cash benefits to Settlement Class
19 members.

20 **2.5** “**Claims Period**” means and refers the 60-day time period following the
21 commencement of the Notice Program during which Settlement Class members may submit a
22 completed Claim Form.

23 **2.6** “**Class Period**” means and refers to the period up to the Court’s entry of the
24 Preliminary Approval Order.

25 **2.7** “**Court**” means and refers to the Superior Court of California, County of Los
26 Angeles.

27 **2.8** “**Defendant**” means and refers to Just Fabulous, Inc.

28 **2.9** “**Email Notice**” means and refers to the email notice approved by the Court.

1 **2.10** “**Final Approval Order**” means and refers to the Court’s judgment and order(s)
2 granting final approval of the settlement and awarding attorneys’ fees, costs, and expenses. This
3 Final Approval Order shall constitute approval pursuant to California Rules of Court 3.769(a) and
4 a judgment pursuant to California Rules of Court 3.769(h).

5 **2.11** “**Final Effective Date**” means and refers to the latest of the following: (i) the date
6 of final affirmance of the Final Approval Order following any and all appeals of such Order; (ii)
7 the date of final dismissal with prejudice of any and all appeals from the Final Approval Order;
8 and (iii) if no appeal is filed, the expiration date of the time for filing or noticing any valid appeal
9 from the Final Approval Order.

10 **2.12** “**Long Form Notice**” means and refers to the full notice approved by the Court.

11 **2.13** “**Net Amount**” means and refers to the total price paid by a Participating Claimant
12 to Defendant prior to the end of the Class Period less the total amount of any refund(s),
13 chargeback(s), and the purchase price of product(s) received (and not returned).

14 **2.14** “**Notice Program**” means and refers to the notice procedures set forth in Section
15 6.

16 **2.15** “**Opt Out Period**” means and refers to the 60-day period of time following the
17 commencement of the Notice Program during which Settlement Class members may exercise the
18 right to opt out of the Settlement Class pursuant to the provisions of Section 7.

19 **2.16** “**Participating Claimants**” means and refers to members of the Settlement Class
20 who submit timely and complete Claim Forms and are eligible for benefits under this Agreement.

21 **2.17** “**Parties**” means and refers to Defendant and the Settlement Class.

22 **2.18** “**Person**” means and refers to any individual, proprietorship, corporation,
23 partnership, association, trustee, unincorporated association, or any other type of legal entity.

24 **2.19** “**Preliminary Approval Order**” means and refers to the Court’s order granting
25 preliminary approval of this Agreement following the motion referenced in Section 5.2.

26 **2.20** “**Refund Factor**” shall be calculated as follows:

27 (a) if the number of Participating Claimants does not exceed 1,000, the Refund
28 Factor shall be 50%.

1 (b) if the number of Participating Claimants exceeds 1,000, but does not exceed
2 2,000, the Refund Factor shall be 40%.

3 (c) if the number of Participating Claimants exceeds 2,000, but does not exceed
4 5,000, the Refund Factor shall be 30%.

5 (d) if the number of Participating Claimants exceeds 5,000, the Refund Factor shall
6 be 20%.

7 (e) if the total payments under this Agreement would exceed \$950,000, the Refund
8 Factor shall be reduced to ensure that the total payments to Participating Claimants does not
9 exceed \$950,000.

10 (f) each Participating Claimant who previously received a partial refund shall have
11 a Refund Factor that is 50% of the amount determined by (a) through (d).

12 **2.21 "Releasing Parties"** means and refers to the Settlement Class and its members,
13 agents, attorneys, partners, joint venturers, affiliates, predecessors, successors, spouses, heirs,
14 assigns, insurers, and any other Persons or entities claiming by or through the Settlement Class, in
15 their capacities as such.

16 **2.22 "Released Parties"** means and refers to Defendant and all other Persons.

17 **2.23 "Settled Claims"** means and refers to any claim, liability, right, demand, suit,
18 matter, obligation, lien, damage, punitive damage, exemplary damage, penalty, loss, cost, expense,
19 debt, action, or cause of action, of every kind and/or nature whatsoever whether now known or
20 unknown, suspected or unsuspected, asserted or unasserted, latent or patent, which any Releasing
21 Party now has, or at any time ever had, regardless of legal theory or type or amount of relief or
22 damages claimed, which: (i) in any way arises out of, is based on, or relates in any way to
23 Defendant's restocking fees, return and exchange policies, billing practices, and disclosure of
24 terms and conditions and/or (ii) is asserted in the Conditional First Amended Complaint filed in
25 this Action.

