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9

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 ANDREA GOLLOHER, MARISA FREEMAN,  
14 ROBERTA CHASE, JAMES HANKS,  
MICHAEL SHAPIRO, BRENDA BROWN,  
15 GRETCHEN SWENSON, CRYSTAL KENNY,  
KELLY BOTTARI, RENEE CONOVER, and  
16 SHANISHA SANDERS, on behalf of themselves  
and all others similarly situated,

17 Plaintiffs,

18 vs.  
19

20 TODD CHRISTOPHER INTERNATIONAL,  
INC. DBA VOGUE INTERNATIONAL, a  
21 Florida Corporation, and DOES 1-100,

22 Defendants.  
23  
24  
25  
26  
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Case No. C 12-06002 RS

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT AGREEMENT**

Date: September 26, 2013  
Time: 1:30 p.m.  
Location: Courtroom 3, 17th Floor  
Judge: Hon. Richard Seeborg

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**NOTICE OF MOTION AND MOTION****TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE THAT** on September 26, 2013 at 1:30 p.m., or as soon thereafter as this matter may be heard in the Courtroom of the Hon. Richard Seeborg, located at the United States District Court for the Northern District of California, San Francisco Courthouse, Courtroom 3, 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiffs Andrea Golloher, Marisa Freeman, Roberta Chase, James Hanks, Michael Shapiro, Brenda Brown, Gretchen Swenson, Crystal Kenny, Kelly Bottari, Renee Conover and Shanisha Sanders ("Plaintiffs"), on behalf of the proposed Class (defined herein), will respectfully apply to this Court for entry of an order: (i) granting preliminary approval of the proposed settlement set forth in the class action Stipulation of Settlement (attached as Exhibit 1 to the accompanying Declaration of Mark N. Todzo ("Todzo Decl.")); (ii) conditionally certifying the Class for purposes of such settlement by way of a [Proposed] Order Granting Preliminary Approval (submitted herewith); (iii) approving Plaintiffs' selection of Class Counsel; (iv) approving the proposed notice plan; and (v) setting a hearing date for final approval of the Settlement.

This motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declaration of Mark N. Todzo and accompanying exhibits, the other papers on file in this action, and such other submissions or arguments that may be presented before or at the hearing on this motion.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**INTRODUCTION**

Plaintiffs Andrea Golloher, Marisa Freeman, Roberta Chase, James Hanks, Michael Shapiro, Brenda Brown, Gretchen Swenson, Crystal Kenny, Kelly Bottari, Renee Conover and Shanisha Sanders (“Plaintiffs”) on behalf of the proposed Class (defined herein), respectfully apply to this Court for entry of an order (i) granting preliminary approval of the proposed settlement set forth in the class action Stipulation of Settlement (the “Settlement”) (Todzo Decl. Exh. 1); (ii) conditionally certifying the Class for purposes of such settlement by way of a [Proposed] Order Granting Preliminary Approval (the “Preliminary Approval Order”) (submitted herewith); (iii) approving Plaintiffs’ selection of Class Counsel; (iv) approving the proposed notice plan; and (v) setting a hearing date for final approval thereof (the “Final Approval Hearing”).

The Settlement resolves the claims in the First Amended Complaint in the above-captioned case, which concerns Todd Christopher International, Inc. d/b/a Vogue International’s (“Vogue”) allegedly false and misleading marketing, advertising and labeling of its Organix brand hair care and skin care products as organic. Specifically, Plaintiffs allege that Vogue misleadingly used the name “Organix” and the word “organic” on the labeling and advertising of the Organix products. Plaintiffs allege that all of the Organix products are, in fact, composed almost entirely of ingredients that are not organic. The Settlement remedies Plaintiffs’ concerns on behalf of purchasers of Organix products nationwide, who allegedly paid a premium for these products over comparable products that did not purport to be organic.

The Settlement is fair, reasonable and adequate, falling well within the range of class action settlements that merit preliminary approval. First, the Settlement will prevent future alleged violations of state consumer protection and false advertising laws by prohibiting Vogue from manufacturing any hair care and skin care products under the Organix brand name and from using the word “organic” to promote the sale of any hair care and skin care product unless such products contain at least 70% organically produced ingredients. Second, the Settlement will



1 compensate Class members who purchased Organix hair care and skin care products under the  
 2 belief that the products are organic by requiring Vogue to pay a total of \$6,500,000 million into a  
 3 claim fund (“Claim Fund”) for the benefit of Class members. The Claim Fund will primarily be  
 4 used to compensate Class Members who submit valid claims. In addition, Vogue will also not  
 5 oppose an application by Plaintiffs to this Court for a partial reimbursement of Plaintiffs’  
 6 attorneys’ fees and costs, not to exceed a total of 25% of the Claim Fund or \$1,625,000. In turn,  
 7 Vogue will receive a release of all claims relating to the challenged marketing and advertising  
 8 practices. These settlement stipulations were reached after substantial discovery and rigorous,  
 9 informed negotiations between the Parties and their experienced class action counsel, in a process  
 10 that was overseen by a seasoned, neutral mediator. Because the Settlement is fair to all Parties and  
 11 because it adequately addresses the grievances of Plaintiffs and the Class, it should be  
 12 preliminarily approved.

### 13 **STATEMENT OF FACTS**

#### 14 **I. PROCEDURAL AND FACTUAL BACKGROUND**

15 Defendant Vogue is a manufacturer, seller and distributor of the Organix line of hair care  
 16 and skin care products (the “Products”), which are sold through third party retailers to thousands  
 17 of consumers in all 50 states and the District of Columbia. Plaintiffs allege that they were induced  
 18 to purchase the Products by Vogue’s representations and claims that the Products are organic; in  
 19 fact, Plaintiffs allege, the Products contain only *de minimis* amounts of organic ingredients.  
 20 Indeed, none of the Products contain more than 10% organic ingredients. Plaintiffs further allege  
 21 that Vogue’s marketing materials for the Products include representations that the Products are  
 22 organic, and the front and back labels of some of the Products state that the Products contain  
 23 organic ingredients.

24 Plaintiffs seek to represent a class of persons throughout the United States who, like  
 25 themselves, purchased the Products under the erroneous belief that the Products are organic based  
 26 on Vogue’s representations. The primary goals of Plaintiffs’ case are to require Vogue to: (i) halt  
 27 its allegedly deceptive marketing and advertising of the Products as organic (thereby protecting  
 28

1 consumers in the future); and (2) disgorge any premiums Vogue obtained as a result of its alleged  
 2 misrepresentations (thereby compensating consumers for past wrongdoings). The Settlement  
 3 accomplishes both of these objectives.

4 Before commencing this action, Class Counsel conducted an examination and evaluation  
 5 of the relevant law and facts to assess the merits of the claims and to determine how to best serve  
 6 the interests of the members of the Class. On October 25, 2012, Plaintiffs Andrea Golloher,  
 7 Marisa Freeman, Roberta Chase, Michael Shapiro and Brenda Brown, on behalf of themselves and  
 8 all other similarly situated persons, filed their initial complaint in the Superior Court of California,  
 9 Alameda County, *Gollogher v. Todd Christopher International, Inc.*, Alameda County Superior  
 10 Court Case No. RG 12-653621. On November 28, 2012, Defendant filed the Notice of Removal  
 11 to Federal Court, based on this Court's subject matter jurisdiction pursuant to 28 U.S.C. § 1332, as  
 12 amended by the Class Action Fairness Act of 2005. Plaintiffs' original complaint sought relief on  
 13 behalf of a proposed Class of purchasers of the Products in California, New York, Hawaii and  
 14 Washington pursuant to the consumer protection and false advertising laws of those states. *See*  
 15 Cal. Bus. & Prof. Code § 17200, *et seq.*; Cal. Civil Code § 1750, *et seq.*; N.Y. Gen. Bus. Law §  
 16 349; Haw. Rev. Stat. §§ 480-2, 480-13(b) and (c); and Revised Washington Code §§ 19.86.020,  
 17 19.86.023 and 19.86.090. Plaintiffs also sought relief on behalf of a proposed Class of purchasers  
 18 of the Products in California, New York, Florida, New Jersey, Ohio, Washington, Texas and  
 19 Hawaii pursuant to the express warranty laws of those states. Plaintiffs' claims under California  
 20 law included a claim that Defendant violated the unlawful prong of California's Unfair  
 21 Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by allegedly violating the  
 22 California Organic Products Act's ("COPA's") restrictions on selling, labeling, or representing  
 23 cosmetic products "as organic or made with organic ingredients" unless the products contain a  
 24 minimum of 70% organically produced ingredients, Cal. Health & Safety Code §§ 110838 *et seq.*<sup>1</sup>

25 On December 12, 2012, Vogue filed a motion in the instant action to transfer venue  
 26 \_\_\_\_\_

27 <sup>1</sup> California is the only state that regulates organic labeling of cosmetic products.  
 28

1 pursuant to 28 U.S.C. § 1404(a) to the Middle District of Florida. ECF No. 9. On February 8,  
2 2013, the Court denied Vogue's motion. ECF No. 27.

3 On March 1, 2013, Vogue filed motions in the instant action to: (1) dismiss Plaintiffs'  
4 claims for breach of express warranty under the laws of the four states in which the named  
5 Plaintiffs neither lived nor purchased Vogue's products; (2) dismiss the Plaintiffs' claims for  
6 injunctive relief in California under the doctrine of res judicata in light of a Consent Judgment in a  
7 prior action;<sup>2</sup> and (3) stay the case under the doctrine of primary jurisdiction pending federal  
8 regulatory action for organic cosmetics. ECF No. 33. These motions were still under submission  
9 at the time the Parties reached an agreement in principle as to the terms of the Settlement.

10 On July 22, 2013, Plaintiffs Kelly Bottari, Renee Conover, James Hanks, Crystal Kenny,  
11 Shanisha Sanders and Gretchen Swenson sent a letter notifying Vogue of their intent to pursue  
12 consumer protection and express warranty claims on behalf of themselves and a nationwide class  
13 of purchasers of the Organix products throughout the United States based on Plaintiffs' allegations  
14 that Vogue misrepresented the organic composition of the products. On August 9, 2013, upon  
15 stipulation of the Parties wherein Vogue reserved all rights and objections, Plaintiffs filed a First  
16 Amended Complaint adding Kelly Bottari, Renee Conover, James Hanks, Crystal Kenny,  
17 Shanisha Sanders and Gretchen Swenson as class representatives, and alleging claims on behalf of  
18 a nationwide class under the consumer protection, express warranty and unjust enrichment laws of  
19 all 50 states and the District of Columbia. ECF Nos. 54 & 55.

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21  
22 <sup>2</sup> Before Plaintiffs filed the instant action, on June 16, 2011, Vogue was named in an action  
23 brought by the Center for Environmental Health ("CEH") entitled *Center for Environmental*  
24 *Health v. Advantage Research Laboratories, Inc.*, Case No. RG 11-580876, Superior Court of the  
25 State of California, County of Alameda. That action was filed by CEH pursuant to COPA's  
26 private attorney general provision, Cal. Health & Safety Code §§ 111910(a), which authorizes any  
27 person to sue to enjoin alleged violations of COPA. On September 13, 2012, the Hon. Steven A.  
28 Brick approved a Consent Judgment between CEH and Vogue resolving the action. The Consent  
Judgment includes injunctive relief placing restrictions on Vogue's use of the Organix brand name  
and the word "organic" on the Products' labeling, advertising and marketing materials in  
California.

1 The Parties have engaged in lengthy and comprehensive settlement discussions,  
 2 culminating in an all-day in person mediation before mediator Randall W. Wulff in Oakland,  
 3 California on July 30, 2013. Through these discussions and substantial written discovery and  
 4 documentary production, Vogue has provided Plaintiffs with extensive information about the facts  
 5 at issue. Based upon Plaintiffs' investigation and evaluation of the facts and law relating to the  
 6 matters alleged in the pleadings, Plaintiffs and Class Counsel agreed to settle this action pursuant  
 7 to the provisions of the Settlement after considering, among other things: (1) the substantial  
 8 benefits available to the Class under the terms of the Settlement; (2) the attendant risks and  
 9 uncertainty of litigation, especially in complex actions such as this, as well as the difficulties and  
 10 delays inherent in such litigation; and (3) the desirability of consummating the Settlement  
 11 promptly to provide effective relief to Plaintiffs and the Class.

12 Vogue has denied and continues to deny each and all of the claims and contentions  
 13 alleged by Plaintiffs in the Complaints and otherwise. Vogue contends that its advertising and  
 14 marketing of the Products was not false or misleading, and that Class members did not suffer any  
 15 damages as a result of the conduct at issue.

## 16 II. THE PROPOSED SETTLEMENT

17 The Settlement remedies Vogue's alleged misconduct and compensates the Class for a  
 18 significant portion of their alleged damages. In exchange for a release of Plaintiffs' and the  
 19 Class's claims, Vogue has agreed to undertake several important remedial measures. First, to  
 20 remedy the alleged misrepresentations on the Product labels, Vogue has agreed to cease using the  
 21 Organix brand name and the word "organic" in its marketing of its hair care and skin care products  
 22 unless the products contain at least 70% organically produced ingredients. Second, Vogue will  
 23 contribute \$6,500,000 into an independently-administered Claim Fund, which will be used chiefly  
 24 to compensate users of the Products who were misled by Vogue's past labeling and marketing  
 25 practices. The Claim Fund will also be used to disseminate notice to the Class, such that affected  
 26 persons may avail themselves of this remedial monetary payment, to pay for attorneys' fees and  
 27 costs of up to \$1,625,000 (25% of the Claim Fund), and to pay modest service awards to the class  
 28

representatives for their time and efforts on behalf of the Class.

**A. Vogue Must Change The Labeling And Packaging Of Its Products.**

In settlement of Plaintiffs’ and the Class’s claims, Vogue has agreed not to manufacture or cause to be manufactured any hair care and skin care products under the Organix brand name unless such products contain at least 70% organically produced ingredients (excluding water and salt). In addition, Vogue has agreed not to use the word “organic” to promote the sale of any hair care and skin care products unless such products contain at least 70% percent organically produced ingredients (excluding water and salt). Todzo Decl. Exh. 1, ¶ III.A; *see also id.*, Exh. 1-H.

**B. Vogue Must Contribute Substantial Sums To A Claim Fund To Compensate Those Persons Allegedly Harmed By Its Allegedly Deceptive Labeling And Marketing Practices.**

The Settlement also provides that Vogue will pay \$6,500,000 to establish the Claim Fund for payment of Class member claims, and for the payment of certain notice and administration costs and expenses. Todzo Decl. Exh. 1, ¶ III.B. The Claim Fund will be administered by Heffler Claims Group an independent, highly qualified company (the “Claim Administrator”). The Claim Administrator shall approve claims submitted by affected Class members in accordance with a specified procedure and subject to verification by the Parties. *Id.*, Exh. 1, ¶¶ III.B.5-B.10; *see also id.*, Exh. 1-A. The Products typically retail for \$7.99, although Vogue often offers discounts such as “buy one, get one free” that result in lower costs to consumers. Class members who submit valid claims are eligible to recover \$4 for each Product they purchased up to \$28 per Class member. Todzo Decl. Exh. 1, ¶ III.B.5.

Notice to the Class will be provided shortly after the Court’s preliminary approval and will be achieved by several means, which the parties have selected as the most effective means of reaching the proposed Class members. *Id.*, Exh. 1, ¶ VI.B. First, the Claim Administrator will publish a half page insertion in the form of the Publication Notice in *People*, *Us Weekly* and *Life And Style* magazines – publications which are widely read among the Products’ target demographic. *Id.*, Exh. 1-C and Exh. 1-D, ¶ 4. Second, the Claim Administrator will provide

1 notice pursuant to California Government Code § 6064 by a 1/6 page advertisement in the form of  
 2 the Publication Notice, which will be published for four consecutive weeks in the San Francisco  
 3 Chronicle. *Ibid.* Third, a press release in both English and Spanish targeting all 50 states will be  
 4 sent via the PR Newswire's U.S.1 National and Hispanic newlines within 10 days of the Court's  
 5 entry of the Preliminary Approval Order. *Id.*, Exh. 1-D, ¶ 5. Fourth, the Claim Administrator will  
 6 run internet and mobile advertisements in both English and Spanish targeting potential Class  
 7 Members through services provided by Facebook, People.com & PeopleStyleWatch, Yahoo!,  
 8 Yahoo! Mobile, Yahoo! Omg!, Yahoo! Shine, Batanga and Univision. Advertisements on each of  
 9 these services shall run for approximately one month. *Id.*, Exh. 1-D, ¶ 6. All notices will direct  
 10 Class members to a settlement website and toll-free telephone support system, which are to be set  
 11 up by the Claim Administrator using the Claim Fund. *Id.*, Exh. 1-D, ¶¶ 1-2. The website will  
 12 include a more detailed notice fully explaining the terms of the Settlement and all attendant Class  
 13 member rights in both English and Spanish.<sup>3</sup> *Id.*, Exh. 1, ¶ VI.B; *see also id.*, Exh. 1-C & 1-E. No  
 14 more than \$650,000 of the Claim Fund may be used to reimburse those costs reasonably and  
 15 actually incurred by the Claim Administrator in connection with providing notice and  
 16 administering claims. *Id.*, Exh. 1, ¶ III.B.2(a).

17 The Settlement allows no possibility of any Claim Fund monies reverting to Vogue. If the  
 18 amounts ultimately paid for claims, claims administration expenses, notice and attorneys' fees and  
 19 costs do not equal or exceed the Claim Fund, the remainder of the Claim Fund shall be distributed  
 20 in equal amounts to the Center for Food Safety and Consumers Union, two non-profit entities that  
 21 serve the interest and needs of the Class. *Id.*, Exh. 1, ¶ III.B.3.

### 22 C. The Parties Stipulate To Class Certification For Settlement 23 Purposes.

24 Plaintiffs seek certification pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and  
 25 (b)(3), and Vogue has agreed to stipulate to class certification solely for purposes of achieving

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26 <sup>3</sup> This detailed Class notice will also be available to Class members via U.S. Mail, upon  
 27 request. *Id.*, Exh. 1, ¶ VI.B.

1 settlement. Todzo Decl. Exh. 1, ¶ V. The putative settlement Class will comprise all individuals  
 2 in the United States who purchased at least one of Vogue's Organix brand hair care and/or skin  
 3 care products from October 25, 2008 to the date notice to the Class is first published. *Id.*

4 Class members will have until fifty days prior to the Final Approval Hearing to file any  
 5 objections to the Settlement, to seek exclusions from the Class, or to file notices of intent to appear  
 6 at the hearing. Todzo Decl. Exh. 1, ¶ VI.B.3. The Claim Administrator and the Parties will  
 7 monitor and track those Class members seeking exclusion or objecting to the Settlement. *Id.*, Exh.  
 8 1, ¶ VI.D.

9 **D. Plaintiffs Will Submit An Application To The Court For**  
 10 **Payment Of Plaintiffs' Reasonable Attorneys' Fees And**  
 11 **Litigation Costs, And Service Awards To The Plaintiffs From**  
 12 **The Claim Fund.**

13 Pursuant to the Settlement Agreement and following the Court's preliminary approval of  
 14 the Settlement, Class Counsel will submit an application to the Court for an award of attorneys'  
 15 fees and expenses not to exceed 25% of Claim Fund, or \$1,625,000. Todzo Decl. Exh. 1, ¶  
 16 VIII.A. Vogue has agreed not to oppose this application. *Id.* Plaintiffs will also seek modest  
 17 awards to compensate the named Plaintiffs for their service as Class representatives, the  
 18 application for which Vogue agrees not to oppose. *Id.*, Exh. 1, ¶ VIII.B. The amount of these  
 19 awards is not to exceed \$1,500 each for Plaintiffs Golloher, Freeman, Chase, Shapiro and Brown  
 20 (who filed the original complaint in October 2012 and have responded to several rounds of  
 21 discovery) and \$250 each for Plaintiffs Kenny, Bottari, Conover, Hanks, Swenson and Sanders  
 22 (who were just recently added as Plaintiffs in the case). *Id.*

23 **ARGUMENT**

24 **I. THE COURT SHOULD GRANT PRELIMINARY APPROVAL**  
 25 **OF THE SETTLEMENT.**

26 The Settlement is fair and reasonable. The Settlement provides substantial benefits to the  
 27 Class by requiring changes in Vogue's labeling and marketing practices, and by securing just  
 28 compensation for past purchases of the Products. The Settlement accomplishes this while  
 avoiding both the uncertainty and the delay that would be associated with further litigation. It



1 represents a fair compromise of the Parties' respective positions in the litigation, and enables each  
 2 Party to end the litigation, thus avoiding its costs and risks. Finally, the Settlement was reached  
 3 through arm's length negotiations as part of a supervised mediation process. Plaintiffs' counsel,  
 4 which has significant experience in litigating class actions, supports the resulting Settlement as  
 5 fair and as providing reasonable relief to the members of the Class.

#### 6 **A. The Applicable Legal Standard.**

7 A proposed settlement may be approved by the trial court if it is determined to be  
 8 "fundamentally fair, adequate, and reasonable." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,  
 9 458 (9th Cir. 2000) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).  
 10 Given that the full fairness and adequacy of a class settlement can only be assessed at the final  
 11 approval hearing, at the preliminary approval stage the Court "need only review the parties'  
 12 proposed settlement to determine whether it is within the permissible 'range of possible judicial  
 13 approval' and thus, whether the notice to the class and the scheduling of the formal fairness  
 14 hearing is appropriate." *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003, 2010 WL 761122,  
 15 at \*5 (S.D. Cal. Mar. 4, 2010) (citing William B. Rubenstein, et al., *NEWBERG ON CLASS ACTIONS*  
 16 § 11:25 (4th ed. 2002)); *see also Wright v. Lucas Enters.*, 259 F.R.D. 468, 472 (E.D. Cal. 2009);  
 17 *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. 2008).

18 Specifically, preliminary approval of a settlement and notice to the proposed class is  
 19 appropriate if "[1] the proposed settlement appears to be the product of serious, informed,  
 20 noncollusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant  
 21 preferential treatment to class representatives or segments of the class, and [4] falls with the range  
 22 of possible approval . . . ." *Williams*, 2010 WL 761122, at \*5 (brackets and ellipses in original)  
 23 (quoting *Vasquez v. Coast Valley Roofing, Inc.*, 670 F. Supp. 2d 1114, 1125 (E.D. Cal. 2009)).  
 24 This Settlement meets all of the above criteria.