26 **2.24 "Settlement Class"** means and refers to all Persons who are: (i) former JustFab
27 and/or ShoeDazzle VIP members as of the Court's entry of the Preliminary Approval Order; or (ii)
28 current JustFab and Shoedazzle VIP members who joined on or before December 31, 2013 and

1 who, as of the Court's entry of the Preliminary Approval order, did not subsequently purchase any
2 particular products under the VIP program or ever choose the Skip A Month option. Excluded
3 from the Settlement Class are all Persons who properly and timely opt out pursuant to this
4 Agreement.

5 **2.25** "Settlement Class Counsel" means and refers to Milstein Adelman, LLP.

6 **2.26** "Settlement Class Representative" means and refers to Kyla Toney.

7 **2.27** "Settlement Orders" means and refers to the orders entered to implement the
8 terms of this Agreement, including, but not limited to, the Preliminary Approval Order and the
9 Final Approval Order.

10 **3. SETTLEMENT PURPOSES ONLY**

11 **3.1 General.** This Agreement is for settlement purposes only.

12 **3.2 No Admissions.** This Agreement, any negotiations, proceedings, documents or
13 anything else related to this Agreement, its implementation, or its judicial approval (as well as the
14 fact of this settlement and any acts or documents related to the settlement or its implementation)
15 shall not be construed as, or deemed to be evidence of, any admission or concession by any of the
16 parties regarding the claims in dispute. By entering into this Agreement, it is understood that the
17 Released Persons do not admit and expressly deny that they have breached any duty, obligation, or
18 agreement; deny that they have engaged in any illegal, tortious, or wrongful activity; deny that
19 they are liable to any member of the Settlement Class or any other Person; and/or deny that any
20 damages have been sustained by any member of the Settlement Class or by any other Person in
21 any way arising out of or relating to Defendant's conduct. This Agreement, any negotiations,
22 proceedings, documents or anything else related to this Agreement, its implementation, or its
23 judicial approval (as well as the fact of this settlement and any acts or documents related to the
24 settlement or its implementation) shall not be construed as, or deemed to be evidence of, any
25 admission or concession by any of the parties or any other Person regarding any matter, including,
26 without limitation, the absence or presence of liability, the absence or presence of damage, or the
27 propriety or impropriety of class treatment.

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1 **3.3 Conditional Amended Complaint.** Settlement Class Counsel shall file and serve
2 the "Stipulation and [Proposed] Order Re Conditional Filing of Amended Complaint" with the
3 Court, substantially in the form attached hereto as Exhibit 1 concurrently with the lodging of a
4 fully-executed copy of this Agreement with the Court. The filing of the amended complaint is
5 subject to automatic revocation at any time in the event that: (i) the Court does not enter the Final
6 Approval Order; or (ii) any such Final Approval Order does not become final for any reason.
7 Upon such revocation, the prior version of the complaint shall again become the operative
8 complaint for all purposes as if the proposed amended complaint had never been filed. The Parties
9 agree that Defendant's time to respond to the amended complaint shall be stayed pending the
10 settlement approval process.

11 **3.4 Permissible Uses Of Settlement Agreement/Fact Of Settlement.** This
12 Agreement, any negotiations, proceedings, or documents related to the Agreement, its
13 implementation, or its judicial approval (as well as the fact of this Agreement and any acts or
14 documents related to the Agreement or its implementation) cannot be asserted or used by any
15 Person to support a contention that class certification is proper or improper or that liability does or
16 does not exist, or for any other reason, in the above-captioned action or in any other proceedings;
17 provided, however, that (a) Settlement Class members, Settlement Class Counsel, Defendant,
18 other released Persons, and any Person who is the beneficiary of a release set forth herein, may
19 reference and file this Agreement, and any resulting Order or Judgment, with the Court, or any
20 other tribunal or proceeding, in connection with the implementation or enforcement of its terms
21 (including but not limited to the releases granted therein, or any dispute related thereto).