#### 25 **B. This Settlement Is The Product of Serious, Informed And** 26 **Arm's-Length Negotiations.**

27 Arm's-length negotiations conducted by competent counsel after meaningful discovery  
 28 constitute prima facie evidence of fair settlements. *See Cicero v. DirecTV, Inc.*, No. EDCV 07-



1182, 2010 WL 2991486, at \*3 (C.D. Cal. July 27, 2010) (“where a class settlement has been reached after meaningful discovery, after arm’s length negotiation, conducted by capable counsel, it is presumptively fair.”) (internal quotations omitted). Here, the Parties’ negotiations were adversarial and at arm’s length. *See* Todzo Decl. ¶ 3. Counsel for Plaintiffs have considerable experience in class action litigation in general, and with the legal and factual issues of this case in particular. *See id.*, ¶¶ 3-4, 11. Through the Parties’ lengthy and comprehensive settlement discussions, and through substantial written discovery and documentary production, Vogue and third party witnesses (such as Vogue’s retailers and sales brokers) provided Plaintiffs with vital information pertaining to the legitimacy and scope of Plaintiffs’ claims – including information regarding the Products’ composition, labeling, advertising and sales. *See id.* ¶¶ 3, 5. This sharing of information ensured sophisticated and meaningful settlement negotiations, which were conducted over several months, including a mediation with Randall W. Wulff, one of the most respected mediators in California if not the entire nation. *See id.* In short, the Parties were fully informed of all relevant facts at the time the Settlement was reached.

**C. The Settlement Has No “Obvious Deficiencies” And Treats No Members Of The Class Preferentially.**

The Settlement is fair and treats all Class members equitably.<sup>4</sup> All potential future purchasers of the Products, including members of the Class, will receive the benefit of the injunctive relief provided for in the settlement. In addition, all Class members who purchased the Products dating back to October 2008 will receive the benefit of the monetary relief provided for therein. The Settlement’s notice provisions, which are detailed and comprehensive and which will be administered by a qualified third party, will help to ensure that such purchasers will actually recoup their monetary losses. *See Alberto*, 252 F.R.D. 652, 666-667 (satisfactory notice provisions weigh in favor of preliminary approval). Moreover, the substantial injunctive and

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<sup>4</sup> The service awards to the Plaintiff Class representatives are far less than service awards approved by other courts. *See, e.g., Williams*, 2010 WL 761122, at \*\*2, 6 (\$5,000 service award to single named plaintiff “does not appear facially unreasonable”); *see also* Todzo Decl. ¶ 9 (detailing the services provided).

1 monetary relief secured by the settlement is fundamentally fair in light of the significant hurdles  
 2 faced by Plaintiffs and the Class going forward: Vogue vigorously disputes that the Class would  
 3 be able to prove liability, certify a class, or be entitled to injunctive relief or monetary damages.

4 Although Plaintiffs believe that they could establish liability were the case to go to trial,  
 5 this is hardly an easy win. For example, at the time the Parties reached the Settlement, Vogue's  
 6 motions to dismiss and stay the case were under submission. As noted above, Vogue's motions  
 7 asked the Court to: (1) dismiss Plaintiffs' claims for breach of express warranty under the laws of  
 8 the four states in which the named Plaintiffs neither lived nor purchased Vogue's products; (2)  
 9 dismiss the Plaintiffs' claims for injunctive relief in California under the doctrine of res judicata in  
 10 light of the CEH Consent Judgment and (3) stay the case under the doctrine of primary jurisdiction  
 11 pending federal regulatory action for organic cosmetics. *See generally* ECF No. 33. At oral  
 12 argument on April 18, 2013, the Court stated its inclination to grant the motions to dismiss but not  
 13 the motion to stay. Thus, Plaintiffs faced the probability that several of their claims would be  
 14 dismissed if the Parties had not settled.

15 By settling now, Class members secure meaningful monetary compensation, plus the  
 16 certainty of knowing that Vogue's alleged offending labeling and marketing practices will cease  
 17 on a nationwide basis hereinafter. These benefits will accrue equally to all Class members. Given  
 18 the vagaries of pressing forward with litigation, the Settlement has no "obvious deficiencies" and  
 19 treats all Class members fairly. *See* Todzo Decl. ¶¶ 6-8.

#### 20 **D. The Settlement Falls Within The Range Of Possible Approval.**

21 The Settlement easily falls within the bounds of reasonableness. Plaintiffs have secured a  
 22 commitment from Vogue to implement injunctive relief that fully cures the alleged  
 23 misrepresentations at the heart of this case, including a commitment to change the brand name of  
 24 Vogue's marquis Products on a national basis. Additionally, the \$6,500,000 class settlement fund  
 25 represents a substantial portion of the damages Plaintiffs believe they could establish at trial. In  
 26 preparing the case for class certification and trial, Plaintiffs developed a damages model with their  
 27 experts that looked to the premiums generally paid by consumers for "organic" personal care  
 28

1 products sold nationwide over and above the prices paid by consumers for seemingly comparable  
 2 products that do not claim to be organic. *See* Todzo Decl. ¶ 8. Although Vogue disputes that it  
 3 charged any “organic” premium for the Products, Plaintiffs contend that they could use their  
 4 damages model to reasonably recover Class-wide damages at trial of approximately \$25 million.  
 5 *Id.*

6 However, one potential problem with Plaintiffs’ damages model is the difficulty of  
 7 assessing what baseline products are to be deemed “comparable,” given differences in ingredients,  
 8 function and so forth – this issue, no doubt, would form a central dispute in any damages  
 9 calculation at trial. *See* Todzo Decl. ¶ 8. Indeed, Vogue disputes that it charged any organic  
 10 premium for the Products, and contends that the Products are actually priced lower than its  
 11 competitors’ products. Thus, in addition to the risks of not certifying a class and not prevailing on  
 12 liability, Plaintiffs also faced risks that they would not be able to prove their damages at trial.  
 13 Given this litigation risk, the \$6,500,000 monetary recovery represents a substantial percentage of  
 14 what Plaintiffs believe to be their best case scenario for recovery at trial. *Id.* Furthermore, since  
 15 the Products typically retail for \$7.99, and are often sold for much lower, the Settlement’s  
 16 allowance of \$4 per Product purchased (up to \$28) will provide Class members with a substantial  
 17 portion of the money paid for the Products. The injunctive relief component of the Settlement –  
 18 which cannot be readily monetized, but which has tremendous value to consumers across the  
 19 United States – only enhances the legitimacy of this recovery. *Id.*

20 The reasonableness of the Settlement is further underscored by the fact that it was reached  
 21 only after participation in formal mediation before a qualified, neutral mediator. *See Alberto*, 252  
 22 F.R.D. at 666 (brokering of settlement by qualified mediator weighs in favor of preliminary  
 23 approval of settlement by court). Here, the Parties employed Randall W. Wulff, a former trial  
 24 lawyer at Farella Braun & Martel LLP with decades of experience in the resolution of complex  
 25 business litigation, including class actions and products liability cases, as a mediator. *See* Todzo  
 26 Decl. ¶ 3 & Exh. 2.

27 Moreover, the fee award sought by Plaintiffs, which will be subject to further review by  
 28

1 this Court at the final settlement approval stage, is well within the range of possible approval. *See*  
 2 Todzo Decl. ¶ 11. Indeed, the fee award sought conforms with the Ninth Circuit’s percentage of  
 3 the fund benchmark award of 25% for attorneys’ fees. *See Hanlon*, 150 F.3d at 1029 (“This  
 4 circuit has established 25% of the common fund as a benchmark award for attorney fees.”). The  
 5 fee award is especially appropriate given the meaningful injunctive relief achieved by the  
 6 Settlement. *See generally* Committee Notes to 2003 Amendments to Fed. R. Civ. P. 23(h) (“[I]t is  
 7 important to recognize that in some class actions the monetary relief obtained is not the sole  
 8 determinant of an appropriate attorney fees award.”) (citing *Blanchard v. Bergeron*, 489 U.S. 87,  
 9 95 (1989) (cautioning against an “undesirable emphasis” on “the importance of the recovery of  
 10 damages in civil rights litigation” that might “shortchange efforts to seek effective injunctive or  
 11 declaratory relief”). For all of these reasons, preliminary approval of the Settlement should be  
 12 granted.

## 13 **II. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS** 14 **IS APPROPRIATE.**

15 For settlement purposes only, Plaintiffs request that the Court provisionally certify the  
 16 settlement Class proposed below pursuant to Rule 23 of the Federal Rules of Civil Procedure.  
 17 Provisional class certification is appropriate in part because Vogue consents to Class certification  
 18 for purposes of this Settlement. *See* Todzo Decl. Exh. 1, ¶ V; *see also generally* The Rutter  
 19 Group, CALIFORNIA PRACTICE GUIDE: FEDERAL CIVIL PROCEDURE BEFORE TRIAL (2012), Ch. 10-  
 20 C at § 10:787 (noting that courts generally permit parties to stipulate that a defined class be  
 21 conditionally certified for settlement purposes because it facilitates settlement).

22 Because the Parties have reached agreement regarding class certification in the context of  
 23 this Settlement, the Court may enter an order provisionally certifying the Class for settlement  
 24 purposes. *See In re Wireless Facilities, Inc. Securities Litig. II*, 253 F.R.D. 607, 610 (S.D. Cal.  
 25 2008); *see also Alvarado Partners, L.P. v. Mehta*, 723 F. Supp. 540, 546 (D.C. Colo. 1989). This  
 26 will allow notice of the proposed settlement to issue, so Class members can be informed of the  
 27 existence and terms of the proposed settlement, of their right to be heard on its fairness, of their  
 28 right to opt out, and of the date, time and place of the fairness hearing. *See* Federal Judicial

Center, *Manual for Complex Litigation* (4th ed. 2004) at §§ 21.632, 21.633.

Plaintiffs seek certification of a settlement Class defined as follows:

All individuals in the United States who purchased Organix® brand hair care and skin care products from October 25, 2008 to the date notice to the Class is first published.

**A. The Criteria For Class Certification Under Rule 23(a) Are Satisfied.**

To merit class certification under Rule 23(a), Plaintiffs must show that: (1) the class is so numerous that joinder is impracticable; (2) questions of law or fact are common to the class; (3) the claims of the representative Plaintiffs are typical of the claims of the class; and (4) the class representatives will fairly and adequately protect the interests of the class. Each of these criteria is met here.

**1. Joinder Of All Members Is Impracticable.**

A class must be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Often, a large number of class members by itself establishes the impracticability of joining them as plaintiffs. *See Jordan v. County of Los Angeles*, 669 F.2d 1311, 1319 (9th Cir. 1982), *vacated on other grounds*, 459 U.S. 810 (1982). Impracticability does not mean impossibility. *See, e.g., Immigrant Assistance Project of Los Angeles County Fed’n of Labor v. I.N.S.*, 306 F.3d 842, 869 (9th Cir. 2002) (noting that classes numbering 39, 64, and 71 met numerosity criterion); *Delarosa v. Boiron, Inc.*, 275 F.R.D. 582, 587 (C.D. Cal. 2011) (“[A]s a general rule, classes of forty or more are considered sufficiently numerous.”) (citation omitted).

Vogue has admitted that more than eight hundred individuals purchased the Products during the class period. *See Todzo Decl.*, ¶ 10. Because joinder of all of these individuals is impractical, if not entirely impossible, the numerosity requirement is satisfied.

**2. Common Issues Of Law And Fact Exist.**

The Ninth Circuit construes Rule 23(a)(2)’s commonality requirement permissively. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). The commonality requirement is less rigorous than the “companion requirements” of Rule 23(b)(3). *Id.* “All questions of fact and law need not be common to satisfy the [commonality] rule. The existence of shared legal issues

1 with divergent factual predicates is sufficient . . . .” *Id.* Indeed, “even a single common question  
 2 will do,” so long as that question has the capacity to generate a common answer “apt to drive the  
 3 resolution of the litigation.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011)  
 4 (citations and internal quotations omitted).

5 Here, “the class is united by a common interest in determining whether a defendant’s  
 6 course of conduct is in its broad outlines actionable.” *Blackie v. Barrack*, 524 F.2d 891, 902 (9th  
 7 Cir. 1975). Vogue utilizes advertisements and packaging that include uniform representations,  
 8 including its brand name Organix and use of the word “organic,” which are allegedly false and  
 9 misleading in violation of the UCL and CLRA and other similar state consumer protection  
 10 statutes. Plaintiffs allege that these representations misled Plaintiffs and the other members of the  
 11 Class, and that Vogue breached uniform warranties that were made to Plaintiffs and the other  
 12 members of the Class. Thus, the commonality requirement is satisfied. *See Zeisel v. Diamond*  
 13 *Foods, Inc.*, No. C 10-01192, 2011 WL 2221113, at \*7 (N.D. Cal. June 7, 2011) (commonality  
 14 met where “class was exposed to the same misleading and misbranded labels”); *Chavez v. Blue*  
 15 *Sky Natural Beverage Co.*, 268 F.R.D. 365, 377 (N.D. Cal. 2010) (commonality met where  
 16 common issue was “whether the [product] packaging and marketing materials are unlawful, unfair,  
 17 deceptive or misleading to a reasonable consumer”); *Delarosa*, 275 F.R.D. at 589 (commonality  
 18 met where “Plaintiff alleges a single misrepresentation [on a product’s packaging] that was made  
 19 identically to all potential class members”).

### 20 3. The Named Plaintiffs’ Claims Are Typical Of Class 21 Claims.

22 Rule 23(a)(3) requires “the claims and defenses of the representative parties [to be] typical  
 23 of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Representative claims are typical  
 24 if they are “reasonably coextensive with those of the absent class members; they need not be  
 25 substantially identical.” *Hanlon*, 150 F.3d at 1020. Where the class representatives’ interests  
 26 align with the interests of the class, then the pursuit of the class representatives’ individual  
 27 interests necessarily advances those interests of the class. “[A] named plaintiff’s claim is typical if  
 28 it stems from the same event, practice or course of conduct . . . and is based upon the same legal or

1 remedial theory.” *Jordan*, 669 F.2d at 1321; *see also Hanlon*, 150 F.3d at 1019-1020 (“[t]he  
 2 existence of shared legal issues with divergent factual predicates is sufficient, as is a common core  
 3 of salient facts coupled with disparate legal remedies within the class”); *Lozano v. AT & T*  
 4 *Wireless Servs., Inc.*, 504 F.3d 718, 734 (9th Cir. 2007) (“Under Rule 23(a)(3), it is not necessary  
 5 that all class members suffer the same injury as the class representative.”).

6 Here, Plaintiffs’ and Class members’ claims stem from the same underlying wrongful  
 7 conduct – namely, they purchased the Products based on the false and misleading representations  
 8 that the Products are organic. Accordingly, there is a “sufficient nexus” between Plaintiffs’ claims  
 9 and those of the Class members to satisfy the typicality requirement. *See O’Donovan v. CashCall,*  
 10 *Inc.*, 278 F.R.D. 479, 491-492 (N.D. Cal. 2011); *Zeisel*, 2011 WL 2221113, at \*8 (typicality met  
 11 where plaintiff’s claims relating to allegedly false health-related statements on product labels were  
 12 “reasonably co-extensive with those of absent class members,” notwithstanding particularities of  
 13 class representative’s “specific medical condition”); *Chavez*, 268 F.R.D. at 378 (typicality met  
 14 where defendant made “substantially the same misrepresentation” on several different beverage  
 15 products, even where allegedly false statements were “worded in several variations” and where  
 16 “plaintiff did not buy each product in [defendant’s] beverage line”).

#### 17 **4. The Named Plaintiffs And Their Counsel Adequately** 18 **Represent The Proposed Class.**

19 The adequacy of representation requirement is satisfied if (1) the proposed representative  
 20 plaintiffs do not have conflicts with the proposed class, and (2) the plaintiff is represented by  
 21 qualified and competent counsel who will vigorously prosecute the action on behalf of the class.  
 22 *See Hanlon*, 150 F.3d at 1020.

23 There is no conflict between Plaintiffs and the members of the Class. All proposed Class  
 24 members purchased the Products, as did Plaintiffs. Because Plaintiffs and Class members have  
 25 been allegedly injured in the same manner and seek relief for the same claims, their interests are  
 26 coextensive. *See O’Donovan*, 278 F.R.D. at 492 (class representative fairly and adequately  
 27 represents class where “their claims are reflective of those of the putative class members’ and the  
 28 relief they seek is identical to that sought for the Classes.”).



1 Plaintiffs' counsel are qualified and experienced in certifying, litigating, settling and  
 2 administering nationwide class actions similar to this case. *See* Todzo Decl. ¶¶ 12 & Exh. 3.  
 3 Plaintiffs' counsel are committed to the vigorous prosecution of this action. To date, Plaintiffs'  
 4 counsel has demonstrated an understanding of the issues in this case and competence to conduct  
 5 this litigation. Further, in addition to counsels' experience, the Lexington Law Group possesses  
 6 the resources to efficiently prosecute this class action lawsuit to its final conclusion. *See id.*  
 7 Plaintiffs and their counsel readily satisfy the requirements of Rule 23(a)(4).

8 **B. The Proposed Settlement Class Meets The Requirements Of**  
 9 **Rule 23(b)(2) and 23(b)(3).**

10 Class certification is appropriate under Rule 23(b)(2). Vogue has acted on grounds that  
 11 apply generally to the Class, such that final injunctive relief is appropriate respecting the Class as  
 12 a whole. Plaintiffs allege that Vogue utilizes product packaging and advertising campaigns which  
 13 include uniform misrepresentations that the Products are organic, which allegedly misled Plaintiffs  
 14 and the other members of the Class. Plaintiffs seek to enjoin Defendant's alleged  
 15 misrepresentations, and injunctive relief will benefit them, the Class, and future purchasers of  
 16 Vogue's products. *See Delarosa*, 275 F.R.D. at 592 (certification under Rule 23(b)(2) appropriate  
 17 where "an injunction prohibiting Defendant from selling [product] with the misleading  
 18 information would 'provide relief to each member of the class.'").

19 In addition, class certification is appropriate under Rule 23(b)(3) because common  
 20 questions of law and fact substantially predominate over any questions that may affect only  
 21 individual members of the Class. Predominance is often readily met in cases alleging consumer  
 22 fraud. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *Bruno v. Quten Research*  
 23 *Inst., LLC*, 280 F.R.D. 524, 537 (C.D. Cal. 2011). The predominance requirement does not  
 24 demand that the common issues be identical so long as there is an essential common factual link  
 25 between all class members and the defendant for which the law provides a remedy. *In re Wells*  
 26 *Fargo Home Mortg. Overtime Pay Litig.*, 527 F. Supp. 2d 1053, 1065 (N.D. Cal. 2007).  
 27 Questions that are common to the class predominate over individual questions where a plaintiff  
 28 alleges a common course of conduct of misrepresentations that affected all the class members in



1 the same or similar manner. *See Blackie v. Barrack*, 524 F.2d 891, 905-908 (9th Cir. 1975).

2 For example, the overarching legal and factual questions in this case – which do not vary  
3 among Class members and which may be determined without reference to the individual  
4 circumstances of any Class member – include, but are not limited to:

- 5 • whether Vogue labels, advertises, markets and sells the Products by representing  
6 that the Products are organic;
- 7 • whether Plaintiffs and the other members of the Class are likely to be misled by  
8 Vogue’s use of the Organix brand name on the Products;
- 9 • whether the Products are predominantly composed of organic ingredients;
- 10 • whether Vogue’s conduct of selling the Products as organic when such Products are  
11 not composed predominantly of organic ingredients is likely to deceive the  
12 members of the Class;
- 13 • whether Vogue’s conduct in advertising and marketing the Products constitutes an  
14 unfair or deceptive act or practice in the conduct of trade or commerce;
- 15 • whether Plaintiffs and the other members of the Class are entitled to injunctive and  
16 other equitable relief based on Vogue’s violations of state and District of Columbia  
17 consumer protection laws;
- 18 • whether Vogue’s representations concerning the Products constitute express  
19 warranties with regard to the Products pursuant to the laws of every state and the  
20 District of Columbia;
- 21 • whether Vogue breached the express warranties it has made with regard to the  
22 Products;
- 23 • whether Plaintiffs and the other members of the Class are entitled to damages  
24 resulting from Vogue’s breach of the express warranties made regarding the  
25 Products in every state and the District of Columbia;
- 26 • whether Vogue unjustly enriched itself to the detriment of the Plaintiffs and the  
27 members of the Class, thereby entitling Plaintiffs and the members of the Class to  
28 restitution or disgorgement of all benefits derived by Vogue.

22 As this list demonstrates, each of Plaintiffs’ contentions can be proven with “generalized  
23 evidence . . . on a class-wide basis.” *O’Donovan*, 278 F.R.D. at 493. In other words, a  
24 determination that Vogue misrepresented the Products as organic to Plaintiffs will necessarily  
25 determine whether Vogue similarly misrepresented the Products to all Class members. *See*  
26 *Delarosa*, 275 F.R.D. at 594. Indeed, each of these “common question[s]” has the capacity to  
27 generate a common answer “apt to drive the resolution of the litigation.” *Dukes*, 131 S.Ct. 2541,

1 2551 (2011) (citations and internal quotations omitted). Because “[a] common nucleus of facts  
 2 and potential legal remedies dominates this litigation,” Rule 23(b)(3) is satisfied here. *Hanlon*,  
 3 150 F.3d at 1022.

### 4 **III. THE PROPOSED CLASS NOTICE SATISFIES THE** 5 **REQUIREMENTS OF DUE PROCESS.**

6 “Rule 23(e)(1)(B) requires the court to direct notice in a reasonable manner to all class  
 7 members who would be bound by a proposed settlement, voluntary dismissal, or compromise.”  
 8 *Manual for Complex Litig.* at § 21.312 (internal quotations omitted). The Settlement Agreement  
 9 provides for notice that easily satisfies Rule 23 and due process considerations.

#### 10 **A. The Proposed Method Of Notice Is Appropriate.**

11 Rule 23 requires that notice of a settlement be “the best notice practicable under the  
 12 circumstances, including individual notice to all members who can be identified through  
 13 reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). The method proposed for providing notice to  
 14 Class members is reasonable and should be approved. Notice to the Class will be achieved shortly  
 15 after entry of the Preliminary Approval Order, in at least four ways. First, the Claim  
 16 Administrator will publish a 1/2 page insertion in the form of the Publication Notice in *People, Us*  
 17 *Weekly* and *Life And Style* magazines – which are magazines popular among the Products’ target  
 18 demographic. Second, notice will be provided pursuant to California Government Code § 6064 by  
 19 a 1/6 page advertisement in the form of the Publication Notice, which will be published for four  
 20 consecutive weeks in the San Francisco Chronicle. Third, a press release in both English and  
 21 Spanish targeting all 50 states will be sent via the PR Newswire’s U.S.1 National and Hispanic  
 22 newlines. Fourth, internet and mobile advertisements in both English and Spanish targeting  
 23 potential Class Members through services provided by Facebook, People.com, Yahoo!, Univision  
 24 and others will run for approximately one month. Each of these notices will direct Class members  
 25 to a settlement website and toll-free telephone support system, which will include a more detailed  
 26 notice fully explaining the terms of the Settlement and all attendant Class member rights both in  
 27 English and Spanish. Courts routinely find that similarly comprehensive notice programs meet the  
 28 requirements of due process and Rule 23. *See, e.g., Beck-Ellman v. Kaz USA, Inc.*, No. 3:10-CV-

02134-H-DHB, 2013 WL 1748729, at \*3-4 (S.D. Cal. January 7, 2013) (approving notice plan involving publication in magazines targeting product users and internet advertisements directing class members to settlement website); *Nigh v. Humphreys Pharmacal, Inc.*, No. 12-CV-2714-MMA DHB, 2013 WL 399179 (S.D. Cal. January 29, 2013) (approving notice plan involving publication in magazines targeting product users and newspapers directing class members to settlement website).