22 **4. JURISDICTION**

23 **4.1 Continuing Jurisdiction.** To the full extent under California law, the Court has,
24 and shall continue to have, jurisdiction to make any orders as may be appropriate to effectuate,
25 consummate, and enforce the terms of this Agreement, to approve awards of attorneys' fees and
26 costs pursuant hereto, and to supervise the administration of this Agreement. Except for those
27 matters specifically identified in this Agreement as being subjects for decision by the Claims
28 Administrator, and any other claims-related matters which Settlement Class Counsel and

1 Defendant later agree in writing to refer to the Claims Administrator, any dispute or question
2 relating to or concerning the interpretation, enforcement, or application of this Agreement shall be
3 presented to the Court for resolution.

4 **5. COURT APPROVAL OF THE SETTLEMENT**

5 **5.1 Preliminary Approval.** Settlement Class Counsel shall move the Court for an
6 order granting preliminary approval of this Agreement and approval of the Notice Program. In
7 connection therewith, Settlement Class Counsel shall submit to the Court a mutually-acceptable
8 proposed Preliminary Approval Order.

9 **5.2 Class Notice Period.** Subject to Court approval, Settlement Class members shall
10 have 60 days following the commencement of the Notice Program to file and serve objections to
11 this Agreement.

12 **5.3 Opt Out Period.** Subject to Court approval, Settlement Class members shall have
13 60 days following the commencement of the Notice Program to opt out of the Settlement Class
14 and this Agreement.

15 **5.4 Final Approval.** After the expiration of the Opt Out Period, if the Agreement has
16 not been terminated in accordance with Section 8, Settlement Class Counsel shall move the Court
17 for final approval of this Agreement. In connection therewith, Settlement Class Counsel shall
18 submit to the Court a mutually-acceptable proposed Final Approval Order.

19 **6. CLASS NOTICE PROCEDURES**

20 **6.1 Email and Mail Notice.** Within 20 days after the entry of the Preliminary
21 Approval Order, Defendant shall submit to the Claims Administrator or their designated agent, the
22 Name, email address, and mailing address of each known Settlement Class member. Within 7 days
23 after receipt of this information, the Claims Administrator and/or its designee shall run a national
24 change of address update on each mailing address. The Claims Administrator shall then send the
25 Email Notice (or, where no email address is available, the Mail Notice) to each known Settlement
26 Class Member. The Claims Administrator shall notify Settlement Class Counsel and Defendant as
27 to the number of emails that are undeliverable. The Claims Administrator shall send the Mail
28 Notice to Settlement Class members whose Email Notice "bounces back" as undeliverable.

1 **7. RIGHT OF EXCLUSION**

2 **7.1 Procedure.** Settlement Class members may opt out of the Settlement Class at any
3 time during the Opt Out Period. To exercise the opt out right set forth in this Section, a Settlement
4 Class member must send to the Claims Administrator a written request to exclude himself or
5 herself from this Agreement, which request should contain the Settlement Class member's name,
6 address, and telephone number. Such request for exclusion must be postmarked or received by the
7 Claims Administrator before the end of the Opt Out Period. All Settlement Class members who
8 do not opt out in accordance with this Agreement during the Opt Out Period will be deemed
9 Settlement Class members for all purposes under this Agreement. Any Person who timely opts
10 out shall no longer be a Settlement Class member, is not entitled to object to the approval of this
11 Agreement, and is not entitled to any relief under and is not affected by this Agreement.

12 **7.2 Withdrawal Of Election To Opt Out.** Prior to the entry of the Final Approval
13 Order, any Person who has elected to opt out may withdraw that election by notifying the Claims
14 Administrator in writing that he or she wishes to be a member of the Settlement Class. The
15 Claims Administrator shall maintain records of all withdrawn opt outs, and shall provide such
16 information to the Parties and to the Court. At any time after the entry of the Final Approval
17 Order, any Person who has elected to opt out of this Agreement may withdraw that election only
18 upon receiving the written consent of Defendant and Court approval.

19 **8. SETTLEMENT TERMINATION**

20 **8.1 Termination Prior To The Final Effective Date.** If any court does not approve
21 and/or does not honor this Agreement and/or denies the parties' motion to enter any or all of the
22 Settlement Orders in a form agreeable to the Parties, Settlement Class Counsel and/or Defendant
23 shall have the right to terminate this Agreement as set forth in Section 8.4.

24 **8.2 Termination After Opt Out Period.** If more than 500 Persons opt out of this
25 Agreement, Defendant shall have the right to terminate this Agreement as set forth in Section 8.4.

26 **8.3 Termination After Appeal.** If a court declares unenforceable, reverses, vacates,
27 or modifies on appeal in what Settlement Class Counsel and/or Defendant determines to be a
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1 material way any aspect of this Agreement, Settlement Class Counsel and/or Defendant may
2 terminate this Agreement as set forth in Section 8.4.

3 **8.4 Termination Procedure And Effect.** Any Party who elects to terminate this
4 Agreement may do so by giving written notice to the other Party's counsel and to the Settlement
5 Administrator. Notice of termination pursuant to Sections 8.1 or 8.3 must be given prior to the
6 Final Effective Date. Notice of termination pursuant to Section 8.2 must be given within 60 days
7 after the expiration of the Opt Out Period, or prior to the Final Approval hearing, whichever is
8 earlier. However, Settlement Class Counsel and Defendant may agree in writing to extend these
9 deadlines. The termination of this Agreement for any of the foregoing reasons or for any other
10 reason shall void all of the rights, obligations, and releases under this Agreement, except for
11 Sections 3.1, 3.2, 3.3 and those provisions of this Agreement that are necessary to effectuate the
12 termination. Within 30 days after termination, the Claims Administrator shall return any and all
13 settlement payments made pursuant to Sections 9.2 and 9.3. If this Agreement is terminated after
14 the Claims Administrator has paid any or all of the award(s) for Settlement Class Counsel Fees,
15 Settlement Class Counsel Costs, and/or the incentive payment for the Settlement Class
16 Representative, the recipients of those payments shall return the full amount of such payments to
17 the Claims Administrator within 10 calendar days after notice of termination, and the Claims
18 Administrator shall then promptly return such funds to Defendant.

19 **9. SETTLEMENT FUNDING AND DISTRIBUTION**

20 **9.1 Funding For Initial Costs Of Notice And Administration Upon Preliminary**
21 **Approval.** Within 15 calendar days after the entry of the Preliminary Approval Order, Defendant
22 shall wire to the Claims Administrator the sum of \$50,000 for the initial notice and administration
23 expenses that are likely to be incurred. This deadline may be extended by mutual consent of the
24 Parties.

25 **9.2 Funding For Payment Of Attorneys' Fees, Costs, and Expenses and For**
26 **Incentive Awards.** Funding for the payment of attorneys' fees, costs, and expenses, and for
27 payment of the Class Representative incentive awards shall be made by Defendant in accordance
28 with Section 11. This deadline may be extended by mutual consent of the Parties.

1 **9.3 Funding For Distribution Of Class Benefits and Remaining Administration**

2 **Costs.** Within 30 days after the resolution of any objections pursuant to Section 10.10, Defendant
3 shall wire to the Claims Administrator the sum necessary to pay the class benefits to Participating
4 Claimants and the remaining administration costs.

5 **9.4 Interest On The Settlement Fund.** All interest generated by the monies in the

6 Settlement Fund shall be deemed and credited as a payment by Defendant.

7 **9.5 Maximum Funding.** The maximum funding obligation under this Agreement is

8 \$950,000, and all payments made pursuant to the provisions of Sections 6 and 9 shall be deemed
9 and credited as a payment by Defendant toward this maximum amount.

10 **10. CONDUCT CHANGES**

11 **10.1 Claims Administrator.** The Claims Administrator shall have the sole authority to

12 administer the settlement. The Claims Administrator shall carry out its duties in strict accordance
13 with the procedures set forth in this Agreement, and any Party may move the Court to compel
14 such compliance.

15 **10.2 Maintenance Of Records.** The Settlement Administrator shall maintain complete,

16 accurate, and detailed records regarding the administration of the Settlement Fund.

17 **10.3 Settlement Fund Costs.** All reasonable and necessary costs of administering the

18 settlement shall be paid out of the Settlement Fund.