**B. The Contents Of The Proposed Notice Are Adequate.**

The content of the notice to class members “is satisfactory if it ‘generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.’” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009) (quoting *Churchill Vill., LLC v. General Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)). Here, the proposed notice forms provide this “sufficient detail.” See Todzo Decl. Exh. 1-C & 1-E. Together, the proposed notices define the Class, explain all Class member rights, releases and applicable deadlines, and describe in detail the injunctive and monetary terms of the settlement, including the procedures for allocating and distributing settlement funds. The notices plainly indicate the time and place of the hearing to consider approval of the settlement, and the method for objecting to or opting out of the settlement. The notices detail the provisions for payment of attorneys’ fees and service awards to the class representatives, and provide contact information for the putative Class Counsel. This content comports with settlement notices upheld in other cases. See, e.g., *In re Wells Fargo Loan Processor Overtime Pay Litig.*, No. C-07-1841, 2011 WL 3352460, at \*4 (N.D. Cal. Aug. 2, 2011) (notice adequate where “[i]t disclosed all material elements of the settlement, including class members’ release of claims, their ability to opt out or object to the settlement, the amount of incentive awards and attorneys’ fees sought, and estimates of the award members could expect to receive.”); see also *Rodriguez*, 563 F.3d at 962-963 (because “[s]ettlement notices are supposed to present information about a proposed settlement neutrally, simply, and understandably,” they need not “detail the content of objections, or analyze the expected value” of fully litigating the case).

**IV. SCHEDULING A FINAL APPROVAL HEARING IS APPROPRIATE.**

The last step in the settlement approval process is a final fairness hearing at which the Court may hear all evidence and argument necessary to evaluate the Settlement. Proponents of the Settlement may explain the terms and conditions of the settlement and offer argument in support of final approval. In addition, Class members, or their counsel, may be heard in support of or in opposition to the Settlement. The Court will determine after the Final Approval Hearing whether the Settlement should be approved, and whether to enter a final order and judgment under Rule 23(e). Plaintiffs request that the Court set a date for the final fairness hearing approximately one hundred and forty (140) days after entry of the Preliminary Approval Order.

**CONCLUSION**

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement, provisionally certify the Settlement Class, appoint Lexington Law Group as “Class Counsel,” approve the proposed notice plan, and schedule a formal fairness hearing on final settlement approval approximately one hundred and forty (140) days after entry of the Preliminary Approval Order.

DATED: August 22, 2013

Respectfully submitted,

LEXINGTON LAW GROUP

By: /s/ Mark N. Todzo  
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SANDERS, on behalf of themselves and all  
others similarly situated,

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9

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 ANDREA GOLLOHER, MARISA FREEMAN,  
ROBERTA CHASE, James Hanks, MICHAEL  
14 SHAPIRO, BRENDA BROWN, GRETCHEN  
SWENSON, CRYSTAL KENNY, KELLY  
15 BOTTARI, RENEE CONOVER, and SHANISHA  
SANDERS, on behalf of themselves and all others  
16 similarly situated,

17 Plaintiffs,

18 vs.

19 Todd Christopher International, Inc. dba VOGUE  
20 INTERNATIONAL, a Florida Corporation, and  
DOES 1-100,  
21

22 Defendants.  
23  
24  
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Case No. C 12-06002 RS

**DECLARATION OF MARK N.  
TODZO IN SUPPORT OF MOTION  
FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT  
AGREEMENT**

Date: September 26, 2013  
Time: 1:30 p.m.  
Location: Courtroom 3, 17th Floor  
Judge: Hon. Richard Seeborg

1 I, Mark N. Todzo, declare:

2 1. I am an attorney with the Lexington Law Group (“LLG”), and I represent Plaintiffs  
3 Andrea Golloher, Marisa Freeman, Roberta Chase, James Hanks, Michael Shapiro, Brenda  
4 Brown, Gretchen Swenson, Crystal Kenny, Kelly Bottari, Renee Conover, and Shanisha Sanders  
5 (“Plaintiffs”) in the above-captioned action. I have personal knowledge of the matters set forth  
6 below and, if called upon, I could and would competently testify thereto.

7 2. I am one of the attorneys who has been principally involved in the prosecution of  
8 this litigation and the negotiations that culminated in the Stipulation of Settlement (the “Settlement  
9 Agreement” or “Settlement”) which is before the Court for preliminary approval. A true and  
10 correct copy of the Settlement Agreement, signed by the Parties to this case, is attached as Exhibit  
11 1. The Settlement Agreement itself appends and incorporates seven exhibits, entitled “Exhibit A”  
12 through “Exhibit G,” which I have included as part of Exhibit 1.

13 3. Along with my partner Howard Hirsch, I negotiated the Settlement Agreement on  
14 behalf of Plaintiffs and the Class during a series of intensive settlement negotiations with counsel  
15 for Defendant Todd Christopher International, Inc. d/b/a Vogue International (“Vogue” or  
16 “Defendant”) in this action. The negotiations were adversarial and conducted at arm’s length, and  
17 there was no collusion involved. The negotiations included a full day of mediation with Randall  
18 W. Wulff of Wulff Quinby Sochynsky in Oakland, California, at which Vogue’s corporate counsel  
19 was present. A true and correct copy of Mr. Wulff’s resume, which I obtained from his firm’s  
20 website on August 22, 2013, is attached as Exhibit 2.

21 4. Before commencing this action, I and others in my firm spent numerous hours and  
22 significant resources investigating and researching the facts of this case and evaluating the  
23 relevant law and facts to assess the merits of Plaintiffs’ potential claims and to determine how best  
24 to serve the interests of Plaintiffs and the Class.

25 5. Since filing this action nearly one year ago, my firm has engaged in substantial  
26 discovery, which included serving three rounds of written discovery (including nearly one hundred  
27 separate requests for production of documents), Vogue’s production of nearly ten thousand pages  
28

1 of documents regarding the labeling, advertising, composition and sales of the Vogue's Organix  
2 brand hair care and skin care products. My firm also served third party subpoenas on six of  
3 Vogue's retailers and on eleven of Vogue's sales brokers and marketing firms, which yielded the  
4 production of hundreds of pages of additional documents.

5         6.         The Settlement Agreement provides for injunctive relief that prohibits Vogue from  
6 manufacturing any hair care and skin care products under the Organix brand name unless such  
7 products contain at least 70% organically produced ingredients (excluding water and salt).  
8 Likewise, the Settlement prohibits Vogue from using the word "organic" to promote the sale of  
9 any hair care and skin care products unless such products contain at least 70% percent organically  
10 produced ingredients (excluding water and salt). The Settlement also requires Vogue to contribute  
11 \$6,500,000 into an independently-administered claim fund ("Claim Fund"), which will be used  
12 chiefly to compensate purchasers of the Products who were allegedly misled by Vogue's past  
13 labeling practices. The Settlement thus provides substantial benefit to class members who  
14 purchased the Organix products at issue under misguided beliefs about the organic composition of  
15 those products, and class members who want to be correctly informed of the contents of these  
16 products in making future purchasing decisions.

17         7.         In my firm's capacity as Class Counsel, we considered a number of factors in  
18 reaching the proposed Settlement Agreement with Defendant. For example, among other issues,  
19 we considered the risk that the Court would find that the use of the Organix brand name and the  
20 term "organic" was not misleading to a reasonable consumer since each of the Products contained  
21 at least one organic ingredient. We also considered the fact that this Court indicated its intention  
22 to grant Vogue's motion to dismiss several of Plaintiffs' claims, which would pare down the  
23 operative claims in the case.

24         8.         In agreeing to a Claim Fund in the amount of \$6,500,000, Class Counsel also  
25 considered the difficulties the Class will face in proving damages at trial. In preparing the case for  
26 class certification and trial, Plaintiffs developed a damages model with their experts that looked to  
27 the premiums generally paid by consumers for "organic" personal care products sold nationwide  
28



1 over and above the prices paid by consumers for seemingly comparable products that do not claim  
2 to be organic. Although Vogue disputes that it charged any “organic” premium for the Products,  
3 Plaintiffs contend that they could use their damages model to reasonably recover Class-wide  
4 damages at trial of approximately \$25 million. However, one potential problem with Plaintiffs’  
5 damages model is the difficulty of assessing what baseline products are to be deemed  
6 “comparable,” given differences in ingredients, function and so forth. Indeed, Vogue disputes that  
7 it charged any organic premium for the Products, and contends that the Products are actually  
8 priced lower than its competitors’ products. While Plaintiffs believe their damages model is  
9 viable, in agreeing to the Settlement Plaintiffs took into account the additional risk (beyond class  
10 certification and liability risks) that Class members would not be able to prove their damages at  
11 trial. Given this litigation risk, the \$6,500,000 monetary recovery represents a substantial  
12 percentage of what Plaintiffs believe to be their best case scenario for recovery at trial.  
13 Furthermore, since the Products typically retail for \$7.99, and are often sold for much lower, the  
14 Settlement’s allowance of \$4 per Product purchased (up to \$28) will provide Class members with  
15 a substantial portion of the money paid for the Products. Moreover, the substantial nationwide  
16 injunctive relief component of the Settlement – which cannot be readily monetized, but which has  
17 tremendous value to consumers – enhances the legitimacy of this recovery.

18 9. Plaintiffs Golloher, Freeman, Chase, Shapiro and Brown (who filed the original  
19 complaint in October 2012) have performed a number of tasks that greatly assisted in the  
20 preparation, prosecution and settlement of the case. Among other things, these original Plaintiffs  
21 have consulted with me and other members of my firm on a number of occasions, made  
22 themselves available as needed, provided factual background to assist in the development of the  
23 case and in responding to several rounds of Vogue’s discovery requests, reviewed pleadings and  
24 correspondence in the case and evaluated the Settlement papers. Plaintiffs Kenny, Bottari,  
25 Conover, Hanks, Swenson and Sanders (who were just recently added as Plaintiffs in the case)  
26 assisted with the prosecution and settlement of the case by providing factual background to  
27 support the pre-suit letter notifying Vogue of their intent to bring a suit for violations of state  
28



1 consumer protection laws in all 50 states, as well as the filing of the First Amended Complaint.  
 2 These recently added Plaintiffs also provided assistance by evaluating the Settlement papers. To  
 3 date, all of the Plaintiffs have received no compensation whatsoever for their efforts on behalf of  
 4 the Class.

5 10. Vogue's responses to Plaintiffs' Requests for Admission admit that there were over  
 6 800 purchasers of the Organix products during the class period.

7 11. I and others in my firm spent numerous hours investigating and researching the  
 8 facts of this case, conferring with Plaintiffs, researching applicable law, drafting pleadings,  
 9 preparing and responding to discovery, reviewing and analyzing voluminous documents and data  
 10 produced by Defendant and negotiating the Settlement Agreement. Class Counsel will submit  
 11 support for the attorneys' fee and costs award called for by the Settlement in connection with the  
 12 hearing for final approval of the Settlement. The proposed Settlement provides that Class Counsel  
 13 may be awarded up to \$1,625,000 as partial compensation for Class Counsel's reasonable  
 14 attorneys' fees and costs, which is consistent with the Ninth Circuit's benchmark of 25% of the  
 15 common fund for attorneys' fees in class action cases.

16 12. LLG is a private law firm that has been successfully pursuing cases on behalf of  
 17 consumers and public interest groups for over a decade. LLG has represented numerous parties in  
 18 civil actions of various types and degrees of complexity, including many cases brought as class  
 19 actions. The attorneys of LLG have substantial experience in false advertising and unfair  
 20 competition matters. The following is a representative sampling of some of the cases LLG has  
 21 successfully litigated or is currently involved in:

22 a) *Stephenson, et al. v. Neutrogena Corporation*, Case No. C 12-00426 PJH  
 23 (N.D. Cal.): Named Class Counsel in case involving misrepresentation of cosmetic products as  
 24 "natural";

25 b) *In re WellPoint Out of Network UCR Rates Litigation*, Case No. MDL 2074  
 26 (J.P.M.L.): Named interim Class Counsel in antitrust case against health insurer alleging  
 27 conspiracy to artificially reduce reimbursements on "out of plan" claims by policy holders through  
 28

1 the use of the fraudulent Ingenix database;

2 c) *In re Comcast Peer to Peer (P2P) Transmission Contract Litigation*, Case  
3 No. 2:08-md-01992 (E.D. Pa.): Named Class Counsel in class action against Comcast for alleged  
4 breach of contract and false advertising arising from interference with subscribers' use of peer to  
5 peer file sharing applications; obtained \$16 million settlement for the class;

6 d) *CEH v. Bristol-Meyers Squibb Co.*, Case No. 307981 (San Francisco  
7 County Super. Ct.); *Johnson v. Bristol-Meyers Squibb Co.*, Case No. 308872 (San Francisco  
8 County Super. Ct.): Counsel for plaintiffs in consolidated cases against manufacturers and  
9 retailers of topical skin care products such as diaper rash ointments containing lead and cadmium;  
10 plaintiffs' case included class action claims against defendants for falsely advertising the attributes  
11 of their products;

12 e) *In re Kava Kava Litigation*, Case No. BC269717 (Los Angeles County  
13 Super. Ct.): Co-counsel for plaintiffs in class and private attorney general action for false  
14 advertising on behalf of purchasers of dietary supplements containing Kava-Kava root;

15 f) *Jones v. Microsoft Corporation*, Case No. 405657 (San Francisco County  
16 Super. Ct.): Co-counsel for plaintiff in class and private attorney general action for false  
17 advertising on behalf of purchasers of Microsoft's Office software;

18 g) *In re TCPA Cases*, Case No. JCCP 4350 (Los Angeles County Super. Ct.):  
19 Counsel for plaintiffs in class action on behalf of recipients of unsolicited fax advertisements;

20 h) *Foundation Aiding the Elderly, et al. v. Covenant Care, GranCare, and*  
21 *Ember Care*, Case Nos. RG03087211, RG03083528, and RG03087224 (Alameda County Super.  
22 Ct.): Co-counsel for plaintiffs in class and private attorney general action on behalf of residents of  
23 understaffed nursing homes; plaintiffs' cases included false advertising claims based on  
24 defendants' failure to disclose that their nursing homes are not adequately staffed;

25 i) *In re Automobile Advertising Cases*, Case No. JCCP 4149 (San Francisco  
26 County Super. Ct.): Counsel for plaintiff in private attorney general action for false advertising on  
27 behalf of automobile consumers;

j) *Lombardi v. Stompsoft, Inc.*, Case No. 04CC08816 (Orange County Super. Ct.): Counsel for plaintiff in class action alleging claims for false advertising of computer software;

k) *In re Tobacco Cases II*, Case No. JCCP 4042 (San Diego County Super. Ct.): Counsel for City of San Jose in action alleging claims under Proposition 65 and Unfair Competition Law for failure to warn regarding dangers of second hand smoke exposure;

l) *Dowhal v. Amazon.com, et al.*, Case No. 03-417080 (San Francisco County Super. Ct.): Counsel for plaintiff in class and private attorney general action for false advertising on behalf of purchasers of inkjet printers;

m) *Robins v. US Airways, Inc.*, Case No. CGC-07-460373 (San Francisco County Super. Ct.): Appointed Class Counsel in class action alleging breach of contract on behalf of internet customers;

n) *Gardner v. Chase Bank USA, N.A.*, Case No. SCV 242322 (Sonoma County Super. Ct.): Counsel for plaintiff in class case alleging national bank's violations of state and federal fair debt collection laws in connection with outstanding consumer credit card debt;

o) *Dervaes v. California Physicians' Service*, Case No. RG-06262733 (Alameda County Super. Ct.): Counsel for plaintiff in class case challenging health insurer's unilateral mid-year increase to calendar-year costs.

Attached hereto as Exhibit 3 is a true and correct copy of LLG's firm resume.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on August 22, 2013, at San Francisco, California.

/s/ Mark N. Todzo

MARK N. TODZO

# **Exhibit 1**

1 LEXINGTON LAW GROUP  
Mark N. Todzo (State Bar No. 168389)  
2 Howard Hirsch (State Bar No. 213209)  
503 Divisadero Street  
3 San Francisco, CA 94117  
Telephone: (415) 913-7800  
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6 Attorneys for Plaintiffs ANDREA GOLLOHER, MARISA  
FREEMAN, ROBERTA CHASE, JAMES HANKS,  
7 MICHAEL SHAPIRO, BRENDA BROWN, GRETCHEN  
SWENSON, CRYSTAL KENNY, KELLY BOTTARI,  
8 RENEE CONOVER, and SHANISHA SANDERS

9 COWAN, LIEBOWITZ & LATMAN  
Kieran G. Doyle (Admitted *Pro Hoc Vice*)  
10 Eric J. Shimanoff (Admitted *Pro Hoc Vice*)  
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13 ejs@cll.com

14 Attorneys for Defendant TODD CHRISTOPHER  
INTERNATIONAL, INC. DBA VOGUE INTERNATIONAL  
15

16 **UNITED STATES DISTRICT COURT**  
17 **NORTHERN DISTRICT OF CALIFORNIA**  
18

19 ANDREA GOLLOHER, MARISA  
FREEMAN, ROBERTA CHASE, JAMES  
20 HANKS, MICHAEL SHAPIRO, BRENDA  
BROWN, GRETCHEN SWENSON,  
21 CRYSTAL KENNY, KELLY BOTTARI,  
RENEE CONOVER, and SHANISHA  
22 SANDERS, on behalf of themselves and all  
others similarly situated,

23 Plaintiffs,

24 v.

25 TODD CHRISTOPHER INTERNATIONAL,  
INC. DBA VOGUE INTERNATIONAL, a  
26 Florida Corporation, and DOES 1-100,

27 Defendant.  
28

Case No. C 12-06002-RS

CLASS ACTION

**STIPULATION OF SETTLEMENT**

CLASS ACTION  
STIPULATION OF SETTLEMENT  
CASE NO. C 12-06002-RS

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1 This Stipulation of Settlement is made and entered into by Plaintiffs Andrea Golloher,  
 2 Marisa Freeman, Roberta Chase, Michael Shapiro, Brenda Brown, James Hanks, Gretchen  
 3 Swenson, Shanisha Sanders, Crystal Kenny, Kelly Bottari and Rennee Conover on behalf of  
 4 themselves and all others similarly situated, and Defendant Todd Christopher International, Inc.  
 5 d/b/a Vogue International.

6 **I. DEFINITIONS**

7 A. As used in this Stipulation, the following capitalized terms have the meanings  
 8 specified below:

9 1. “Action” means the case entitled *Golloher v. Todd Christopher*  
 10 *International, Inc.* filed in the California Superior Court for the County of Alameda and removed  
 11 to the United States District Court for the Northern District of California and assigned Case No. C  
 12 12-06002 RS.

13 2. “Approved Claim(s)” means the claims approved by the Claim  
 14 Administrator according to the claims criteria in Exhibit A.

15 3. “Challenged Products” shall mean any and all Organix® brand hair care  
 16 and skin care products sold during the Class Period.

17 4. “Claim Administrator” means the independent company agreed upon by  
 18 the Parties to provide the Class and Publication Notice and administer the claims process. The  
 19 Parties agree that Heffler Claims Group will be retained as the Claim Administrator.

20 5. “Claims Administration Protocols” means the protocols set forth in  
 21 attached Exhibit A.

22 6. “Claims Cost Estimate” is the Claim Administrator’s good faith best  
 23 estimate of all the expenses to be incurred in the claims process.

24 7. “Claim Form” means the form that is substantially in the form of Exhibit F  
 25 hereto.

26 8. “Claim Fund” means the \$6.5 million to be paid by Defendant to be used  
 27 for payment of the following: (1) Class Members’ claims; (2) notice and administration costs,  
 28 including expenses related to maintaining the Claim Fund (such as taxes that may be owed by the

1 Claim Fund), if any; (3) attorneys' fees and costs; and (4) incentive awards to Plaintiffs. The  
2 Claim Fund shall be administered by the Claim Administrator.

3 9. "Claim Fund Balance" means the balance in the Claim Fund at the end of  
4 the Claim Review Period, consisting of the \$6.5 million paid into the Claim Fund minus: (i) up to  
5 \$650,000 for notice and administration costs, including expenses related to maintaining the Claim  
6 Fund (such as taxes that may be owed by the Claim Fund), if any; (ii) attorneys' fees and costs;  
7 and (iii) incentive awards to Plaintiffs.

8 10. "Claim Review Period" means the three-month period beginning no later  
9 than 10 days after the Effective Date.

10 11. "Claim Submission Period" means the period beginning on the date notice  
11 to the Class is first published, and continuing until 10 days prior to the date of the Final Approval  
12 Hearing.

13 12. "Class" and/or "Class Members" means all individuals in the United States  
14 who purchased the Challenged Products within the Class Period. Specifically excluded from the  
15 Class are (a) Defendant, (b) the officers, directors, or employees of Defendant and their  
16 immediate family members, (c) any entity in which Defendant has a controlling interest, (d) any  
17 affiliate, legal representative, heir, or assign of Defendant, (e) all federal court judges who have  
18 presided over this Action and their immediate family members; (f) all persons who submit a valid  
19 request for exclusion from the Class; and (g) those who purchased the Challenged Products for  
20 the purpose of resale.

21 13. "Class Counsel" means the Lexington Law Group.

22 14. "Class Notice" means the "Notice of Class Action Settlement"  
23 substantially in the same form as Exhibit E attached hereto.

24 15. "Class Notice Package" means the information as approved in form and  
25 content by Class Counsel and Defendant's Counsel and to be approved by the Court. Class  
26 Notice Packages will include (a) the Class Notice, and (b) the Claim Form.

27 16. "Class Period" is from October 25, 2008 to the date notice to the Class is  
28 first published.



1                   17.     “Complaints” means the Complaint filed in this matter on October 25,  
2     2012 and the First Amended Complaint filed in this matter on August 9, 2013.

3                   18.     “Court” means the United States District Court for the Northern District of  
4     California.

5                   19.     “Covered Products” mean hair care and skin care products sold under the  
6     Organix® brand name.

7                   20.     “Defendant” means Todd Christopher International, Inc. d/b/a Vogue  
8     International, also referred to herein as “Vogue.”

9                   21.     “Defendant’s Counsel” or “Vogue’s Counsel” means the law firm of  
10    Cowan, Liebowitz & Latman, P.C..

11                  22.     “Distribution Plan” means a written final accounting and plan of  
12    distribution prepared by the Claim Administrator, identifying (a) each claimant whose claim was  
13    approved, including the dollar amount of the payment awarded to each such claimant, and the  
14    dollar amount of any pro rata reduction required by Section III.B.4; (b) each claimant whose  
15    claim was rejected; (c) the dollar amount of the Claim Fund Balance to be disbursed to the  
16    recipient(s) selected by the Court as provided in Section III.B.3; and (d) a final accounting of all  
17    administration fees and expenses incurred by the Claim Administrator.

18                  23.     “Effective Date” means the date described in Section VII.A.

19                  24.     “Escrow Agent” means the Claim Administrator.