19 **10.4 Submission Of Claims.** At any time prior to the expiration of the Claims Period,

20 members of the Settlement Class may submit a Claim Form to the Claims Administrator by mail
21 or online pursuant to the directions on the Claim Form.

22 **10.5 Collection Of Claims.** The Claims Administrator shall collect and log the Claim

23 Forms postmarked and/or received on or before expiration of the Claims Period.

24 **10.6 Evaluation Of Claims.** Within 20 days after the Final Effective Date, the Claims

25 Administrator shall determine whether each collected Claim Form is properly completed. If a
26 Claim Form is not complete, the Claims Administrator shall provide a written notice to the
27 claimant, in a form agreeable to the Parties. Any submission to cure any deficiency shall be
28 submitted within 30 calendar days of the date of the notice from the Claims Administrator. To

1 avoid unreasonable delays for those who submit fully completed Claim Forms, the Claims
2 Administrator shall deny any incomplete claims that are not fully cured during this 30-day period.

3 **10.7 Determination Of Benefits.** Within 20 days after the completion of the evaluation
4 described in Section 10.6 (including evaluation of attempts to cure deficiencies), the Claims
5 Administrator shall send a list of Participating Claimants to Defendant. Within 20 days after
6 receipt of this list, Defendant shall submit to the Claims Administrator a spreadsheet that shows,
7 for each Participating Claimant, the following information: (i) the total amount of any restocking
8 fees paid and not refunded; (ii) the Net Amount (as defined in Section 2.13); and (iii) whether he
9 or she has previously received a partial refund. Within 20 days after receipt of this spreadsheet,
10 the Claims Administrator shall determine each Participating Claimant's proposed cash benefit as
11 follows:

12 **10.7.1** Each Participating Claimant who paid one or more restocking fees is
13 entitled to receive a full refund of all such fees paid during the Class Period.

14 **10.7.2** Each Participating Claimant who reports on his or her Claim Form that he
15 or she is dissatisfied with the terms of the VIP membership is entitled to
16 receive the sum equal to his or her Refund Factor multiplied by his or her
17 Net Amount. For illustration purposes, if a Participating Claimant's Refund
18 Factor is 50% and her Net Amount is \$100, she is entitled to receive \$50.

19 **10.7.3** Each Participating Claimant who does not satisfy the criteria under Section
20 10.7.1 or 10.7.2 is entitled to receive \$5.00.

21 **10.8 Notification Of Proposed Benefits.** The Claims Administrator shall promptly
22 report its determination of the number of Participating Claimants and the calculation of the
23 proposed cash benefits pursuant to Section 10.7, to Settlement Class Counsel and to Defendant.

24 **10.9 Objections To The Proposed Benefits.** Settlement Class Counsel and Defendant
25 shall have 20 calendar days from receipt of the report referenced in Section 10.8 to notify the
26 Claims Administrator in writing of any errors in the calculation of the proposed benefits.

27
28

1 **10.10 Resolutions Of Objections.** If the Settlement Administrator receives timely
2 objections to any proposed benefit, the Settlement Administrator shall consider the objections and
3 attempt to resolve the objections between the Parties.

4 **10.11 Distribution Of Individual Benefits To Participating Claimants.** If no
5 objections are timely made, or when such objections are resolved, the Claims Administrator shall
6 promptly distribute, by check, the Claim Amount for each Participating Claimant.

7 **10.12 Uncashed Checks.** If any of the checks to Participating Claimants remain
8 uncashed as of a 180-day stale date, the Claims Administrator shall stop payment on such checks,
9 deduct any unpaid notice and administration costs, and distribute the remainder to Defendant.

10 **10.13 Maintenance Of Records.** The Claims Administrator shall maintain complete,
11 accurate, and detailed records regarding the administration of the Settlement Fund, including but
12 not limited to: all Claim Forms submitted; any objection to proposed benefits and the resolution
13 thereof; and any and all receipts by and disbursements from the Settlement Fund. The Claims
14 Administrator shall make such records available to counsel for the Parties or to their designee
15 upon reasonable request and at reasonable times. Upon request, the Claims Administrator shall
16 provide such records to Defendant in an electronic format designated by Defendant. The Claims
17 Administrator shall maintain all records for a period of not less than one year following the Final
18 Effective Date.