20                  25.     “Final Approval Hearing” means the hearing to be held by the Court to  
21    consider and determine whether the proposed settlement of the Action as contained in this  
22    Stipulation should be approved as fair, reasonable, and adequate, and whether the Final  
23    Settlement Order and Judgment approving the settlement contained in this Stipulation should be  
24    entered.

25                  26.     “Final Settlement Order and Judgment” means an order and judgment  
26    entered by the Court:

27                         (a)     Giving final approval to the terms of this Stipulation as fair,  
28    adequate, and reasonable;

(b) Providing for the orderly performance and enforcement of the terms and conditions of the Stipulation;

(c) Dismissing the Action with prejudice;

(d) Discharging the Released Parties of and from all further liability for the Released Claims to the Releasing Parties; and

(e) Permanently barring and enjoining the Releasing Parties from instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of them, or in any other capacity of any kind whatsoever, any action in any state court, any federal court, before any regulatory authority, or in any other tribunal, forum, or proceeding of any kind, against the Released Parties that asserts any Released Claims that would be released and discharged upon final approval of the Settlement as provided in Sections IV.A and B of this Stipulation.

(f) The actual form of the Final Settlement Order and Judgment entered by the Court may include additional provisions as the Court may direct that are not inconsistent with this Stipulation, and will be substantially in the form attached hereto as Exhibit G.

27. “Notice Plan” or “Notice Program” means the plan for dissemination of the Publication Notice and Class Notice Package as described in Section VI.

28. “Parties” means Plaintiffs and Defendant.

29. “Plaintiff” or “Plaintiffs” means Andrea Golloher, Marisa Freeman, Roberta Chase, Michael Shapiro, Brenda Brown, James Hanks, Gretchen Swenson, Shanisha Sanders, Crystal Kenny, Kelly Bottari and Rennee Conover.

30. “Preliminary Approval Order” means the “Order re: Preliminary Approval of Class Action Settlement,” substantially in the form of Exhibit B.

31. “Publication Notice” means information as approved in form and content by Class Counsel and Defendant’s Counsel and to be approved by the Court, substantially in the form of Exhibit C.

32. “Rejected Claims” means all claims rejected according to the claims criteria in Exhibit A.

33. “Released Parties” means Defendant and each of its parent, affiliated and subsidiary companies, manufacturers, suppliers, fillers, public relations and advertising consultants, account representatives, brokers, wholesalers, customers, dealers, franchises, licensors, licensees, distributors and retailers, and all of their agents, employees, partners, parent, affiliated and subsidiary companies, representatives, shareholders, owners, members, joint ventures, predecessors, successors, assigns, insurers, attorneys, officers, and directors. It is expressly understood that, to the extent a Released Party is not a Party to this Stipulation, all such Released Parties are intended third-party beneficiaries of this Stipulation.

34. “Releasing Parties” means Plaintiffs, individually and as representatives of all those similarly situated, and the Class Members who do not exclude themselves pursuant to Section VI.D.

35. “Settlement Website” means the website located at [www.\\_\\_\\_\\_\\_.com](http://www._____.com) established by the Claim Administrator that will contain documents relevant to the settlement, including the Class Notice Package in Spanish and English. Claim Forms may be submitted by Class Members via the Settlement Website.

36. “Stipulation of Settlement” and/or “Stipulation” means this Stipulation of Settlement, including its attached exhibits (which are incorporated herein by reference), duly executed by Plaintiffs, Class Counsel, Defendant and Defendant’s Counsel.

B. Capitalized terms used in this Stipulation, but not defined above, shall have the meaning ascribed to them in this Stipulation and the exhibits attached hereto.

## **II. RECITALS**

A. On October 25, 2012, Plaintiffs Andrea Golloher, Marisa Freeman, Roberta Chase, Michael Shapiro, and Brenda Brown, on behalf of themselves and all other similarly situated persons, filed their initial complaint in the Superior Court of California, Alameda County, *Gollogher v. Todd Christopher International, Inc.*, Alameda County Superior Court Case No. RG 12-653621. On November 28, 2012, Defendant filed the Notice of Removal to Federal Court,

1 based on this Court's subject matter jurisdiction pursuant to 28 U.S.C. § 1332, as amended by the  
 2 Class Action Fairness Act of 2005. Plaintiffs' original complaint alleged claims for injunctive  
 3 and monetary relief on behalf of a class of similarly situated consumers who purchased Vogue's  
 4 Organix branded hair care and skin care products based on purported representations that such  
 5 products were "organic" when they were allegedly comprised primarily of non-organic  
 6 ingredients. Specifically, Plaintiffs' complaint alleged that Vogue misleadingly used the name  
 7 "Organix" and the word "organic" on the labeling and advertising of Organix products.  
 8 Plaintiffs' original complaint sought relief on behalf of proposed Classes of purchasers of the  
 9 Organix Products in California, New York, Hawaii and Washington pursuant to the consumer  
 10 protection and false advertising laws of those states. *See* Cal. Bus. & Prof. Code § 17200, *et seq.*;  
 11 Cal. Civil Code § 1750, *et seq.*; N.Y. Gen. Bus. Law § 349; Haw. Rev. Stat. §§ 480-2, 480-13(b)  
 12 and (c); and Revised Washington Code §§ 19.86.020, 19.86.023 and 19.86.090. Plaintiffs also  
 13 sought relief on behalf of a proposed Class of purchasers of the Organix products in California,  
 14 New York, Florida, New Jersey, Ohio, Washington, Texas and Hawaii pursuant to the express  
 15 warranty laws of those states. Plaintiffs' claims under California law included a claim that  
 16 Defendant violated the unlawful prong of California's Unfair Competition Law ("UCL"), Cal.  
 17 Bus. & Prof. Code §§ 17200 *et seq.*, by allegedly violating the California Organic Products Act's  
 18 ("COPA") restrictions on selling, labeling, or representing cosmetic products "as organic or made  
 19 with organic ingredients" unless the products contain a minimum of 70% organically produced  
 20 ingredients, Cal. Health & Safety Code §§ 110838 *et seq.* Class Counsel confirm that before  
 21 commencing the Action, they conducted an examination and evaluation of the relevant law and  
 22 facts to assess the merits of the claims and to determine how to best serve the interests of the  
 23 members of the Class.

24 B. Prior to the time Plaintiffs filed the instant action, on June 16, 2011, Defendant  
 25 was named in an action brought by the Center for Environmental ("CEH") entitled *Center for*  
 26 *Environmental Health v. Advantage Research Laboratories, Inc., et al.*, Case No. RG 11-580876,  
 27 Superior Court of the State of California, County of Alameda (the "CEH Action"). The CEH  
 28 Action was filed by CEH pursuant to COPA's private attorney general provision, Cal. Health &

1 Safety Code §§ 111910(a), which authorizes any person to sue to enjoin alleged violations of  
2 COPA. On September 13, 2012, the Hon. Steven Brick approved a Consent Judgment between  
3 CEH and Vogue in the CEH Action (the “CEH Consent Judgment”). The CEH Consent  
4 Judgment includes injunctive relief placing restrictions on Vogue’s use of the “Organix” brand  
5 and the word “organic” on its products’ labeling, advertising and marketing materials in  
6 California.

7 C. On December 12, 2012, Defendant filed a motion in the instant action to transfer  
8 venue pursuant to 28 U.S.C. § 1404(a) to the Middle District of Florida. On February 8, 2013,  
9 the Court denied Defendant’s motion.

10 D. On March 1, 2013, Defendant filed motions in the instant action to: (1) dismiss  
11 Plaintiffs’ claims for breach of express warranty under the laws of the four states in which the  
12 named Plaintiffs neither lived nor purchased Vogue’s products; (2) dismiss Plaintiffs’ claims for  
13 injunctive relief in California under the doctrine of res judicata in light of the CEH Consent  
14 Judgment and (3) stay the case under the doctrine of primary jurisdiction pending federal  
15 regulatory action for organic cosmetics. At oral argument on April 18, 2013, Judge Seeborg  
16 stated that he intended to grant the motions to dismiss but not the motion to stay. These motions  
17 still were under submission at the time the Parties reached this Stipulation of Settlement.

18 E. On July 22, 2013, Plaintiffs Kelly Bottari, Renee Conover, James Hanks, Crystal  
19 Kenny, Shanisha Sanders and Gretchen Swenson sent a letter notifying Defendant of their intent  
20 to pursue consumer protection and express warranty claims set forth in the First Amended  
21 Complaint based on Plaintiffs’ allegations that Defendant misrepresented the organic nature of  
22 the products.

23 F. Prior to and since the commencement of this action, the Parties have engaged in  
24 lengthy and comprehensive settlement discussions, culminating in an all-day in person mediation  
25 before mediator Randall W. Wulff in Oakland, California on July 30, 2013. Through these  
26 discussions, and through substantial written discovery and documentary production, Defendant  
27 has provided Plaintiffs with extensive information about the facts at issue. Based upon Plaintiffs’  
28 investigation and evaluation of the facts and law relating to the matters alleged in the pleadings,

1 Plaintiffs and Class Counsel agreed to settle the Action pursuant to the provisions of this  
 2 Stipulation after considering, among other things: (1) the substantial benefits available to the  
 3 Class under the terms of this Stipulation; (2) the attendant risks and uncertainty of litigation,  
 4 especially in complex actions such as this, as well as the difficulties and delays inherent in such  
 5 litigation; and (3) the desirability of consummating this Stipulation promptly to provide effective  
 6 relief to Plaintiffs and the Class

7 G. On August 9, 2013, upon stipulation of the parties wherein Defendant reserved all  
 8 rights and objections, Plaintiffs filed a First Amended Complaint adding Kelly Bottari, Renee  
 9 Conover, James Hanks, Crystal Kenny, Shanisha Sanders and Gretchen Swenson as class  
 10 representatives, and alleging claims on behalf of a nationwide class under the consumer  
 11 protection, express warranty and unjust enrichment laws of all 50 states and the District of  
 12 Columbia.

13 H. Defendant has denied and continues to deny each and all of the claims and  
 14 contentions alleged by Plaintiffs in the Complaints and otherwise. Defendant has expressly  
 15 denied and continues to deny all charges of wrongdoing or liability against it arising out of any of  
 16 the conduct, labels, statements, acts or omissions alleged, or that could have been alleged, in the  
 17 Action and states that its advertising and marketing of the Organix products was not false or  
 18 misleading.

19 I. Nonetheless, Defendant has concluded that further defense of the Action would be  
 20 protracted and expensive, and that it is desirable that the Action be fully and finally settled in the  
 21 manner and upon the terms and conditions set forth in the Stipulation. Defendant also has taken  
 22 into account the uncertainty and risks inherent in any litigation. Defendant, therefore, has  
 23 determined that it is desirable and beneficial to it that the Action be settled in the manner and  
 24 upon the terms and conditions set forth in the Stipulation.

### 25 **III. SETTLEMENT RELIEF**

26 In consideration of the covenants set forth herein, the Parties agree as follows:

#### 27 **A. Injunctive Relief**

28 1. On or after July 1, 2015, or 2 months after the Effective Date (whichever is

1 later) (hereinafter the “Compliance Date”), Vogue shall not manufacture or cause to be  
 2 manufactured any hair care and skin care products under the Organix brand name unless such  
 3 product contains at least seventy (70%) percent organically produced ingredients, excluding water  
 4 and salt;

5 2. By way of example, but not limitation, Vogue may at any time  
 6 manufacture or cause to be manufactured products containing less than seventy (70%) percent  
 7 organically produced ingredients, excluding water and salt, under the trademark “OGX” and the  
 8 Class Members consent to such use of the trademark OGX and agree that use of the OGX  
 9 trademark by Vogue will not violate COPA or any other federal, state or local statute or  
 10 regulation including, but not limited to, those set forth in the Complaints filed in the Action.

11 3. Within 30 days following the Effective Date, Vogue shall not use the word  
 12 “organic” to promote the sale of any hair care and skin care product unless such product contains  
 13 at least seventy (70%) percent organically produced ingredients, excluding water and salt. For  
 14 purposes of this agreement, “promote the sale of any hair care and skin care product” does not  
 15 include:

16 (a) any explanation of Vogue’s discontinuance of the Organix brand  
 17 name;

18 (b) truthfully responding to any inquiries about the organic content of  
 19 Vogue’s hair care and skin care products, including through the “Frequently Asked Questions”  
 20 section of its website;

21 (c) truthfully describing the organic content of Vogue’s hair care and  
 22 skin care products in direct communications that are not intended for public dissemination;

23 (d) identifying the organic content of the product on the Information  
 24 Panel in accordance with the California Organic Products Act, which at present calls for the  
 25 following:

- (1) Identifying each organic ingredient in the ingredient statement either with the word “organic” or with an asterisk or other reference mark that is defined below the ingredient statement to indicate that such ingredient is organically produced; and/or
- (2) Displaying the total percentage of organic contents on the Informational Panel of the product.

4. The changes described in this Section III.A. only apply prospectively. Vogue does not agree to, and is not required to, recall products and, except as set forth in III.A.3 above, does not agree to alter labels or packaging on products manufactured prior to July 1, 2015.

5. Nothing herein shall be interpreted as precluding Vogue from using the phrase “formerly ORGANIX” on or in connection with Products manufactured prior to the Compliance Date.

**B. Monetary Relief**

Vogue primarily sells the Challenged Products to distributors, wholesalers and retailers, not directly to consumers, and thus has no way to identify all individual Class Members. Additionally, an individual Class Member’s recovery may be too small to make traditional methods of proof economically feasible. In order to assure that Class Members have access to the proceeds of this settlement, a Claim Fund is proposed to be established and administered as follows:

1. Vogue shall pay \$6,500,000 to the Escrow Agent for payment of Class Member claims, attorneys’ fees and costs in accordance with Section VIII.A below, Plaintiffs’ incentive awards in accordance with Section VIII.B below, and for the payment of certain notice and administration costs and expenses, on the following schedule:

(a) Within 10 days after the Court’s order granting Preliminary Approval, Vogue shall pay \$650,000 of the Claim Fund to the Escrow Agent to cover any notice and/or administration costs to be borne by the Claim Administrator and any Escrow Agent fees.



1 (b) Within 30 days after the Effective Date, Vogue shall pay the  
2 remaining \$5,850,000 of the Claim Fund to the Escrow Agent.

3 (c) The Escrow Agent will release funds only upon the express written  
4 consent of Class Counsel and Vogue's Counsel.

5 2. The Claim Fund shall be applied as follows:

6 (a) To reimburse or pay up to, but not to exceed, \$650,000 of the total  
7 costs reasonably and actually incurred by the Claim Administrator in connection with providing  
8 notice and administering claims submitted by the Class and pay for expenses associated with  
9 maintaining the Claim Fund (including taxes that may be owed by the Claim Fund);

10 (b) To pay attorneys' fees and costs of up to \$1,625,000 in accordance  
11 with Section VIII.A;

12 (c) To pay incentive awards to Plaintiffs in accordance with Section  
13 VIII.B; and

14 (d) To distribute to Class Members who submit Approved Claims to  
15 the Claim Administrator.

16 3. If the amounts to be paid from the Claim Fund under Section III.B.2(d) do  
17 not equal or exceed the Claim Fund Balance, the remainder shall be equally distributed to  
18 Consumers Union and the Center for Food Safety.

19 4. If the amounts to be paid from the Claim Fund under Section III.B.2(d)  
20 exceed the Claim Fund Balance, all Approved Claims will be reduced pro rata, based on the  
21 respective dollar amounts of the Approved Claims until the total aggregate of Approved Claims  
22 equals the Claim Fund Balance.

23 5. Class Members shall have the opportunity to submit a claim to the Claim  
24 Administrator during the Claim Submission Period. Class Members must fill out a Claim Form  
25 substantially in the form of Exhibit F and submit it as described in Exhibits C, E and F. Class  
26 Members will submit the Claim Form under penalty of perjury and must specify the number of  
27 the Challenged Products purchased during the Class Period. Class Members who properly and  
28

1 timely submit the Claim Form are eligible to receive \$4.00 for each of the Challenged Products  
2 purchased up to a total of \$28.00 per Class Member.

3 6. The claim process will be administered by a Claim Administrator,  
4 according to the criteria set forth in the Claim Administration Protocols attached hereto as Exhibit  
5 A, and neither Class Counsel nor Vogue shall participate in resolution of such claims.

6 7. All expenses of the Claim Administrator shall be paid as provided in  
7 Section III.B.2(a).

8 8. The Claim Administrator shall approve or reject all claims according to the  
9 claims criteria in Exhibit A. The determination of claims shall occur during the Claim Review  
10 Period. The decision of the Claim Administrator shall be final and binding on Vogue and all  
11 Class Members submitting Claims, and neither Vogue nor such Class Members shall have the  
12 right to challenge or appeal the Claim Administrator's decision.

13 9. Within 10 days after conclusion of the Claim Review Period, the Claim  
14 Administrator shall provide to Vogue and Class Counsel the Distribution Plan. No sooner than  
15 20 days, but not later than 45, days after delivering the Distribution Plan, the Claim Administrator  
16 shall disburse the remaining amounts in the Claim Fund according to the Distribution Plan and  
17 mail letters to all claimants with Rejected Claims explaining the rejection. In no event shall a  
18 Class Member's claim be paid until the conclusion of the Claim Review Period.

19 10. If any distribution checks mailed to Class Members are returned as  
20 non-deliverable, or are not cashed within 180 days, or are otherwise not payable, any such funds  
21 shall be returned to the Claim Fund for distribution in accordance with Section III.B.2. and III.B.3.

#### 22 **IV. RELEASES**

23 A. As of the Effective Date, in consideration of the settlement obligations set forth  
24 herein, any and all claims, demands, rights, causes of action, suits, petitions, complaints, damages  
25 of any kind, liabilities, debts, punitive or statutory damages, penalties, losses and issues of any  
26 kind or nature whatsoever, asserted or unasserted, known or unknown (including, but not limited  
27 to, any and all claims relating to or alleging deceptive or unfair business practices, false or  
28 misleading advertising, intentional or negligent misrepresentation, negligence, concealment,

omission, unfair competition, promise without intent to perform, unsuitability, unjust enrichment, and any and all claims or causes of action arising under or based upon any statute, act, ordinance, or regulation governing or applying to business practices generally, including, but not limited to, any and all claims relating to or alleging violations of the following: Alabama's Deceptive Trade Practices Act, Ala. Code § 8-19-1, *et seq.*; Alaska's Unfair Trade Practices and Consumer Protection Act, Alaska Stat. § 45.50.471, *et seq.*; Arizona's Consumer Fraud Act, Ariz. Rev. Stat. Ann. § 44-1521, *et seq.*; Arkansas's Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101, *et seq.*; California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, and Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, 1770, *et seq.*; Colorado's Consumer Protection Act, Colo. Rev. Stat. § 61-1-101, *et seq.*; Connecticut's Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a, *et seq.*; Delaware's Consumer Fraud Act, Del. Code Ann. tit. 6, § 2511, *et seq.*, and Deceptive Trade Practices Act, Del. Code Ann. tit. 6, § 2531, *et seq.*; the District of Columbia's Consumer Protection Act, D.C. Code § 28-3901, *et seq.*; Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.*; Georgia's Fair Business Practices Act, Ga. Code Ann. § 10-1-390, *et seq.*; Hawaii's Deceptive Practices Act, Haw. Rev. Stat. § 480-1, *et seq.*; Idaho's Consumer Protection Act, Idaho Code Ann. § 48-601, *et seq.*; Illinois's Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. § 505/1, *et seq.*, and Uniform Deceptive Trade Practices Act, 815 Ill. Comp. Stat. § 510/1, *et seq.*; Indiana's Deceptive Consumer Sales Act, Ind. Code Ann. § 24-5-0.5-1, *et seq.*; Iowa's Consumer Fraud Act, Iowa Code § 714.16; Kansas's Consumer Protection Act, Kan. Stat. Ann. § 50-623, *et seq.*; Kentucky's Consumer Protection Act, Ky. Rev. Stat. Ann. § 367.110, *et seq.*; Louisiana's Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § 51:1401, *et seq.*; Maine's Unfair Trade Practices Act, Me. Rev. Stat. tit. 5, § 205-A, *et seq.*, and Deceptive Trade Practices Act, Me. Rev. Stat. tit. 10, § 1211, *et seq.*; Maryland's Consumer Protection Act, Md. Code Ann. Com. Law § 13-101, *et seq.*; Massachusetts's Consumer Protection Act, Mass. Gen. Laws ch. 93A, § 1, *et seq.*; Michigan's Consumer Protection Act, Mich. Comp. Laws § 445.901, *et seq.*; Minnesota's Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, *et seq.*, and Unlawful Trade Practices law, Minn. Stat. § 325D.09, *et seq.*; Mississippi's Consumer Protection Act,

1 Miss. Code Ann. § 75-24-1, *et seq.*; Missouri's Merchandising Practices Act, Mo. Rev. Stat. §  
 2 407.010, *et seq.*; Montana's Unfair Trade Practices and Consumer Protection Act, Mont. Code.  
 3 Ann. § 30-14-103, *et seq.*, and § 30-14-201, *et seq.*; Nebraska's Consumer Protection Act, Neb.  
 4 Rev. Stat. § 59-1601, *et seq.*, and Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-  
 5 302, *et seq.*; Nevada's Deceptive Trade Practices Act, Nev. Rev. Stat. Ann. § 598.0903, *et seq.*,  
 6 and Nev. Rev. Stat. Ann. § 41.600; New Hampshire's Regulation of Business Practices for  
 7 Consumer Protection, N.H. Rev. Stat. Ann. § 358-A:1, *et seq.*; New Jersey's Consumer Fraud  
 8 Act, N.J. Stat. Ann. § 56:8-1, *et seq.*; New Mexico's Unfair Practices Act, N.M. Stat. Ann. § 57-  
 9 12-1, *et seq.*; New York's Deceptive Practices Act, N.Y. Gen. Bus. Law § 349; North Carolina's  
 10 Unfair Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*; North Dakota's Unlawful  
 11 Sales or Advertising Practices Law, N.D. Cent. Code § 51-15-01, *et seq.*; Oklahoma's Consumer  
 12 Protection Act, Okla. Stat. tit. 15, § 751, *et seq.*, and Deceptive Trade Practices Act, Okla. Stat.  
 13 tit. 78, § 51, *et seq.*; Ohio's Consumer Sales Practices Act, Ohio Rev. Code Ann. § 1345.01, *et*  
 14 *seq.*; Oregon's Unlawful Trade Practices Act, Or. Rev. Stat. § 646.605, *et seq.*; Pennsylvania's  
 15 Unfair Trade Practices and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-1, *et seq.*; Rhode  
 16 Island's Deceptive Trade Practices Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*; South Carolina's  
 17 Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*; South Dakota's Deceptive Trade  
 18 Practices and Consumer Protection Act, S.D. Codified Laws § 37-24-1, *et seq.*; Tennessee  
 19 Consumer Protection Act, Tenn. Code Ann. § 47-18-101, *et seq.*; Texas's Deceptive Trade  
 20 Practices Consumer Protection Act, Tex. Bus. & Com. Code Ann. § 17.41, *et seq.*; Utah's  
 21 Consumer Sales Practices Act, Utah Code Ann. § 13-11-1, *et seq.*, and Truth in Advertising Law,  
 22 Utah Code Ann. § 13-11a-1, *et seq.*; Vermont's Consumer Fraud Act, Vt. Stat. Ann. tit. 9 § 2451,  
 23 *et seq.*; Virginia's Consumer Protection Act, Va. Code Ann. § 59.1-198, *et seq.*; Washington's  
 24 Consumer Protection Act, Rev. Code Wash. § 19.86.010, *et seq.*; West Virginia's Consumer  
 25 Credit and Protection Act, W. Va. Code § 46A-1-101, *et seq.*; Wisconsin's Consumer Act, Wis.  
 26 Stat. § 421.101, *et seq.*; Wyoming's Consumer Protection Act, Wyo. Stat. Ann. § 40-12-101, *et*  
 27 *seq.* (or any and all other federal, state, and/or local statutes analogous or similar to the statutes  
 28 cited in any of the Complaints filed in this Action)), arising out of or related to the Action, that

1 were asserted or reasonably could have been asserted in the Action by or on behalf of all  
 2 Releasing Parties, whether individual, class, representative, legal, equitable, administrative, direct  
 3 or indirect, or any other type or in any other capacity, against any Released Party ("Released  
 4 Claims") shall be finally and irrevocably compromised, settled, released, and discharged with  
 5 prejudice. The Released Claims include any and all such claims related to the labeling,  
 6 packaging, advertising and marketing of the Covered Products manufactured prior to July 1, 2015  
 7 without regard to when such Covered Products were, or are in the future, purchased by Class  
 8 Members. The Releasing Parties further agree that compliance with the injunctive relief  
 9 provisions of ¶ III.A alleviate each and every alleged deficiency with regard to the labeling,  
 10 packaging, advertising and marketing of the Covered Products as set forth in the Complaints filed  
 11 in the Action.

12 B. Each of the Releasing Parties hereby waives any and all rights and benefits arising  
 13 out of the facts alleged in the Action by virtue of the provisions of California Civil Code  
 14 section 1542, or any other provision in the law of the United States or any state or territory of the  
 15 United States, or any principle of common law or equity that is similar, comparable, or equivalent  
 16 to Civil Code section 1542, with respect to this release. The Releasing Parties are aware that  
 17 Civil Code section 1542 provides as follows:

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

21 The Releasing Parties expressly acknowledge that they may hereafter discover facts in addition to  
 22 or different from those which they now know or believe to be true with respect to the subject  
 23 matter of the Released Claims, but the Releasing Parties, upon the Effective Date, shall be  
 24 deemed to have, and by operation of law shall have, fully, finally and forever settled, released,  
 25 and discharged any and all Released Claims, known or unknown, suspected or unsuspected,  
 26 whether or not concealed or hidden, that now exist or heretofore have existed upon any theory of  
 27 law or equity, including, but not limited to, Released Claims based on conduct that is negligent,  
 28 reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard

1 to the subsequent discovery or existence of such different or additional facts. The Parties agree  
2 that the Released Claims constitute a specific and not a general release.

3 C. The Releasing Parties shall be deemed to have agreed that the release set forth in  
4 Sections IV.A and B will be and may be raised as a complete defense to and will preclude any  
5 action or proceeding based on the Released Claims.

6 D. As of the Effective Date, by operation of entry of judgment, the Released Parties  
7 shall be deemed to have fully released and forever discharged Plaintiffs, all other Class Members  
8 and Class Counsel from any and all claims of abuse of process, malicious prosecution, or any  
9 other claims arising out of the initiation, prosecution, or resolution of the Action, including, but  
10 not limited to, claims for attorneys' fees, costs of suit or sanctions of any kind, or any claims  
11 arising out of the allocation or distribution of any of the consideration distributed pursuant to this  
12 Stipulation of Settlement.

### 13 **V. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

14 Solely for the purposes of the settlement of this Action, the Parties agree to the  
15 certification of a Class of all persons or entities in the United States who purchased the  
16 Challenged Products from October 25, 2008, to the date notice to the Class is first published.  
17 Plaintiffs shall make this request for certification to the Court. Class Counsel shall request that  
18 the Court enter an order that, among other things, certifies the national Class for settlement  
19 purposes as set forth in this paragraph. Vogue contends that certification of the alleged class  
20 (other than on a settlement basis) would not be possible absent this settlement because individual  
21 issues would predominate.

22 In the event this Stipulation of Settlement and the settlement proposed herein is not finally  
23 approved, or is terminated, canceled, or fails to become effective for any reason whatsoever, this  
24 class certification, to which the parties have stipulated solely for the purpose of the settlement of  
25 the Action, shall be null and void and the Parties will revert to their respective positions  
26 immediately prior to the execution of this Stipulation of Settlement. Under no circumstances may  
27 this Stipulation of Settlement be used as an admission or as evidence concerning the  
28 appropriateness of class certification in these or any other actions against Vogue.

**VI. CLASS NOTICE AND COURT APPROVAL**

**A. Notice Order; Preliminary Approval**

Within 30 days after the execution of the Stipulation of Settlement, the Parties shall apply to the Court for a Preliminary Approval Order substantially in the form and content of Exhibit B, conditionally certifying the Class for settlement purposes as defined in Section V, for preliminary approval of the settlement, for scheduling a final approval hearing, and for approving the contents and method of dissemination of the proposed Publication Notice and Class Notice Package.

**B. The Notice Program**

The notice program shall consist of notice by publication (the Publication Notice, Exhibit C) which generally describes the settlement and directs all interested parties to a detailed Class Notice available on the Settlement Website and, at the request of interested parties, by U.S. Mail. The Settlement Website will become active and available no later than 5 days after the Court enters the Preliminary Approval Order. Upon the close of the Claim Submission Period, the Settlement Website will be modified whereby the documents and information listed in paragraph 1 of the Notice Plan attached hereto as Exhibit D will be removed and replaced with (a) a Frequently Asked Questions section, the content of which is to be agreed to by Class Counsel and Vogue's Counsel and the purpose of which is to update those Class Members who have submitted Claim Forms of the Status of their Claims; and (b) information about how to contact the Claim Administrator via a toll-free telephone number, email and U.S. mail to enable those who have submitted Claim Forms to inquire as to the Status of their Claims. The Settlement Website will be permanently deactivated and made unavailable within 120 days following the Effective Date. Class Counsel shall also place a link to the Settlement Website on the website of the Lexington Law Group for a period starting from the date the Publication Notice is published, and continuing no longer than the end of the Claim Submission Period. The cost associated with the Publication Notice and Class Notice Package shall be paid from the Claim Fund as described in Section III.B.2(a), except those costs associated with posting and maintaining notice on Class Counsel's Internet websites.



1                   1.     Publication Notice

2                   Commencing no later than 30 days after the Court enters the Preliminary Approval Order  
3 or some other date set by the Court, the Claim Administrator shall cause to be published the  
4 Publication Notice substantially in the form and content of Exhibit C pursuant to the Notice Plan  
5 described in Exhibit D.

6                   2.     Class Notice Package

7                   The Class Notice Package shall be available in electronic format on the Settlement  
8 Website and mailed as a hard copy by the Claim Administrator upon request. Should the parties  
9 become aware, within the Claim Submission Period, of other pending litigation that concerns the  
10 Covered Products, they will notify Vogue and Vogue shall direct the Claim Administrator to mail  
11 the Class Notice Package to counsel for the plaintiff(s) in such pending litigation. Each Class  
12 Notice Package shall contain a Class Notice substantially in the form of Exhibit E and the Claim  
13 Form substantially in the form of Exhibit F and shall be made available in Spanish and English.

14                  3.     Notice of Deadlines

15                  Both the Publication Notice and the Class Notice shall inform Class Members of the dates  
16 by which they must file any objections, requests for exclusions, and submit a Claim Form. Class  
17 Members must file any objections, notices of intent to appear at the Final Approval Hearing, or  
18 submit exclusion requests no later than 50 days prior to the Final Approval Hearing. Class  
19 Members will have the opportunity to submit a Claim Form during the period beginning on the  
20 date notice to the Class is first published and continuing until 10 days prior to the date of the Final  
21 Approval Hearing.

22                  C.     Final Approval Hearing

23                  The Parties shall request that, after notice is given, but no earlier than 120 days after the  
24 Publication Notice is first published, the Court: hold a Final Approval Hearing for the purpose of  
25 determining whether final approval of the settlement of the Action as set forth herein is fair,  
26 adequate, and reasonable to the Class Members; and enter a Final Settlement Order and Judgment  
27 dismissing the Action with prejudice substantially in the form and content of Exhibit G.  
28



1           D.     Requests for Exclusion

2           If, prior to the Final Approval Hearing, the number of putative Class Members who timely  
 3 request exclusion from the class in accordance with the provisions of the Preliminary Approval  
 4 Order exceeds 500, Vogue shall have the right, but not the obligation, to terminate this Stipulation  
 5 of Settlement or to seek appropriate modifications to this Stipulation of Settlement that  
 6 adequately protect the Parties. All Requests for Exclusion must be in writing and mailed to the  
 7 Claim Administrator. Copies of all Requests for Exclusion received by the Claim Administrator,  
 8 together with copies of all written revocations of Requests for Exclusion received, shall be  
 9 delivered to the Parties' counsel no later than 10 days after the Class Members' deadline to  
 10 submit such exclusion requests, or at such other time as the Parties may mutually agree in writing.

11           E.     Parties' Duty to Defend

12           From the date of execution of this Stipulation, the Parties, via Class Counsel and  
 13 Defendant's Counsel, shall take all reasonable steps to defend the terms of this Stipulation as fair,  
 14 reasonable, and adequate, shall defend the proposed Class as meeting the requirements of Federal  
 15 Rule of Civil Procedure 23 as applied to proposed settlement class, and shall defend the notice  
 16 program set forth in the Stipulation as meeting the requirements of Federal Rule of Civil  
 17 Procedure 23 and giving the best and most reasonable notice practicable under the circumstances.

18     **VII.    CONDITIONS; TERMINATION**

19           A.     This Settlement shall become final on the first date after which all of the following  
 20 events and conditions have been met or have occurred (the "Effective Date"):

- 21                   1.     The Court has preliminarily approved this Stipulation (including all  
 22 attachments), the settlement set forth herein, and the method for providing notice to the Class;
- 23                   2.     The Court has entered a Final Settlement Order and Judgment in the  
 24 Action; and
- 25                   3.     One of the following has occurred:  
 26                           (a)    The time to appeal from such orders has expired and no appeals  
 27 have been timely filed;

(b) If any such appeal has been filed, it has finally been resolved and the appeal has resulted in an affirmation of the Final Settlement Order and Judgment; or

(c) The Court, following the resolution of any such appeals, has entered a further order or orders approving the Settlement of the Action on the terms set forth in this Stipulation of Settlement, and either no further appeal has been taken from such order(s) or any such appeal has resulted in affirmation of such order(s).

B. If the Settlement is not made final (per the provisions of Section VII.A), this entire Stipulation shall become null and void as set forth in Section V, except that the Parties shall have the option to agree in writing to waive the event or condition and proceed with this settlement, in which event the Stipulation of Settlement shall be deemed to have become final on the date of such written agreement.

C. If the Settlement is not made final (per the provisions of Section VII.A), all amounts paid into the Claim Fund, less amounts paid for taxes and tax expenses and claims administration and notice shall be returned to Defendant. In that event, within five (5) business days after written notification of such event is sent by Vogue's Counsel or Class Counsel to the Escrow Agent, the Claim Fund (including accrued interest), less expenses and any costs which have been disbursed or are determined to be chargeable as notice and claims administration expenses, shall be refunded by the Escrow Agent to Vogue. In such event, Vogue shall be entitled to any tax refund owing to the Claim Fund. At the request of Vogue, the Escrow Agent or its designee shall apply for any such refund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for a refund, to Vogue. In no event will Vogue be entitled to recover any funds spent for notice and claims administration expenses prior to termination of this Stipulation.

## **VIII. COSTS, FEES, AND EXPENSES**

### **A. Attorneys' Fees and Expenses**

1. The Parties agree that any award of attorneys' fees and expenses to Class Counsel will be approved by the Court and paid from the Claim Fund as set forth herein.

2. Class Counsel shall make an application for an award of attorneys' fees and expenses not to exceed \$1,625,000. The Claim Administrator shall pay the award of Class Counsels' fees and expenses from the Claim Fund within 40 days after the Effective Date.

3. In the event the amount of the attorneys' fees requested is decreased or denied by the Court, such denial or decrease in the requested fees shall have no effect on this Stipulation and shall not invalidate the settlement agreed to herein.

4. Class Counsel, in their sole discretion, shall allocate and distribute the award of attorneys' fees and expenses among counsel for the class members. In the event that any Class Members object to any aspect of this Stipulation of Settlement, Vogue shall under no circumstances be obligated or required to pay attorneys' fees or costs claimed by or associated with such objectors (if any).

#### B. Class Representative Awards

Vogue agrees not to oppose an application for class representative service awards to be paid out of the Claim Fund to Plaintiffs in an amount not to exceed \$1,500 each for Plaintiffs Golloher, Freeman, Chase, Shapiro and Brown and \$250 each for Plaintiffs Kenny, Bottari, Conover, Hanks, Swenson, and Sanders. Such awards shall be paid within 40 days after the Effective Date. In the event that a Class Member appeals the award of attorneys' fees and costs, or the class representative service awards, Vogue shall not take a position contrary to this Stipulation.

#### C. Claim Administration Costs and Costs of Class Notice

The costs associated with the administration of the claim process and with notifying the Class of this proposed settlement shall be paid from the Claim Fund as described in Section III.

### **IX. MEDIA COMMUNICATIONS**

A. Following the issuance of the Preliminary Approval Order, the Parties agree that they will issue a joint press release to be used in the Notice Plan, the content of which must first be agreed by Vogue's Counsel and Class Counsel and generally will mirror the contents of the Publication Notice in Exhibit C. Defendant and Class Counsel may post the joint press release on Defendant's website and Class Counsel's websites, if they so choose.

1           B.       Class Counsel will consult with Vogue's Counsel and Vogue's Counsel will  
 2 consult with Class Counsel about the content of counsels' proposed response to media inquiries  
 3 or requests for comments with respect to the settlement or the underlying subject matter and they  
 4 will reach an agreement with respect to the same, which agreement shall be consistent with the  
 5 content and purposes of this Stipulation and any joint press release previously agreed to.

6           C.       Nothing herein will prohibit Class Counsel or Vogue's Counsel from responding  
 7 to routine questions about the settlement or the Action so as to permit timely responses to media  
 8 inquiries consistent with the language of the joint press release or any agreements or agreed  
 9 announcements.

#### 10 **X. NOTICE AND CURE**

11           Any party that believes there has been a violation of this Stipulation of Settlement or the  
 12 Final Settlement and Judgment shall provide the other party with written notice of such alleged  
 13 violation, and the party receiving such notice shall have 60 days from the date such notice is sent  
 14 in which to take reasonable steps to cure such alleged violation. In the event that any identified  
 15 violation has been substantially cured within such 60 day time period, then the party providing  
 16 notice of such violation shall refrain from bringing any legal action against the breaching party  
 17 based on such violation.

#### 18 **XI. COVENANTS AND WARRANTIES**

##### 19 **A. Authority to Enter Agreement**

20           Plaintiffs and Defendant each covenant and warrant that they have the full power and  
 21 authority to enter into this Stipulation of Settlement and to carry out its terms, and that they have  
 22 not previously assigned, sold, or otherwise pledged or encumbered any right, title, or interest in  
 23 the claims released herein or their right, power, and authority to enter into this Stipulation of  
 24 Settlement. Any person signing this Stipulation of Settlement on behalf of any other person or  
 25 entity represents and warrants that he or she has full power and authority to do so and that said  
 26 other person or entity is bound hereby.

1           B.     Represented by Counsel

2           In entering into this Stipulation of Settlement, the Parties represent that: they have relied  
3 upon the advice of attorneys of their own choice, concerning the legal consequences of this  
4 Stipulation of Settlement; the terms of this Stipulation of Settlement have been explained to them  
5 by their attorneys; and the terms of this Stipulation of Settlement are fully understood and  
6 voluntarily accepted by the Parties.

7           C.     No Other Actions

8           As of the date of executing this Stipulation, Plaintiffs and Class Counsel represent and  
9 warrant that they are not aware of any action or potential action other than this Action that  
10 (1) raises allegations similar to those asserted in the Action, and (2) is pending or is expected to  
11 be filed in any forum by any person or entity against Vogue. Until the Effective Date, Plaintiffs  
12 and Class Counsel shall have a continuing duty to notify Vogue if Plaintiffs or Class Counsel  
13 become aware of any such action.

14   **XII. MISCELLANEOUS**

15           A.     Governing Law

16           The interpretation and construction of this Stipulation of Settlement shall be governed by  
17 the laws of the State of California.

18           B.     Counterparts

19           This Stipulation of Settlement may be executed in counterparts, and faxed signatures  
20 and/or signatures scanned to pdf and sent by email shall be valid and enforceable, each of which  
21 shall be deemed an original signature. All counterparts so executed shall constitute one  
22 agreement binding on all of the Parties hereto, notwithstanding that all Parties are not signatories  
23 to the original or the same counterpart.

24           C.     No Drafting Party

25           Any statute or rule of construction that ambiguities are to be resolved against the drafting  
26 party shall not be employed in the interpretation of this Stipulation of Settlement, and the Parties  
27 agree that the drafting of this Stipulation has been a mutual undertaking.  
28

1           D.     Protective Orders

2           All orders, agreements and designations regarding the confidentiality of documents and  
3 information (“Protective Orders”) remain in effect, and all Parties and counsel remain bound to  
4 comply with the Protective Orders, including the provisions to certify the destruction of  
5 “Confidential” documents. Notwithstanding such provision in the Protective Order, Class  
6 Counsel and Vogue’s Counsel may retain copies of all documents submitted to the Court, but  
7 those documents must be kept confidential to the extent they were designated as “Confidential”  
8 and will continue to be subject to the Protective Order.

9           E.     Entire Agreement

10          All agreements, covenants, representations and warranties, express or implied, written or  
11 oral, of the Parties hereto concerning the subject matter hereof are contained in this Stipulation of  
12 Settlement and the exhibits hereto. Any and all prior or contemporaneous conversations,  
13 negotiations, drafts, terms sheets, memoranda of understanding, possible or alleged agreements,  
14 covenants, representations and warranties concerning the subject matter of this Stipulation of  
15 Settlement are waived, merged herein, and superseded hereby.

16          F.     Retained Jurisdiction

17          The Court shall retain jurisdiction with respect to the implementation and enforcement of  
18 the terms of this Stipulation, and all Parties hereto submit to the jurisdiction of the Court for  
19 purposes of implementing and enforcing the settlement embodied in this Stipulation.

20          G.     Cooperation

21          Each of the Parties hereto shall execute such additional pleadings and other documents  
22 and take such additional actions as are reasonably necessary to effectuate the purposes of this  
23 Stipulation of Settlement.

24          H.     Amendments in Writing

25          This Stipulation of Settlement may only be amended in writing signed by Class Counsel  
26 and Defendant’s Counsel. Any amendment to the Stipulation of Settlement must be approved by  
27 the Court.

1 I. Binding Effect; Successors and Assigns

2 This Stipulation of Settlement shall inure to the benefit of, and shall be binding upon, the  
3 Class and the Parties hereto as well as the legal successors and assigns of the Parties hereto and  
4 each of them.

5 J. Construction

6 As used in this Stipulation of Settlement, the terms “herein” and “hereof” shall refer to this  
7 Stipulation in its entirety, including all exhibits and attachments, and not limited to any specific  
8 sections. Whenever appropriate in this Stipulation of Settlement, the singular shall be deemed to  
9 refer to the plural, and the plural to the singular, and pronouns of any gender shall be deemed to  
10 include both genders.

11 K. Waiver in Writing

12 No waiver of any right under this Stipulation of Settlement shall be valid unless in  
13 writing.

14 L. Computation of Time

15 All time periods set forth herein shall be computed in business days, if seven days or  
16 fewer, and calendar days, if eight days or more, unless otherwise expressly provided. In  
17 computing any period of time prescribed or allowed by this Stipulation or by order of the Court,  
18 the day of the act, event, or default from which the designated period of time begins to run shall  
19 not be included. The last day of the period so computed shall be included, unless it is a Saturday,  
20 a Sunday, or a legal or court holiday, or, when the act to be done is the filing of a paper in Court,  
21 a day in which weather or other conditions have made the office of the clerk of the Court  
22 inaccessible, in which event the period shall run until the end of the next day as not one of the  
23 aforementioned days. As used in this subsection, “legal or court holiday” includes New Year’s  
24 Day, Martin Luther King Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day,  
25 Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as  
26 a holiday by the President or the Congress of the United States or by the State of California.  
27  
28

1 M. No Admission of Liability

2 Each of the Parties understands and agrees that he, she, or it has entered into this  
3 Stipulation of Settlement for purpose of purchasing peace and preventing the risks and costs of  
4 any further litigation or dispute. This settlement involves disputed claims; specifically, Vogue  
5 denies any wrongdoing, and the Parties understand and agree that neither this Stipulation of  
6 Settlement, nor the fact of this settlement, may be used as evidence or admission of any  
7 wrongdoing by Vogue.