19 **11. ATTORNEYS' FEES AND INCENTIVE PAYMENTS**

20 **11.1 Attorneys' Fees, Costs, and Expenses.** In connection with the motion for final
21 approval, and at least two weeks prior to the end of the Opt Out Period, Settlement Class Counsel
22 shall submit a request for approval of an award of attorneys' fees of up to \$195,000 and an award
23 of fees and costs of up to \$10,000 in connection with their work on behalf of the Settlement Class.
24 Settlement Class Counsel agree they will not seek attorneys' fees, costs, and expenses in excess of
25 this sum. Within 15 days after the Final Effective Date, the Claims Administrator shall wire to
26 Settlement Class Counsel the amount awarded for fees, costs, and expenses (up the aggregate
27 amount set forth in this Section) using the wire instructions provided by Settlement Class Counsel.
28

1 **11.2 Incentive Payment To Settlement Class Representative.** In connection with the
2 motion for final approval, Settlement Class Counsel shall submit a request to the Court seeking
3 approval for an award of an incentive payment to the Settlement Class Representative of up to
4 \$2,500. Within 15 days after the Final Effective Date, the Claims Administrator shall wire the
5 incentive payment in the amount approved by the Court (up to the maximum amount set forth in
6 this Section) to Settlement Class Counsel (using the instructions provided), and Settlement Class
7 Counsel shall distribute such payment to the Settlement Class Representative within 10 days of
8 receipt.

9 **11.3 Miscellaneous.** Except as provided herein, each Settlement Class member shall
10 bear his/her/its own attorneys' fees, costs, and expenses incurred in connection with any claim
11 against Defendant.

12 **12. FINAL ACCOUNTING**

13 **12.1 Final Accounting.** By no later than 60 days after the distribution of all class
14 benefits pursuant to this Agreement or 60 days after the Settlement Termination Date, whichever
15 occurs first, the Parties shall file with the Court a summary report regarding the administration of
16 the settlement.

17 **13. RELEASE**

18 **13.1 Class Release.** Except for the obligations and rights created by this Agreement,
19 the Releasing Parties hereby release and absolutely and forever discharge Defendant and all
20 Released Parties from any and all Settled Claims. The Final Approval Order shall include this
21 release.

22 **13.2 Release Of The Settlement Class And Settlement Class Counsel.** Except for the
23 obligations and rights created by this Agreement, Defendant hereby releases and absolutely and
24 forever discharges the members of the Settlement Class and Settlement Class Counsel of and from
25 any and all claims relating to the commencement or prosecution of this Action.

26 **14. NOTICES**

27 **14.1 Designated Recipients.** Unless otherwise specified in this Agreement or agreed to
28 in writing by the party receiving such communication, all notices, requests, or other required

1 communications hereunder shall be in writing and shall be sent by one of the following methods:
2 (i) by registered or certified, first class mail, postage prepaid; or (ii) by personal delivery
3 (including by Federal Express or other courier service). All such communications shall be sent to
4 the undersigned persons at their respective addresses as set forth herein.

5 Settlement Class Counsel:
6 Gillian L. Wade
7 Milstein Adelman
8 2800 Donald Douglas Loop N
9 Santa Monica, California 90405

10 Defendant:
11 Jeffrey L. Richardson
12 Mitchell Silberberg & Knupp LLP
13 11377 West Olympic Boulevard
14 Los Angeles, California 90064

15 Notice shall be deemed effective when signed for or when delivery is refused.

16 **14.2 Changes In Designated Recipients.** Any Party may re-designate the Person to
17 receive notices, requests, demands, or other communications required or permitted by this
18 Agreement by providing written notice to the other Party, the Claims Administrator, and the
19 Court.

20 **15. MISCELLANEOUS**

21 **15.1 Entire Agreement.** This Agreement supersedes and replaces any and all other
22 prior agreements and all negotiations leading up to the execution of this Agreement, whether oral
23 or in writing, between the Parties with respect to the subject matter hereof. The Parties
24 acknowledge that no representations, inducements, promises, or statements, oral or otherwise,
25 have been made or relied upon by any of the Parties or by anyone acting on behalf of the Parties
26 which are not embodied or incorporated by reference herein, and further agree that no other
27 covenant, representation, inducement, promise, or statement not set forth in writing in this
28 Agreement shall be valid or binding.