8 N. Notice

9 Any notice to the Parties required by this Stipulation of Settlement shall be given in  
10 writing by first-class U.S. Mail and e-mail to:

11 For Plaintiff:

12 Mark N. Todzo  
13 Lexington Law Group  
14 503 Divisadero Street  
15 San Francisco, CA 94117  
Telephone: (415) 913-7800  
[mtodzo@lexlawgroup.com](mailto:mtodzo@lexlawgroup.com)

16 For Defendant:

17 Kieran G. Doyle  
18 Cowan, Liebowitz & Latman  
19 1133 Avenue of the Americas  
New York, NY 10036  
Telephone: (212) 790-9261  
[kgd@cll.com](mailto:kgd@cll.com)

21 IN WITNESS WHEREOF, the parties hereto have executed this Stipulation of Settlement  
22 as of the dates set forth below.  
23  
24  
25  
26  
27  
28



1  
2 DATED: Aug 15, 2013

  
ANDREA GOLLOHER

3  
4  
5 DATED: \_\_\_\_\_, 2013

MARISA FREEMAN

6  
7  
8 DATED: \_\_\_\_\_, 2013

ROBERTA CHASE

9  
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11 DATED: \_\_\_\_\_, 2013

MICHAEL SHAPIRO

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14 DATED: \_\_\_\_\_, 2013

BRENDA BROWN

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JAMES HANKS

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20 DATED: \_\_\_\_\_, 2013

GRETCHEN SWENSON

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23 DATED: \_\_\_\_\_, 2013

SHANISHA SANDERS

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25  
26 DATED: \_\_\_\_\_, 2013

CRYSTAL KENNY

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2 DATED: \_\_\_\_\_, 2013

ANDREA GOLLOHER

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5 DATED: 8/15/, 2013

  
MARISA FREEMAN

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8 DATED: \_\_\_\_\_, 2013

ROBERTA CHASE

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11 DATED: \_\_\_\_\_, 2013

MICHAEL SHAPIRO

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14 DATED: \_\_\_\_\_, 2013

BRENDA BROWN

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JAMES HANKS

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GRETCHEN SWENSON

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SHANISHA SANDERS

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CRYSTAL KENNY

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DATED: \_\_\_\_\_, 2013

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ANDREA GOLLOHER

DATED: \_\_\_\_\_, 2013

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MARISA FREEMAN

DATED: 8/15/2013, 2013

  
ROBERTA CHASE

DATED: \_\_\_\_\_, 2013

\_\_\_\_\_  
MICHAEL SHAPIRO

DATED: \_\_\_\_\_, 2013

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BRENDA BROWN

DATED: \_\_\_\_\_, 2013

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JAMES HANKS

DATED: \_\_\_\_\_, 2013

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GRETCHEN SWENSON

DATED: \_\_\_\_\_, 2013

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DATED: \_\_\_\_\_, 2013

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ANDREA GOLLOHER


DATED: \_\_\_\_\_, 2013

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MARISA FREEMAN

DATED: \_\_\_\_\_, 2013

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ROBERTA CHASE

DATED: August 18, 2013

  
\_\_\_\_\_  
MICHAEL SHAPIRO

DATED: \_\_\_\_\_, 2013

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BRENDA BROWN

DATED: \_\_\_\_\_, 2013

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JAMES HANKS

DATED: \_\_\_\_\_, 2013

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GRETCHEN SWENSON

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SHANISHA SANDERS

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ANDREA GOLLOHER

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MARISA FREEMAN

DATED: \_\_\_\_\_, 2013

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ROBERTA CHASE

DATED: \_\_\_\_\_, 2013

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MICHAEL SHAPIRO

DATED: Aug. 15<sup>th</sup>, 2013

Brenda Brown  
BRENDA BROWN

DATED: \_\_\_\_\_, 2013

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JAMES HANKS

DATED: \_\_\_\_\_, 2013

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GRETCHEN SWENSON

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ROBERTA CHASE

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MICHAEL SHAPIRO

DATED: \_\_\_\_\_, 2013

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BRENDA BROWN

DATED: 8-7, 2013

  
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JAMES HANKS

DATED: \_\_\_\_\_, 2013

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GRETCHEN SWENSON

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SHANISHA SANDERS

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CRYSTAL KENNY

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ANDREA GOLLOHER

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MARISA FREEMAN

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MICHAEL SHAPIRO

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BRENDA BROWN

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JAMES HANKS

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GRETCHEN SWENSON

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SHANISHA SANDERS

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CRYSTAL KENNY

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9 ROBERTA CHASE

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21 GRETCHEN SWENSON

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23 DATED: August 13, 2013

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SHANISHA SANDERS

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27 CRYSTAL KENNY

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ANDREA GOLLOHER

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MARISA FREEMAN

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ROBERTA CHASE

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MICHAEL SHAPIRO

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GRETCHEN SWENSON

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SHANISHA SANDERS

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26 DATED: Aug. 13, 2013

Crystal Kenny  
CRYSTAL KENNY

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2 DATED: 8/18, 2013

  
KELLY BOTTARI

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5 DATED: \_\_\_\_\_, 2013

\_\_\_\_\_  
RENEE CONOVER

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7  
8 DATED: \_\_\_\_\_, 2013

TODD CHRISTOPHER INTERNATIONAL, INC.

9  
10  
11 BY: Todd Christopher  
President

12  
13 DATED: \_\_\_\_\_, 2013

\_\_\_\_\_  
LEXINGTON LAW GROUP  
MARK N. TODZO

14  
15  
16 MARK N. TODZO

17 503 Divisadero Street  
18 San Francisco, CA 94117  
19 Telephone: (415) 913-7800

20 DATED: \_\_\_\_\_, 2013

COWAN, LIEBOWITZ & LATMAN P.C.

21  
22  
23 KIERAN G. DOYLE

24 1133 Avenue of the Americas  
25 New York, NY 10036  
26 Telephone: (212) 790-9261  
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DATED: \_\_\_\_\_, 2013

KELLY HOTTARI

DATED: Aug 21, 2013

Renee Conover  
RENEE CONOVER

DATED: \_\_\_\_\_, 2013

TODD CHRISTOPHER INTERNATIONAL, INC.

BY: Todd Christopher  
President

DATED: \_\_\_\_\_, 2013

LEXINGTON LAW GROUP  
MARK N. TODZO

MARK N. TODZO

503 Divisadero Street  
San Francisco, CA 94117  
Telephone: (415) 913-7200

DATED: \_\_\_\_\_, 2013

COWAN, LIEBOWITZ & LATMAN P.C.

RIDLAND DOYLE

1133 Avenue of the Americas  
New York, NY 10036  
Telephone: (212) 790-9261

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2 DATED: \_\_\_\_\_, 2013

KELLY BOTTARI

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5 DATED: \_\_\_\_\_, 2013

RENNEE CONOVER

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8 DATED: Aug 21<sup>st</sup>, 2013

TODD CHRISTOPHER INTERNATIONAL, INC.

9  
10  
11 BY:   
President

12  
13 DATED: \_\_\_\_\_, 2013

LEXINGTON LAW GROUP  
MARK N. TODZO

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16 MARK N. TODZO

17 503 Divisadero Street  
18 San Francisco, CA 94117  
19 Telephone: (415) 913-7800

20 DATED: \_\_\_\_\_, 2013

COWAN, LIEBOWITZ & LATMAN P.C.

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23 KIERAN G. DOYLE

24 1133 Avenue of the Americas  
25 New York, NY 10036  
26 Telephone: (212) 790-9261

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KELLY BOTTARI

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RENEE CONOVER

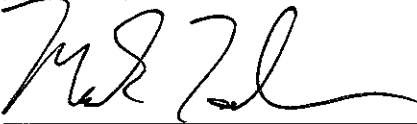
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TODD CHRISTOPHER INTERNATIONAL, INC.

9  
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11 BY: Todd Christopher  
President

12  
13 DATED: 8/20, 2013

LEXINGTON LAW GROUP  
MARK N. TODZO



\_\_\_\_\_  
MARK N. TODZO

17  
18 503 Divisadero Street  
San Francisco, CA 94117  
Telephone: (415) 913-7800

19  
20 DATED: \_\_\_\_\_, 2013

COWAN, LIEBOWITZ & LATMAN P.C.

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KIERAN G. DOYLE

24 1133 Avenue of the Americas  
New York, NY 10036  
Telephone: (212) 790-9261

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2 DATED: \_\_\_\_\_, 2013

KELLY BOTTARI

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RENNEE CONOVER

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8 DATED: \_\_\_\_\_, 2013

TODD CHRISTOPHER INTERNATIONAL, INC.

9  
10  
11 BY: Todd Christopher  
12 President

13 DATED: \_\_\_\_\_, 2013

LEXINGTON LAW GROUP  
MARK N. TODZO

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16 MARK N. TODZO

17 503 Divisadero Street  
18 San Francisco, CA 94117  
19 Telephone: (415) 913-7800

20 DATED: 8/21, 2013

COWAN, LIEBOWITZ & LATMAN P.C.

21  
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~~KIERAN G. DOYLE~~ ERIK J SHIMANOFF

24 1133 Avenue of the Americas  
25 New York, NY 10036  
26 Telephone: (212) 790-9261 9200  
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**LIST OF EXHIBITS**

- A. Claims Administration Protocols
- B. Order re: Preliminary Approval of Class Action Settlement
- C. Publication Notice
- D. Notice Plan
- E. Notice of Class Action Settlement
- F. Claim Form
- G. Final Settlement Order and Judgment

## **EXHIBIT A**

### **CLAIM ADMINISTRATION PROTOCOLS**

These Claim Administration Protocols (“Protocols”) are part of the Stipulation of Settlement (“Stipulation”) between Plaintiffs and Defendant Todd Christopher International, Inc. d/b/a Vogue International (“Vogue”). All provisions of the Stipulation are incorporated into these Protocols by reference, including without limitation all definitions. All capitalized terms used here shall have the same meaning given them in the Stipulation. These Protocols shall define the duties of the Claim Administrator retained to implement the claim process as described in Paragraph III.B of the Stipulation.

#### **A.1 Appointment of Claim Administrator**

The Parties have agreed that the Heffler Claims Group will serve as the Claim Administrator to implement the claim process described in Paragraph III.B of the Stipulation. The Claim Administrator represents that it is experienced in fairly and independently administering class action settlement claims. If the Claim Administrator fails to perform adequately all duties described in the Stipulation and these Protocols on behalf of Vogue, Class Counsel or the Class, then Vogue and Class Counsel by agreement may remove the Claim Administrator for good cause. If there is any disagreement between Vogue and Class Counsel regarding the removal of the Claim Administrator, the Court shall resolve the dispute. If the Claim Administrator is removed either by agreement of the parties or by order of the Court, the Claim Administrator will return to Defendant any unused amounts in the Claim Fund.

#### **A.2 Agreement by Claim Administrator**

By executing these Protocols, the Claim Administrator hereby consents to serve, and agrees to abide by the obligations of the Stipulation and these Protocols.



### **A.3 Escrow Agent**

The Claim Administrator will serve as Escrow Agent as set forth in the Stipulation of Settlement.

### **A.4 Control of Claim Fund**

The Claim Fund described in Paragraph III.B of the Stipulation shall be maintained by the Claim Administrator as Escrow Agent. Disbursement from the Claim Fund shall be pursuant to the directions provided in these Protocols and Paragraphs III.B and VII.C of the Stipulation.

### **A.5 Conflicts of Interest**

The Claim Administrator hereby warrants that it knows of no reason why it cannot fairly and impartially administer claims. The Claim Administrator shall not adjudicate the claim of any Class Member if the Claim Administrator, Vogue, and/or Class Counsel determines there is a conflict of interest. If the Claim Administrator, Vogue and/or Class Counsel learns of a conflict of interest as to a claim, that party shall give written notice to the other parties, who shall resolve any such circumstances by further written agreement. Any unresolved dispute over such conflict of interest shall be submitted to the Court for resolution. The Claim Administrator shall indemnify and defend the Parties and their counsel against any liability arising from the Claim Administrator's breach of this provision.

### **A.6 Class Action Fairness Act ("CAFA") Notices**

No later than ten (10) days after the parties file a motion for Preliminary Approval, the Claim Administrator will serve, on behalf of Defendant, all CAFA notifications as required under 28 USC §1715.

**A.7 The Settlement Website**

The Claim Administrator shall establish and maintain a special internet site, the Settlement Website, which shall be easily accessible through commonly used internet service providers, for the submission of claims. Notices and Claim Forms will be made available on the Settlement Website in both English and Spanish. The Settlement Website will become active and available no later than 5 days after the Court enters the Preliminary Approval Order. Upon the close of the Claim Submission Period, the Settlement Website will be modified whereby the documents and information listed in paragraph 1 of the Notice Plan attached as Exhibit D to the Stipulation of Settlement will be removed and replaced with (a) a Frequently Asked Questions section, the content of which is to be agreed to by Class Counsel and Vogue's Counsel and the purpose of which is to update those Class Members who have submitted Claim Forms of the Status of their Claims; and (b) information about how to contact the Claim Administrator via a toll-free telephone number, email and U.S. mail to enable those who have submitted Claim Forms to inquire as to the Status of their Claims. The Settlement Website will be permanently deactivated and made unavailable within 120 days following the Effective Date.

**A.8 Timing**

The Claim Administrator shall begin to review the claims no later than 10 days after the Effective Date, and shall conclude the review process during the time provided in Paragraph I.A.10 of the Stipulation (the "Claim Review Period"). The deadline for Class members to submit their claim to the Claim Administrator (the "Claim Deadline") shall be 10 days prior to the date of the Final Approval Hearing or such other date as may be set by order of the Court and/or agreement of the parties. The Claim Deadline shall be specified in the Class Notice and

Publication Notice. In no event shall payments be made to Class Members until the end of the Claim Review Period and preparation of the Distribution Plan.

**A.9 Communications with Claimants**

No communications with a claimant or others shall be initiated by the Claim Administrator unless necessary or appropriate to resolve the claims according to these Protocols or to randomly verify claims. Where necessary or appropriate to resolve the claims, the Claim Administrator may communicate with the claimant. If the claimant has indicated to the Claim Administrator that he or she has counsel, the Claim Administrator shall only contact the claimant through his or her counsel unless the claimant or the claimant's designated counsel instructs otherwise. In all communications, the Claim Administrator shall treat the claimant with courtesy, responsiveness and professionalism and shall accurately and neutrally describe, and shall train and instruct its employees and agents to accurately and objectively describe, the provisions of the Stipulation in communications with Class Members. The Claim Administrator also shall establish a toll free number which will have recorded information answering questions about the claims submission process and representatives available to answer questions.

**A.10 Maintenance and Preservation of Records**

The Claim Administrator shall keep a clear and careful record of all communications with claimants, all claims decisions, all expenses, and all tasks performed in administering the claims process. The Claim Administrator shall preserve all such records until notified in writing by both Vogue and Class Counsel that the claim process is concluded and that preservation of records is no longer necessary.

#### **A.11 Method of Submitting Claims**

Claims may be submitted on the Claim Forms by mail, or electronically through the Settlement Website. The Settlement Website address shall be identified in the Class Notice and the Publication Notice. The Claim Administrator shall be solely responsible for receiving and processing requests for Claim Forms and for promptly delivering Claim Forms to the Class Members who request them. The Claim Forms on the Settlement Website and the hard copy Claim Forms shall be identical in content.

#### **A.12 Approval or Denial of Claims**

After the Claim Deadline has passed, the Claim Administrator shall gather all Claim Forms, whether submitted by Settlement Website, and/or by mail. Before the end of the Claim Review Period, the Claim Administrator shall select the claims which will be paid and the amount of each such payment (“Approved Claims”) and claims that will not be paid (“Rejected Claims”). The Claim Administrator shall determine whether claims are Approved Claims or Rejected Claims, subject to pro rata reduction, by the following criteria:

##### **A.12.1 Duplicative Claims**

No claimant may submit more than one Claim Form, and two or more claimants may not submit Claim Forms for the same alleged product purchases. The Claim Administrator shall determine whether there is any duplication of claims, if necessary by contacting the claimant(s). The Claim Administrator shall award settlement relief to only one claimant for the same alleged product purchases and designate as appropriate duplicative claims as Rejected Claims.

##### **A.12.2 Claims Process**

Claimants that purchased one or more of the Organix brand hair care or skin care products during the Class Period may submit claims using the Claim Form. The claimant must

provide information that allows the Claim Administrator to determine: (1) the identity and contact information for each claimant; and (2) the number of Organix brand products each claimant purchased. If the number of Organix brand products is not indicated, then the Claimant will be paid as if the Claimant indicated the purchase of one Organix brand product. The Claim Administrator shall also verify that the Claim Form has been executed under penalty of perjury.

Once the Claim Administrator has verified that the claimant has complied with each of these requirements to the satisfaction of the Claim Administrator, the claim shall be designated as an Approved Claim without further inquiry aside from the duplicative determination process described above. However, the Claim Administrator in its discretion may examine and verify a random sample of Claims to prevent fraud and abuse. If a claimant has not complied with all of these requirements to the satisfaction of the Claim Administrator, the claim shall be designated as a Rejected Claim.

#### **A.12.3 Untimely or Incomplete Claims**

The Claim Administrator shall, in its discretion, decide whether to accept Claim Forms submitted after the Claims Deadline. In deciding whether to accept a late-submitted Claim Form, the Claim Administrator shall take into account the length of time the Claim Form was submitted after the Claims Deadline, including whether the late-submitted claim would delay the distribution of the Claim Fund to claimants and the reasons for the late submission of the Claim Form. In the event the Claim Administrator determines that a Claim Form is incomplete, but may be cured by the claimant, the Claim Administrator shall contact the claimant if reasonably practical to cure any deficiency with the Claim Form.

**A.13 Distribution Plan**

Within 10 days after conclusion of the Claim Review Period, the Claim Administrator shall deliver the Distribution Plan as described in Paragraph III.B.10 of the Stipulation.

**A.14 Claim Administrator's Fees and Expenses**

As provided in Paragraph III.B.2 of the Stipulation the actual cost of the Claim Administrator shall be paid out of the Claim Fund. The Claim Administrator shall take all reasonable efforts to administer the claims efficiently and avoid unnecessary fees and expenses. The Claim Administrator shall only be reimbursed for fees and expenses supported by detailed and clear timesheets and receipts for costs. As soon as work commences, the Claim Administrator shall provide a detailed written accounting of all fees and expenses on a monthly basis to Vogue's Counsel and Class Counsel, and shall respond promptly to inquiries by Vogue's Counsel and Class Counsel concerning fees and expenses.

**A.15 Access to Information from the Claim Administrator**

The Parties are entitled to observe and monitor the performance of the Claim Administrator to assure compliance with the Stipulation of Settlement and these protocols. The Claim Administrator shall promptly respond to all inquiries and requests for information made by either Vogue or Class Counsel.

Heffler Claims Group  
Mark Rapazzini, Esq.

Dated: \_\_\_\_\_

\_\_\_\_\_  
1515 Market Street, Suite 1700  
Philadelphia, PA 19102  
(267) 765-7400

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ANDREA GOLLOHER, MARISA	)	No. C 12-06002 RS
FREEMAN, ROBERTA CHASE, JAMES	)	
HANKS, MICHAEL SHAPIRO, BRENDA	)	<u>CLASS ACTION</u>
BROWN, GRETCHEN SWENSON,	)	
CRYSTAL KENNY, KELLY BOTTARI,	)	[PROPOSED] ORDER PRELIMINARILY
RENEE CONOVER, and SHANISHA	)	APPROVING CLASS ACTION
SANDERS, on behalf of themselves and all	)	SETTLEMENT, CONDITIONALLY
others similarly situated,	)	CERTIFYING THE SETTLEMENT CLASS,
	)	PROVIDING FOR NOTICE AND
Plaintiffs,	)	SCHEDULING ORDER
	)	
vs.	)	
	)	
	)	
TODD CHRISTOPHER INTERNATIONAL,	)	
INC. DBA VOGUE INTERNATIONAL, a	)	
Florida Corporation, and DOES 1-100,	)	
	)	
Defendants.	)	
	)	

1 WHEREAS, the Parties<sup>1</sup> in the above-entitled Action have entered into a Stipulation of  
 2 Settlement, filed [REDACTED], 2013 (the “Stipulation”), after arms-length settlement discussions conducted  
 3 in good faith and with the assistance of an experienced mediator, Randall W. Wulff.;

4 WHEREAS, the Court has received and considered the Stipulation, including the  
 5 accompanying exhibits;

6 WHEREAS, the Parties have made an application for an order preliminarily approving the  
 7 settlement of this Action, and for its dismissal with prejudice upon the terms and conditions set forth  
 8 in the Stipulation; and

9 WHEREAS, the Court has reviewed the Parties’ application for such order, and has found  
 10 good cause for same.

11 NOW, THEREFORE, IT IS HEREBY ORDERED:

12 **A. The Settlement Class Is Conditionally Certified.**

13 1. Pursuant to Federal Rule of Civil Procedure 23, and for settlement purposes only, the  
 14 Court hereby certifies the following Class:

15 all individuals in the United States who purchased the Challenged Products within the Class  
 16 Period. Specifically excluded from the Class are (a) Defendant, (b) the officers, directors, or  
 17 employees of Defendant and their immediate family members, (c) any entity in which  
 18 Defendant has a controlling interest, (d) any affiliate, legal representative, heir, or assign of  
 19 Defendant, (e) all federal court judges who have presided over this Action and their  
 immediate family members; (f) all persons who submit a valid request for exclusion from the  
 Class; and (g) those who purchased the Challenged Products for the purpose of resale.

20 2. With respect to the Class and for settlement purposes only, the Court preliminarily  
 21 finds the prerequisites for a class action under Federal Rules of Civil Procedure 23(a) and (b)(3)  
 22 have been met, including: (a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the class  
 23 representatives and Class Counsel; (e) predominance of common questions of fact and law among  
 24 the Class for purposes of settlement; and (f) superiority.

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25  
 26 <sup>1</sup> All capitalized terms herein shall have the same meanings as set forth in the Stipulation  
 27 unless otherwise specifically defined.



3. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby appoints the Plaintiffs in the Action – *i.e.*, Andrea Golloher, Marisa Freeman, Roberta Chase, James Hanks, Michael Shapiro, Brenda Brown, Gretchen Swenson, Crystal Kenny, Kelly Bottari, Rennee Conover and Shanisha Sanders – as the class representatives.

4. Having considered the factors set forth in Federal Rule of Civil Procedure 23(g)(1), the Court hereby appoints Mark N. Todzo and the Lexington Law Group as Class Counsel.

**B. The Stipulation Is Preliminarily Approved and Final Approval Schedule Set.**

5. The Court hereby preliminarily approves the Stipulation and the terms and conditions of settlement set forth therein, subject to further consideration at the Final Approval Hearing described below.

6. The Court has conducted a preliminary assessment of the fairness, reasonableness, and adequacy of the Stipulation, and hereby finds that the settlement falls within the range of reasonableness meriting possible final approval. The Court therefore preliminarily approves the proposed settlement as set forth in the Stipulation.

7. Pursuant to Federal Rule of Civil Procedure 23(e), the Court will hold a Final Approval Hearing on \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m., in the Courtroom of the Honorable Richard Seeborg, United States District Court for the Northern District of California, San Francisco Courthouse, Courtroom 3 - 17th Floor, 450 Golden Gate Ave, San Francisco, CA 94102, for the following purposes:

(a) finally determining whether the Class meets all applicable requirements of Federal Rule of Civil Procedure 23 and, thus, the Class should be certified for purposes of effectuating the settlement;

(b) determining whether the proposed settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate and should be approved by the Court;

(c) considering the application of Class Counsel for an award of attorneys' fees and reimbursement of expenses, as provided for under the Stipulation;

(d) considering the applications of Plaintiffs for class representative incentive awards, as provided for under the Stipulation;

(e) considering whether the Court should enter the [Proposed] Final Settlement Order and Judgment;

(f) considering whether the release of the Released Claims as set forth in the Stipulation should be provided; and

(g) ruling upon such other matters as the Court may deem just and appropriate.

8. The Court may adjourn the Final Approval Hearing and later reconvene such hearing without further notice to Class Members.

9. The Parties may further modify the Stipulation prior to the Final Approval Hearing so long as such modifications do not materially change the terms of the settlement provided thereunder. The Court may approve the Stipulation with such modifications as may be agreed to by the Parties, if appropriate, without further notice to Class Members.

10. All papers in support of the settlement and any application for an award of attorneys' fees and expenses and/or class representative incentive awards must be filed with the Court and served at least seven days prior to the Final Approval Hearing.

**C. The Court Approves the Form and Method of Class Notice.**

11. The Court approves, as to form and content, the proposed Publication Notice and Class Notice (collectively the "Notice"), which are Exhibits C and E, respectively, to the Stipulation.

12. The Court finds that the distribution of Notice substantially in the manner and form set forth in the Stipulation meets the requirements of Federal Rule of Civil Procedure 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

13. The Court approves the designation of the Heffler Claims Group to serve as the Court-appointed Claim Administrator for the settlement. The Claim Administrator shall cause

1 the Publication Notice to be published, disseminate Class Notice, and supervise and carry out the  
2 notice procedure, the processing of claims, and other administrative functions, and shall respond  
3 to Class Member inquiries, as set forth in the Stipulation and this Order under the direction and  
4 supervision of the Court.

5 14. The Court directs the Claim Administrator to establish a Settlement Website, making  
6 available copies of this Order, the Class Notice, Claim Forms that may be downloaded and submitted  
7 online, or by mail, the Stipulation and all Exhibits thereto, a toll-free hotline, and such other  
8 information as may be of assistance to Class Members or required under the Stipulation. The Class  
9 Notice and Claim Forms shall be made available to Class Members through the Settlement Website.  
10 The Settlement Website will become active and available no later than 5 days after the entry of this  
11 Preliminary Approval Order. Upon the close of the Claim Submission Period, the Settlement  
12 Website will be modified whereby the documents and information listed in paragraph 1 of the Notice  
13 Plan attached to the Stipulation of Settlement as Exhibit D will be removed and replaced with (a) a  
14 Frequently Asked Questions section, the content of which is to be agreed to by Class Counsel and  
15 Vogue's Counsel and the purpose of which is to update those Class Members who have submitted  
16 Claim Forms of the Status of their Claims; and (b) information about how to contact the Claim  
17 Administrator vial a toll-free telephone number, email and U.S. mail to enable those who have  
18 submitted Claim Forms to inquire as to the Status of their Claims. The Settlement Website will be  
19 permanently deactivated and made unavailable within 120 days following the Effective Date. Class  
20 Notice and Claim Forms may also be made available to Class Members through the websites of  
21 Class Counsel at their option through the close of the Claim Submission Period but no longer.

22 15. The Claim Administrator is ordered to begin publication of the Publication Notice on  
23 or about 120 days before the Final Approval Hearing and complete publication of the Publication  
24 Notice on or about 80 days before the Final Approval Hearing.

25 16. The costs of Notice, processing of claims of Class Members, creating and maintaining  
26 the Settlement Website, and all other Claim Administrator and Notice expenses shall be paid from  
27 the Claim Fund in accordance with the applicable provisions of the Stipulation.

**D. Procedure for Class Members to Participate in the Settlement.**

17. The Court approves the Parties' proposed Claim Form. Any Class Member who wishes to participate in the settlement shall complete a Claim Form in accordance with the instructions contained therein and submit it to the Claim Administrator no later than 10 days prior to the date of the Final Approval Hearing, which date will be specifically identified in the Claim Form. Such deadline may be further extended without notice to the Class by written agreement of the Parties.

18. The Claim Administrator shall have the authority to accept or reject claims in accordance with the Stipulation, including the Claims Administration Protocols.

19. Any Class Member may enter an appearance in the Action, at his or her own expense, individually or through counsel who is qualified to appear in the jurisdiction. All Class Members who do not enter an appearance will be represented by Class Counsel.

**E. Procedure for Requesting Exclusion from the Class.**

20. All Class Members who do not timely exclude themselves from the Class shall be bound by all determinations and judgments in the Action concerning the settlement, whether favorable or unfavorable to the Class.

21. Any person or entity falling within the definition of the Class may, upon his, her or its request, be excluded from the Class. Any such person or entity must submit a request for exclusion to the Clerk of the Court c/o the Class Action Administrator, postmarked or delivered no later than 50 days prior to the date of the Final Approval Hearing, the date for which will be specifically identified in the Publication Notice and Class Notice. Requests for exclusion purportedly filed on behalf of groups of persons/or entities are prohibited and will be deemed to be void.

22. Any Class Member who does not send a signed request for exclusion postmarked or delivered on or before the time period described above will be deemed to be a Class Member for all purposes and will be bound by all judgments and further orders of this Court related to the settlement of this Action and by the terms of the settlement, if finally approved by the Court. The written request for exclusion must request exclusion from the Class, must be signed by the potential Class

Member and include a statement indicating that the person or entity is a member of the Class. All persons or entities who submit valid and timely requests for exclusion in the manner set forth in the Stipulation shall have no rights under the Stipulation and shall not be bound by the Stipulation or the Final Judgment and Order.

23. A list reflecting all requests for exclusions shall be filed with the Court by the parties at or before the Final Approval Hearing.

**F. Procedure for Objecting to the Settlement**

24. Any Class Member who desires to object either to the settlement, application for attorneys' fees and expenses, or class representative incentive awards must timely file with the Clerk of this Court and timely serve on the Parties' counsel by hand or first-class mail a notice of the objection(s) and the grounds for such objections, together with all papers that the Class Member desires to submit to the Court no later than 50 days prior to the date of the Final Approval Hearing, the date for which will be specifically identified in the Publication Notice and Class Notice. The Court will consider such objection(s) and papers only if such papers are timely received by the Clerk of the Court, Class Counsel and Vogue's Counsel. Such papers must be sent to each of the following persons:

Clerk of the Court,  
United States District Court  
Northern District of California  
450 Golden Gate Avenue  
San Francisco, CA 94102

Mark N. Todzo  
Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117

Kieran G. Doyle  
Cowan, Liebowitz & Latman  
1133 Avenue of the Americas  
New York, NY 10036

25. All objections must include the name, address, and telephone number of the objecting Class Member, an affirmation that they purchased the Challenged Products during the Class Period, an explanation of the objection, and the submitting party's signature. All objections must also include a reference to *Golloher v. Todd Christopher International, Inc.*, Case No. C 12-06002 RS (N.D. California). Each Class Member submitting an objection must state whether he or she (or his or her attorney) intends to appear at the Final Approval Hearing.

26. Attendance at the Final Approval Hearing is not necessary; however, any Class Member wishing to be heard orally with respect to approval of the settlement, the applications for

attorneys' fees and reimbursement of expenses, or the application for class representative incentive awards are required to provide written notice of their intention to appear at the Final Approval Hearing no later than 50 days prior to the date of the Final Approval Hearing, which date will be specifically identified in the Class Notice. Class Members who do not oppose the settlement, the applications for attorneys' fees and expenses, or class representative incentive awards need not take any action to indicate their approval. A Class Member's failure to submit a written objection in accordance with the procedure set forth in the Class Notice waives any right the Class Member may have to object to the settlement, attorneys' fees and expenses, or class representative incentive awards, to appear at the Final Approval Hearing, or to appeal or seek other review of the Final Judgment and Order.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE RICHARD SEEBORG  
UNITED STATES DISTRICT COURT  
JUDGE





## EXHIBIT D

### Notice Plan

\_\_\_\_\_, 2013

- 1. Settlement Website:** The Claim Administrator will establish a Settlement Website that will contain: (1) a summary of the settlement; (2) a list of frequently asked questions and answers; (3) key deadlines; (4) downloadable copies of orders of the Court and other pleadings and documents pertaining to the settlement; (5) a downloadable copy of the Stipulation of Settlement; (6) a downloadable copy of the Class Notice and Claim Form in both English and Spanish; (7) information about how to contact the Claim Administrator via a toll-free number, via email and mail; (8) information about how to submit a claim, opt-out of the class and object to the settlement; (9) a platform via which class members can submit their claims electronically; and (10) other information required for Class Members to file a claim. Upon the close of the Claim Submission Period, the Settlement Website will be modified whereby the documents and information previously listed in this paragraph will be removed and replaced with (a) a Frequently Asked Questions section, the content of which is to be agreed to by Class Counsel and Vogue's Counsel and the purpose of which is to update those Class Members who have submitted Claim Forms of the Status of their Claims; and (b) information about how to contact the Claim Administrator via a toll-free telephone number, email and U.S. mail to enable those who have submitted Claim Forms to inquire as to the Status of their Claims. The Settlement Website will be permanently deactivated and made unavailable within 120 days following the Effective Date. Class Counsel shall also place a link to the Settlement Website on the website of the Lexington Law Group for a period starting from the date the Publication Notice is published, and continuing no longer than the end of the Claim Submission Period.
- 2. Toll-Free Telephone Support:** The Claim Administrator will establish a toll-free telephone support system that will provide Class Members with (1) general information about the settlement; (2) frequently asked questions and answers; and (3) the ability to request a Class Notice and Claim Form. The toll-free telephone support system will be maintained until 120 days after the Effective Date.
- 3. CAFA Notice:** The Claim Administrator will provide notice of the terms of the Stipulation of Settlement and other information to the appropriate federal official and state official in each State within 10 days after the Stipulation of Settlement is filed with the Court for preliminary approval as required by the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (2005) ("CAFA").
- 4. Published Notice:** The Claim Administrator will provide Notice to Class Members through a one half page insertion in each of the following magazines as soon as it becomes commercially reasonable: *People*, *Us Weekly* and *Life and Style*. The Claim Administrator also will provide Notice pursuant to California Government Code Section 6064 by a 1/6 page advertisement inserted four consecutive weeks in the San Francisco Chronicle. The notice will direct Class Members to the Settlement Website and the toll-free telephone number referenced above. Class Members may download a Class Notice and Claim Form from the Settlement Website, request a Class Notice and Claim Form via U.S. Mail, e-mail or via the toll-free telephone number. The specific language of this notice will be substantially as set forth in



Exhibit C to the Stipulation of Settlement. Published notice shall begin within 30 days after the Court's entry of the Preliminary Approval Order and shall be completed no later than 80 days before the Final Approval Hearing.

**5. PR Newswire Press Release:** Within 10 days after the Court's entry of the Preliminary Approval Order, the Claim Administrator will send a press release of up to 600 words (also available in Spanish) targeting all 50 states via the PR Newswire's U.S.1 National and Hispanic newslines. The specific language of the press release contemplated by this section will be mutually agreed upon by the Parties and will be substantially as set forth in Exhibit C to the Stipulation of Settlement.

**6. Internet and Mobile Advertisements:** Commencing within 30 days after the Court's entry of the Preliminary Approval Order, the Claim Administrator will run internet and mobile advertisements targeting potential Class Members through services provided by Facebook, People.com & PeopleStyleWatch, Yahoo!, Yahoo! Mobile, Yahoo! Omg!, Yahoo! Shine, Batanga and Univision as soon as it becomes commercially reasonable. Advertisements on each of these services shall run for approximately one month. The specific form and content of each internet and mobile advertisement (which also will be available in Spanish) will be mutually agreed upon by the Parties and will be substantially as set forth in the top four lines in Exhibit C to the Stipulation of Settlement. Each internet and mobile advertisement will contain a hyperlink to the Settlement Website.

**EXHIBIT E**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**IF YOU PURCHASED  
ORGANIX BRAND HAIR CARE OR SKIN CARE PRODUCTS  
YOU MAY BE ENTITLED TO A CASH PAYMENT**

**THIS NOTICE AFFECTS YOUR RIGHTS.**

*A Federal Court authorized this notice.  
This is not a solicitation from a lawyer.*

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	The only way to get a cash payment.
EXCLUDE YOURSELF	Get no settlement benefits. Remove yourself from both the settlement and the lawsuit.
OBJECT	Write to the Court about why you don't like the settlement.
DO NOTHING	Get no cash payment. Give up your rights.

Please read this entire Class Notice carefully.

Your rights and options – **and the deadlines to exercise them** – are explained in this Notice.

**WHAT IS THIS LAWSUIT ABOUT?**

A proposed settlement has been reached in a class action lawsuit about the labeling and advertising of Organix brand hair care and skin care products. The plaintiffs in the lawsuit assert that the packaging and advertising for these products mislead consumers to believe that the products were wholly or at least mostly organic. Todd Christopher International, Inc., which does business as Vogue International, denies all the plaintiffs' allegations and is entering into this settlement to avoid burdensome and costly litigation. The settlement is not an admission of wrongdoing. The court has not decided who is right and who is wrong.

**WHO IS INCLUDED IN THE SETTLEMENT CLASS?**

You are a member of the Class if you purchased at least one Organix brand hair care or skin care product on or after October 25, 2008.

The following persons are excluded from the settlement class: (a) Defendant; (b) the officers, directors, or employees of Defendant and their immediate family; (c) any entity in which Defendant has a controlling interest; (d) any affiliate, legal representative, heir, or assign of Defendant; (e) all federal court judges who have presided over this Action and their immediate family; (f) all persons who submit a valid request for exclusion from the Class; and (g) those who purchased the Organix brand hair care or skin care products for the purpose of resale.

**THE SETTLEMENT BENEFITS – WHAT YOU MAY GET****CASH FROM THE CLAIM PROCESS**

Todd Christopher International, Inc. will create a fund of \$6.5 million to pay Class Members' claims, certain notice and administrative costs, incentive awards to the named plaintiffs and attorneys' fees and costs. You may obtain a cash payment from the fund if you purchased one of the Organix brand hair care or skin care products. The amount of your payment will depend on the statements in your Claim Form. Details are provided below.

Under the settlement, Todd Christopher International, Inc. also has agreed to make certain changes to the product labeling for its Organix brand hair care and skin care products. Details are described in the Settlement Agreement, which is available at [www.toddchristopher.com](http://www.toddchristopher.com).

**HOW YOU GET A CASH PAYMENT – SUBMITTING A CLAIM FORM****HOW CAN I GET A PAYMENT?**

You must return a Claim Form to get a cash payment. A copy of the Claim Form is included in this Notice Package. Claim Forms are also available at [www.toddchristopher.com](http://www.toddchristopher.com) or by calling 1-800-xxx-xxxx.

**HOW MUCH CASH WILL I RECEIVE?**

You will receive \$4 for each product you purchased, up to a total of \$28 per Class Member.

**HOW DO I SEND IN A CLAIM?**

The Claim Forms are simple and easy to complete.

The Claim Form requires that you provide:

1. Your mailing address;
2. The number of Organix products you purchased between October 25, 2008 and [Date Notice First Published]; and
3. Your signature under penalty of perjury, confirming that the information provided is true and correct.

***Please return a Claim Form if you think that you have a claim. Returning a Claim Form is the only way to receive a cash payment from this settlement. No claimant may submit more than one Claim Form, and two or more claimants may not submit Claim Forms for the same alleged damage.***

The Claim Administrator may request additional information if the Claim Form is insufficient to process your claim. Failure to provide any requested documentation may result in the denial of your claim and may limit the type of remedy you receive.

#### WHEN IS THE CLAIM FORM DUE?

You must file your claim, so that it is postmarked or submitted online, no later than [10 days prior to Final Approval Hearing], 2013.

#### WHO DECIDES MY CLAIM?

The Claim Forms will be reviewed by an independent Claim Administrator according to criteria agreed to by the parties.

The Claim Administrator may contact you or other persons listed in your Claim Form if he or she needs additional information or otherwise wants to verify information in your Claim Form.

The Claim Administrator's determination is final. Neither you nor Todd Christopher International, Inc. can appeal or contest the decision of the Claim Administrator.

#### WHEN WOULD I GET MY PAYMENT?

The Court will hold a hearing on \_\_\_\_\_ to decide whether to approve the settlement. If the Court approves the settlement, after that there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. If there are no appeals or other delays, you should be sent your cash payment in approximately \_\_\_\_\_.

#### WHAT IF THE FUND IS TOO SMALL? TOO LARGE?

If the total amount of claims and certain administration costs are more than \$4,866,000, the payments to Class Members will be reduced *pro rata* such that each claimant would receive proportionally less than the amount he or she claimed. If, after everyone sends in Claim Forms, the total of all approved claims and certain administration costs are less than \$4,866,000, equal amounts of the unused portion of the fund will be donated to the following non-profit charitable organizations: Consumers Union and The Center for Food Safety. Such funds will not be returned to Todd Christopher International, Inc.

#### WHAT HAPPENS IF I DO NOTHING AT ALL?

You ***must*** return a Claim Form to receive a cash payment. If you do nothing, you will get no money from the settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Todd Christopher International, Inc. about the legal issues in this case.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### HOW DO I GET OUT OF THE SETTLEMENT?

If you do not wish to be included in the Class and receive settlement benefits, you must send a letter stating that you want to be excluded from this lawsuit. Be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request post-marked no later than [50 days prior to Final Approval Hearing date] to:

**Organix Class Settlement  
Claims Administrator  
Heffler Claims Group  
P.O. Box XXXX  
Philadelphia, PA 1901X-XXX**

If you asked to be excluded, you will not get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Todd Christopher International, Inc. in the future.

If you have a pending lawsuit against Todd Christopher International, Inc., speak to your lawyer immediately. You may need to exclude yourself from this lawsuit in order to continue your own lawsuit. Remember, the exclusion date is [50 days prior to Final Approval Hearing date].

## THE LAWYERS REPRESENTING YOU

### DO I HAVE LAWYERS IN THIS CASE?

The Court appointed the law firm of the Lexington Law Group to represent you and other Class Members. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

### HOW WILL THE LAWYERS BE PAID?

Class Counsel will ask the Court to award them attorneys' fees and expenses. Class Counsel will make an application to the Court for an amount up to 25% of the Claim Fund or \$1,625,000.

The named plaintiffs will also ask the Court to award them an amount not to exceed \$1,500 each for their time and effort acting as plaintiffs and for their willingness to bring this litigation and act on behalf of consumers. These amounts, if approved by the Court, will be paid from the Claim Fund.

The costs to administer the settlement, to review Claim Forms, and notify Class Members about this settlement will be paid out of the Claim Fund, and will not exceed \$650,000.

## OBJECTING TO THE SETTLEMENT

### HOW DO I TELL THE COURT THAT I DO NOT LIKE THE SETTLEMENT?

If you are a Class Member, you can object to the settlement if you do not like any part of it and the Court will consider your views. To object, you must send a letter to the Court and the parties saying that you object to the settlement in *Golloher v. Todd Christopher International, Inc.*, Case No. 12-cv-06002-RS (N.D. California). Be sure to include your name, address, telephone number, your signature, and *a statement under penalty of perjury that you purchased one of the Organix brand hair care or skin care products in the United States during the Class Period*, as well as the reasons you object to the settlement. This objection ***must be***

**postmarked** no later than [50 days prior to Final Approval Hearing date]. Send your objection to:

Clerk of the Court  
United States District Court  
Northern District of California  
450 Golden Gate Avenue  
San Francisco, CA 94102

Mark N. Todzo  
Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117

Kieran G. Doyle  
Cowan, Liebowitz & Latman  
1133 Avenue of the Americas  
New York, NY 10036

#### WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING?

Objecting is telling the Court that you do not like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class or the lawsuit. You cannot request exclusion **and** object to the settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

#### RELEASE OF CLASS MEMBERS' CLAIMS AND DISMISSAL OF LAWSUIT

##### IN RETURN FOR THESE SETTLEMENT BENEFITS, WHAT AM I GIVING UP?

If the Court approves the proposed settlement and you do not request to be excluded from the Class, you must release (give up) all claims that are subject to the Release, and the case will be dismissed on the merits and with prejudice. **If you remain in the Class, you may not assert any of those claims in any other lawsuit or proceeding. This includes any other lawsuit or proceeding already in progress.**

#### THE FINAL APPROVAL HEARING

##### WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Judge will hold a Final Approval Hearing at \_\_\_\_ on \_\_\_\_\_ at the United States District Court for the Northern District of California, 450 Golden Gate Ave., San Francisco, CA 94102, in Courtroom 3 on the 17<sup>th</sup> Floor. At this hearing, the Judge will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Judge will consider them. The Judge will listen to people who have asked to speak at the hearing. After the hearing, the Judge will decide whether to approve the settlement. We do not know how long this decision will take.

**DO I HAVE TO COME TO THE HEARING?**

No. Class Counsel will answer questions the Judge may have. But, you are welcome to come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. As long as you delivered your written objection on time, the Judge will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**MAY I SPEAK AT THE HEARING?**

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must file with the Court a "Notice of Intention to Appear in *Golloher v. Todd Christopher International, Inc.*, Case No. 12-cv-06002-RS." Be sure to include your name, address, telephone number, your signature and *a statement under penalty of perjury that you are a member of the Class* (i.e., that you purchased one of the Organix brand hair care or skin care products during the class period). Your Notice of Intention to Appear must be post-marked no later than \_\_\_\_\_, and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel at the three addresses listed above.

**GETTING MORE INFORMATION****ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?**

This Notice summarizes the proposed settlement. More details are in the Stipulation of Settlement. You can get a copy of the Stipulation of Settlement by writing to **Organix Class Settlement, Claims Administrator, Heffler Claims Group, P.O. Box XXXX, Philadelphia, PA 1910X-XXXX** or on the internet at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

If you have questions about how to complete a Claim Form, you can call the Claim Administrator at \_\_\_\_\_. You can also contact attorneys for the class at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

**PLEASE DO NOT CALL OR WRITE TO THE COURT FOR INFORMATION OR ADVICE.**

/s/ Hon. Richard Seeborg

DATED: \_\_\_\_\_

BY ORDER OF THE U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**EXHIBIT F**

**Todd Christopher International, Inc. d/b/a Vogue International's ("Vogue")  
Organix Brand Hair Care And Skin Care Products ("Organix Products")**

**CLAIM FORM**

**You can also submit online at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).**

Use this Claim Form to claim refunds of a portion of the purchase price of one or more of the Organix Products (up to a total of \$28). This Claim Form is only for claims concerning the purchase(s) of Organix Products. You cannot use this form to make a claim concerning the purchase(s) of any other Vogue product or hair care or skin care products manufactured by another company. You may submit only one Claim Form, and two people cannot submit Claim Forms for the same purchases. **All Claim Forms must be postmarked or submitted online by [10 Days prior to Final Hearing].** If mailing, please return this form to:

Organix Class Settlement  
Claims Administrator  
Heffler Claims Group  
P.O. Box XXXX  
Philadelphia, PA 1901X-XXX

**CLASS MEMBER INFORMATION**

NAME: \_\_\_\_\_ TELEPHONE OR EMAIL: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

**Number of Organix Products purchased  
between October 25, 2008 and [DATE Notice first published]: \_\_\_\_\_**

**28 U.S.C. §1746 AFFIRMATION**

I UNDERSTAND THAT THE DECISION OF THE CLAIM ADMINISTRATOR IS FINAL AND BINDING ON ME AND ON VOGUE.

I SWEAR UNDER PENALTY OF PERJURY THAT THE INFORMATION ON THIS CLAIM FORM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**CLAIM FORMS MUST BE RETURNED BY [10 Days prior to Final Hearing].  
QUESTIONS? VISIT [WWW.\\_\\_\\_\\_\\_.COM](http://www._____.com) OR CALL 1-800-XXX-XXXX.**



**EXHIBIT G**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ANDREA GOLLOHER, MARISA  
FREEMAN, ROBERTA CHASE, JAMES  
HANKS, MICHAEL SHAPIRO, BRENDA  
BROWN, GRETCHEN SWENSON,  
CRYSTAL KENNY, KELLY BOTTARI,  
RENEE CONOVER, and SHANISHA  
SANDERS, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

vs.

TODD CHRISTOPHER INTERNATIONAL,  
INC. DBA VOGUE INTERNATIONAL, a  
Florida Corporation, and DOES 1-100,

Defendants.