15.2 Modification Or Amendment. This Agreement may not be modified or amended
except in a writing signed by the Settlement Class Representative and Defendant, and, if after the

1 entry of the Preliminary Approval Order, the written modification must also be approved by the
2 Court.

3 **15.3 Execution In Counterparts.** This Agreement may be executed in one or more
4 counterparts, each of which shall be deemed an original.

5 **15.4 Authority Of Counsel.** Settlement Class Counsel is authorized by the members of
6 the Settlement Class, and by the Court, to take all appropriate action required and permitted to be
7 taken by the Settlement Class pursuant to this Agreement to effectuate its terms.

8 **15.5 Headings.** The headings of the sections, paragraphs, and subparagraphs of this
9 Agreement are included for convenience only and shall not be deemed to constitute part of this
10 Agreement or to affect its construction.

11 **15.6 Liens.** The Released Parties shall have no obligation to pay or otherwise resolve
12 any liens that are or may be asserted against settlement payments to Settlement Class members
13 pursuant to the terms of this Agreement. In the event any such lien is asserted, it is the
14 responsibility of the Settlement Class member to pay, compromise, or otherwise resolve the lien at
15 no cost to Defendant or the Settlement Fund.

16 **15.7 Further Acts.** The Parties shall perform such further acts and execute such further
17 documents as may be reasonably necessary or appropriate to effectuate the terms and purposes of
18 this Agreement.

19 **15.8 Heirs, Successors, And Assignees.** This Agreement shall be binding upon and
20 shall inure to the benefit of the Parties' heirs, successors, and assignees.


21 **15.9 Choice Of Law.** This Agreement in all respects shall be interpreted, enforced, and
22 governed by and under the laws of the State of California applicable to instruments, persons, and
23 transactions which have legal contacts and relationships solely within the State of California. Any
24 action pertaining to the terms of this Agreement shall be filed in the Superior Court for the County
25 of San Diego.

26 **15.10 Warranty Re Advice.** Settlement Class Counsel warrants that the Settlement
27 Class Representatives have been fully advised of and agree to the terms of this Agreement. The
28 Parties hereby acknowledge that they have been represented by independent legal counsel

1 throughout all negotiations which preceded the execution of this Agreement, and that this
2 Agreement has been executed with the consent and on the advice of said counsel.

3
4 **AGREED TO AND ACCEPTED.**


5 Dated: 7/9

6 By: 
Kyla Toney
Settlement Class Representative

7
8
9 Dated: _____

JUST FABULOUS, Inc.
By: _____
Name: _____
Title: _____

10
11
12 **APPROVED AS TO FORM**
13 Dated: 7/10/2014

MILSTEIN ADELMAN LLP
By: 
Gillian L. Wade
Attorneys For Settlement Class

14
15
16
17 Dated: _____

MITCHELL SILBERBERG & KNUPP LLP
By: _____
Jeffrey L. Richardson
Attorneys for Defendant Just Fabulous, Inc.

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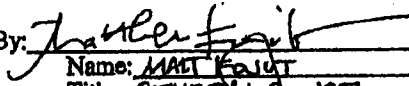
1 throughout all negotiations which preceded the execution of this Agreement, and that this
2 Agreement has been executed with the consent and on the advice of said counsel.

3
4 **AGREED TO AND ACCEPTED.**

5 Dated: _____

6 By: _____
7 Kyla Toney
8 Settlement Class Representative

9 Dated: _____


10 JUST FABULOUS, Inc.
11 By: 
12 Name: MATT FAJUT
13 Title: GENERAL COUNSEL

14 **APPROVED AS TO FORM**

15 Dated: _____

16 MILSTEIN ADELMAN LLP
17 By: _____
18 Gillian L. Wade
19 Attorneys For Settlement Class

20 Dated: 7/10/2014

21 MITCHELL SILBERBERG & KNUPP LLP
22 By: 
23 Jeffrey L. Richardson
24 Attorneys for Defendant Just Fabulous, Inc.