) No. C 12-06002 RS

) CLASS ACTION

) **[PROPOSED] FINAL SETTLEMENT**  
) **ORDER AND JUDGMENT**

1           IT IS HEREBY ADJUDGED AND DECREED THAT:

2           1.       This Judgment incorporates by reference the definitions in the Stipulation of  
3 Settlement dated \_\_\_\_\_, 2013 (“Stipulation”), attached as Exhibit A, and all capitalized  
4 terms used herein shall have the same meanings as set forth in the Stipulation unless set forth  
5 differently herein. The terms of the Stipulation are fully incorporated in this Judgment as if set forth  
6 fully here.

7           2.       The Court has jurisdiction over the subject matter of this action and all Parties to the  
8 action, including all Class Members who do not timely exclude themselves from the Class. The list  
9 of excluded Class Members is attached as Exhibit B.

10          3.       Pursuant to Federal Rule of Civil Procedure 23(b)(3), and for settlement purposes  
11 only, the Court hereby certifies the following Class:

12           all individuals in the United States who purchased the Challenged Products within the Class  
13 Period. Specifically excluded from the Class are (a) Defendant, (b) the officers, directors, or  
14 employees of Defendant and their immediate family members, (c) any entity in which  
15 Defendant has a controlling interest, (d) any affiliate, legal representative, heir, or assign of  
16 Defendant, (e) all federal court judges who have presided over this Action and their  
17 immediate family members; (f) all persons who submit a valid request for exclusion from the  
18 Class; and (g) those who purchased the Challenged Products for the purpose of resale.

19          4.       Pursuant to Federal Rule of Civil Procedure 23(c)(3), all such persons or entities who  
20 satisfy the Class definition above, except those Class Members who timely and validly excluded  
21 themselves from the Class, are Class Members bound by this Judgment.

22          5.       For settlement purposes only, the Court finds:

23           (a)       Pursuant to Federal Rule of Civil Procedure 23(a), Andrea Golloher, Marisa  
24 Freeman, Roberta Chase, James Hanks, Michael Shapiro, Brenda Brown, Gretchen Swenson, Crystal  
25 Kenny, Kelly Bottari, Rennee Conover and Shanisha Sanders are members of the Class, their claims  
26 are typical of the Class, and they fairly and adequately protected the interests of the Class throughout  
27 the proceedings in the Action. Accordingly, the Court hereby appoints Andrea Golloher, Marisa  
28 Freeman, Roberta Chase, James Hanks, Michael Shapiro, Brenda Brown, Gretchen Swenson, Crystal  
Kenny, Kelly Bottari, Rennee Conover and Shanisha Sanders as class representatives;

1 (b) The Class meets all of the requirements of Federal Rules of Civil Procedure  
2 23(a) and (b)(3) for certification of the class claims alleged in the First Amended Complaint,  
3 including: (a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the class representatives  
4 and Class Counsel; (e) predominance of common questions of fact and law among the Class for  
5 purposes of settlement; and (f) superiority; and

6 (c) Having considered the factors set forth in Rule 23(g)(1) of the Federal Rules  
7 of Civil Procedure, Class Counsel have fairly and adequately represented the Class for purposes of  
8 entering into and implementing the settlement. Accordingly, the Court hereby appoints Class  
9 Counsel as counsel to represent Class Members.

10 6. Persons or entities that filed timely exclusion requests are not bound by this Judgment  
11 or the terms of the Stipulation and may pursue their own individual remedies against Defendant.  
12 However, such excluded parties are not entitled to any rights or benefits provided to Class Members  
13 by the terms of the Stipulation. The list of persons and entities excluded from the Class because they  
14 filed timely and valid requests for exclusion is attached hereto as Exhibit B.

15 7. The Court directed that notice be given to Class members by publication and other  
16 means pursuant to the notice program proposed by the Parties in the Stipulation and approved by the  
17 Court. The Declaration of \_\_\_\_\_, attesting to the dissemination of the notice to  
18 the Class, demonstrates compliance with this Court's Preliminary Approval Order. The Class Notice  
19 advised Class members of the terms of the settlement; the Final Approval Hearing and their right to  
20 appear at such hearing; their rights to remain in or opt out of the Class and to object to the  
21 settlement; the procedures for exercising such rights; and the binding effect of this Judgment,  
22 whether favorable or unfavorable, to the Class.

23 8. The distribution of the notice to the Class constituted the best notice practicable under  
24 the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the  
25 requirements of due process, 28 U.S.C. §1715, and any other applicable law.

26 9. Pursuant to Federal Rule of Civil Procedure 23(e)(2), the Court finds after a hearing  
27 and based upon all submissions of the Parties and other persons that the settlement proposed by the

1 Parties is fair, reasonable, and adequate. The terms and provisions of the Stipulation are the product  
2 of arms-length negotiations conducted in good faith and with the assistance of an experienced  
3 mediator, Randall W. Wulff. The Court has considered any timely objections to the Settlement and  
4 finds that such objections are without merit and should be overruled. Approval of the Stipulation  
5 will result in substantial savings of time, money and effort to the Court and the Parties, and will  
6 further the interests of justice.

7 10. Upon the Effective Date, the named Plaintiffs and each Class Member other than  
8 those listed on Exhibit B shall be deemed to have, and by operation of this Final Settlement Order  
9 and Judgment shall have released, waived and discharged with prejudice Defendant from any and all  
10 Released Claims as set forth in Section IV of the Stipulation.

11 11. All Class Members who have not timely and validly submitted requests for exclusion  
12 are bound by this Judgment and by the terms of the Stipulation.

13 12. The Plaintiffs in the Action initiated this lawsuit, acted to protect the Class, and  
14 assisted their counsel. Their efforts have produced the Stipulation entered into in good faith that  
15 provides a fair, reasonable, adequate and certain result for the Class. Plaintiff Golloher is entitled to  
16 an incentive award of \$\_\_\_\_\_. Plaintiff Freeman is entitled to an incentive award of \$\_\_\_\_\_.  
17 Plaintiff Chase is entitled to an incentive award of \$\_\_\_\_\_. Plaintiff Hanks is entitled to an  
18 incentive award of \$\_\_\_\_\_. Plaintiff Shapiro is entitled to an incentive award of \$\_\_\_\_\_.  
19 Plaintiff Brown is entitled to an incentive award of \$\_\_\_\_\_. Plaintiff Swenson is entitled to an  
20 incentive award of \$\_\_\_\_\_. Plaintiff Kenny is entitled to an incentive award of \$\_\_\_\_\_.  
21 Plaintiff Bottari is entitled to an incentive award of \$\_\_\_\_\_. Plaintiff Conover is entitled to an  
22 incentive award of \$\_\_\_\_\_. Plaintiff Sanders is entitled to an incentive award of \$\_\_\_\_\_. Class  
23 Counsel are entitled to reasonable attorneys' fees and expenses, which the Court finds to be  
24 \$\_\_\_\_\_.

25 13. The Court hereby dismisses with prejudice the Action, and the Released Parties are  
26 hereby released from all further liability for the Released Claims.

1           14.     Without affecting the finality of this Judgment, the Court reserves jurisdiction over  
2 the implementation, administration and enforcement of this Judgment and the Stipulation, and all  
3 matters ancillary thereto.

4           15.     The Court finding that no reason exists for delay in ordering final judgment pursuant  
5 to Federal Rule of Civil Procedure 54(b), the clerk is hereby directed to enter this Judgment  
6 forthwith.

7           16.     The Parties are hereby authorized without needing further approval from the Court to  
8 agree to and adopt such modifications and expansions of the Stipulation, including without limitation  
9 the claim review procedure, that are consistent with this Judgment and do not limit the rights of  
10 Class Members under the Stipulation.

11  
12           **IT IS SO ORDERED.**

13  
14 DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE RICHARD SEEBORG  
UNITED STATES DISTRICT COURT  
JUDGE

# **Exhibit 2**

# Randall W. Wulff

Randall W. Wulff

Contact:

Michael Richards

Case Manager for Mr. Wulff

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Randall W. Wulff: [rwulff@wqsadr.com](mailto:rwulff@wqsadr.com)



[View Current Fee Schedule and Policies](#)

Before becoming a full-time neutral in 1994, Randall Wulff was a trial lawyer with Farella Braun & Martel LLP in San Francisco for 20 years, specializing in complex commercial, construction, intellectual property, securities, insurance coverage, real estate and employment litigation, representing both plaintiffs and defendants. Mr. Wulff received his J.D. from the University of California, Hastings College of the Law, in 1974, where he was ranked first academically in his class in 1972 and 1973, achieving the academic honoraries of the Order of the Coif and Thurston Society. In 1974, he then served as Hastings' first extern for the Chief Justice of the California Supreme Court, and also worked on the editorial staff of the Hastings Law Journal. In addition to his active trial practice at Farella, he was also an adjunct professor at Hastings, having taught courses in "Trial Evidence" and "Complex Litigation." Mr. Wulff has tried cases in federal court, state court and the U.S. Court of Claims. He has also arbitrated many cases and acted as an arbitrator in several more. Mr. Wulff's background in trial work led to his active interest in mediation, looking for faster, more economical results for his clients. He successfully settled roughly 100 cases for his clients as an advocate in mediations or mini-trials.

Because of this extensive experience, Mr. Wulff has been selected as a mediator in over two thousand diverse cases, settling most of those cases. They have ranged from two-party cases to suits involving more than one hundred parties.

Mr. Wulff successfully mediated the \$2.75 billion agreement between Discover, Mastercard and Visa. He also mediated the \$1.1 billion class action settlement of the Microsoft antitrust claims in California.

In 2004, after a nationwide search for several months, Mr. Wulff was selected by the Chief Judge in the Southern District of New York to lead the panel that heard and decided the property damage claims for the World Trade Center arising from the tragedy on September 11. This included reconstruction costs as well as business interruption claims. These insurance claims were roughly four times larger than any other in the history of the industry.

Mr. Wulff is co-editor of two books, the Alternative Dispute Resolution Practice Guide (West Group 1993-2003), as well as a second book devoted specifically to ADR for the construction industry, both being marketed nationally. He has also published numerous articles on alternative dispute resolution ("ADR"), and contributed the chapter on "Mediation" to the nationally published ADR Handbook. He has spoken on mediation at numerous national and international conferences and conventions.

The Mediation Society selected Mr. Wulff in 2004 as its "Mediator of the Year." Mr. Wulff received the American Arbitration Association's 1990 Award as its outstanding mediator in Northern California. He is regularly selected among the "top" mediators in polls done periodically by the legal newspapers, The Recorder and the Daily Journal. Mr. Wulff regularly appears in each annual selection of SuperLawyers and Best Lawyers in America and other similar published evaluations. He is one of two mediators in California to receive a first tier rating from Chambers & Partners for construction mediation. Mr. Wulff was selected the ADR Lawyer of the Year from Oakland in the Best Lawyers 2011 edition.

Recently published articles profiling Mr. Wulff can be found by clicking on the "Articles" tab on the home page of this site or by [clicking here](#).

## PROFESSIONAL EXPERIENCE

1974 - 2000 Farella, Braun & Martel  
1980 - 1999 Partner in the firm  
1994 - Present Full-time neutral

## EDUCATION

J.D., 1974, University of California, Hastings College of the Law. Extern to Chief Justice of the California Supreme Court, 1973, Order of the Coif, Law Review.  
B.A., 1970, Honors College of University of Oregon. 1968-69, attended Netherlands Institute of International Business.

## PROFESSIONAL ACTIVITIES AND AWARDS

Selected as the Mediation Society's "Mediator of the Year" in 2004; selected as AAA's outstanding mediator in Northern California in 1990; Member of Alameda County Bar and American Bar groups on ADR. Past member of Adjunct Faculty at Hastings College of the Law, having taught courses in Trial Practice and Complex Litigation.

## REPRESENTATIVE CASES

### Commercial:

Selected in 2004 to lead the panel that will hear and decide the property damage claims for the World Trade Center complex arising from the tragedy on September 11, 2001, numerous disputes involving high technology, antitrust (including 1.1 billion settlement of Microsoft class action), securities, intellectual property, limited partnerships and real estate, employment issues, environmental, SuperFund cleanups, energy lease or royalty disputes, legal and accounting malpractice claims, insurance coverage, general contractual disagreements.

### Construction:

Claims arising from construction of subway station, dams, hydroelectric facilities, Golden State Warriors' Arena renovation; Arizona Diamondback's ballpark, Staples Center (LA Lakers' and Clippers' arena), Disney Concert Hall, highways, cogeneration plants, chemical plants, water treatment plants, chip fabrication facilities, tunnels and pipelines, offshore oil platform, hospitals, and various high-rise buildings and other structures, both commercial and residential.

## LECTURES ON ADR

National or international conventions or conferences include presentations for the Construction SuperConference, the PLI Copyright Trademark Conference; the Construction Users Council of the Business Roundtable, the Engineering News Record Conference, the International Symposium on Dispute Resolution, the International Association of Defense Counsel, the ABA Energy Litigation Committee, the ABA forum, the nationally televised CLESN program on Dispute Resolution, the Mechanical Contractors Association of America, the DPIC Convocation and the Forbes Conference on International Infrastructure.



Regional presentations include keynote speaker to the Hawaii State Bar Convention and programs for the California Society of CPA's, the California Bar, the Risk and Insurance Management Society, the Associated General Contractors, the California County Counsel's Association, the Asia/Pacific Center and the Defense Research Institute.

Local presentations on ADR include programs for the Bay Area Executives Group, Hastings College of Advocacy, the Bar Association of San Francisco, the Mediation Society and numerous local programs and mediator trainings.

#### **PUBLICATIONS ON ADR**

Co-Editor, ADR: A Practical Guide to Resolve Construction Disputes, book published and nationally marketed in 1993.

Co-Editor, The Alternative Dispute Resolution Practice Guide (West Group 1993-2003).

Author, "A Mediation Primer," ADR Practice Guide, Wiley and Sons, 1990.

Author, "Alternative Dispute Resolution," ABA Energy Committee Newsletter, 1995.

Co-Author, "Tips for A Successful Construction Mediation," DART Occasional Papers, 1994.

Author, "Mediation," Assn. Of Business Trial Lawyers Report, November, 1993.

Co-author, chapter on Arbitration, California ADR Practice Guide, Shepherds/McGraw-Hill, 1992.

Author, "Approaching Your Opponent about Mediating," AAA Mediation and Arbitration Handbook, 1991.

Author, "Mediation of Construction Claims," AAA Mediation and Arbitration Handbook, 1991.

Co-author, "Mediation and Arbitration of Construction Claims," Digger Reporter, July 1991.

Author, "A Shortcut to Settlement," The Recorder, August 1988.

Author, "Mediation—An Easier Solution," Engineers At The Bar, April 1988.

Author, "Why Haven't You Tried Mediation?", Barristers Law Journal, Vol. 6, No. 10, December 1987.

#### **REFERENCES**

A sample of names follows here. A lengthier list of specific references from counsel and parties in cases where Mr. Wulff has acted as mediator is also available upon request.

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# Exhibit 3





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### **MISSION STATEMENT**

The Lexington Law Group is a public interest law firm specializing in consumer protection and environmental litigation. We bring creativity and tenacity to plaintiff's public interest litigation in a manner that yields superb results for our clients and the general public. Our cases have resulted in the recovery of millions of dollars for the benefit of consumers and the removal of toxic chemicals from thousands of everyday products.

Our firm is made up of committed people who are passionate about our work. We represent aggrieved individuals, non-profit organizations, and public entities. We are dedicated to our clients and the public interest goals that we set for each case. Our exceptional grasp of complex legal issues enables us to obtain extraordinary results for our clients.

We are aggressive litigators who fight for our clients at every turn, yet we are also professional in our approach and treat all parties with respect. Our goal is to hold corporations accountable and to use the law to forge creative solutions to difficult problems for the benefit of our clients and society.

### **CURRENT CASES**

The following is a list of representative cases we are currently litigating:

- Fake Organic Cosmetic Products Litigation: Class counsel in cases involving misrepresentation of non-organic cosmetic products as organic. (*Brown, et al. v. Hain Celestial Group*, CV-11-03082 LB (N.D. CA); *Golloher, et al. v. Todd Christopher International*, RG 12 653621 (Alameda Sup. Ct.)).
- Out-of-Network UCR Rates Litigation: Named interim Class Counsel in antitrust case against WellPoint alleging conspiracy to artificially reduce reimbursements on "out of plan" claims by policy holders through the use of the fraudulent Ingenix database. (*In Re WellPoint Out-of-Network UCR Rates Litigation*, MDL 2074).
- Lead in Jewelry: Environmental enforcement action co-litigated with the California Attorney General that has thus far resulted in commitments by hundreds of major retailers, importers and manufacturers of costume jewelry to significantly reduce the levels of lead in their jewelry. This case also lead directly to California's landmark lead in jewelry statute, which was itself a precursor to passage of the federal Consumer Product Safety Improvement Act. (*State of California v. Burlington Coat Factory, et al.*).

## **RESULTS**

The following is a representative list of some of our past successes:

- **Peer-to-Peer (P2P) Interference**: Named Class Counsel in class action against Comcast for alleged breach of contract and false advertising arising from interference with subscribers' use of peer-to-peer file sharing applications. Obtained \$16 million settlement for the class. (*In re: Comcast Peer-to-Peer (P2P) Transmission Contract Litigation*).
- **Greenwashing of Consumer Products**: Counsel for non-profit group in private attorney general action resulting in Consent Judgments entered against more than 30 manufacturers and re-sellers requiring compliance with California's marketing and labeling requirements for cosmetic products. Examples of brands which have agreed to Court ordered compliance with these requirements include Alterna, Aubrey, Beauty Without Cruelty, Blum Naturals, Boots, Curls, Derma E, Episencial, Kiss My Face, Morrocco Method, Nature's Baby, Organic Root Stimulator, Out of Africa, Pacifica, Palmer's, Parnevu, Peter Lamas, Pure & Basic, Shea Moisture, Simply Organic, Suki and Tints of Nature.
- **False Advertising of Anti-Aging Products**: Successfully prosecuted consumer protection action against maker of multi-million dollar "snake oil" product line falsely advertised as anti-aging cancer cure. (*Center for Environmental Health v. Almon Glenn Braswell*).
- **Chase Bank Debt Collection Practices**: Named Class Counsel in class action against Chase Bank alleging violations of Federal Debt Collection Practices Act and California's Rosenthal Fair Debt Collection Practices Act in connection with Chase's credit card collection activities. (*Gardner v. Chase Bank USA, N.A.*).
- **Blue Shield Mid-Year Cost Increases**: Named Class Counsel in class action alleging breach of contract and false advertising case challenging health insurer Blue Shield of California's mid-year unilateral increase to deductibles and other calendar year costs. Obtained \$2.7 million judgment for the class. (*Dervaes v. Blue Shield of California*).
- **Lead in Diaper Rash Ointment**: Class action and private attorney general case that forced more than twenty-five major manufacturers and retailers of diaper rash ointment to reformulate their products to eliminate actionable levels of lead. Defendants included Bristol-Myers Squibb Co., Johnson & Johnson Consumer Companies, Inc., Pfizer, Inc., Schering-Plough HealthCare Products, Inc., and Warner-Lambert Company. (*Center for Environmental Health v. Bristol-Myers Squibb Co., et al., and Kenneth Johnson et al. v. Bristol-Myers Squibb Co., et al.*).
- **US Airways Lap Child Litigation**: Recovered refunds in a successful consumer class action case alleging that US Airways charged for "lap-children" in breach of its contract of carriage. (*Robins v. US Airways, Inc.*).
- **Microsoft Technical Support Litigation**: Class action consumer case against Microsoft forcing Microsoft to abandon its unilateral decision to discontinue free technical

support for Office 2000 software products. (*Jones v. Microsoft Corporation*).

- Automobile Credit Truth-In-Lending Violations: Plaintiffs' Liaison Counsel in a large multi-party coordinated proceeding against hundreds of automobile dealerships alleging violations of the Truth in Lending Act that resulted in injunctions requiring disclosure of previously undisclosed lease and finance terms in automobile advertising. (*In Re Automobile Advertising Cases*).
- Nursing Home Staffing Litigation: Class action and private attorney general lawsuits against dozens of skilled nursing facilities that resulted in agreements to increase minimum staffing levels as required by California law. (*Foundation Aiding the Elderly v. Covenant Care, et al.*).
- Health Risks From Kava Kava: Represented class of consumers of Kava Kava dietary supplements against more than thirty-five defendants in case about failure to disclose the risk of liver disease from the products. (*In Re: Kava Kava Litigation*).
- Second Hand Smoke: Represented the City of San Jose and a private plaintiff in suit against major tobacco companies regarding failure to warn about second hand smoke in violation of California law. (*In Re Tobacco Cases II*).
- Yellow Pages Fraud: Business fraud case involving dissemination by defendant US Yellow Pages of solicitations disguised to appear like invoices to businesses in violation of state and federal law. (*Dowhal v. US Yellow Pages, Inc.*).
- False Advertising of Inkjet Printers: Consumer protection action alleging false advertising of print speeds by over forty major manufacturers and retailers of inkjet printers including Hewlett-Packard Company, Lexmark, Canon and Epson that resulted in injunctions requiring clear print speed disclosures. (*Dowhal v. Amazon.com et al.*).
- Tobacco Advertising: Represented non-profit group in case against outdoor advertising company defendants alleging violations of California's STAKE Act, which prohibits tobacco advertising within 1,000 feet of public schools, that resulted in the removal of hundreds of tobacco billboards located near schools in California. (*Center For Environmental Health v. Eller Media Corporation, et al.*).

## **ATTORNEY BACKGROUND AND EXPERIENCE**

**Eric S. Somers** specializes in complex environmental and consumer public interest litigation. Mr. Somers has significant experience enforcing California's landmark Right-to-Know law, Proposition 65, against Fortune 500 companies in the tobacco, pharmaceutical, chemical, cosmetics, water quality, costume jewelry and retail industries. These cases have led to reformulation of thousands of products designed for children to eliminate toxic chemicals such as lead, arsenic, toluene, di-n-butyl phthalate (DBP) and di-2-ethylhexyl phthalate (DEHP). Examples of consumer products that have been reformulated include children's playsets (arsenic treated wood), water filters (lead and arsenic) and children's jewelry

(lead). Many of these private enforcement actions have been co-litigated with the California Attorney General and other public enforcement agencies.

Mr. Somers also has substantial experience in false advertising and unfair competition matters. Mr. Somers recently represented a group of plaintiffs in a case against major inkjet printer manufacturers regarding false and misleading print speed representations. Mr. Somers was also Liaison Counsel in a complex coordinated proceeding alleging violations of the Truth In Lending Act by California automobile dealers that resulted in industry wide changes in advertising practices. He is currently working on a class action alleging violations of the Fair Debt Collection Practices Act against Chase Bank.

Mr. Somers founded the Lexington Law Group in 1996 and is a principal of the firm. Mr. Somers received his law degree from Hastings College of the Law and received a B.A. from Tulane University. While attending law school, Mr. Somers externed for the Honorable John P. Vukasin, Jr., United States District Court, Northern District of California.

**Mark N. Todzo** has devoted his practice of law to the representation of plaintiffs in consumer and environmental protection litigation for over fifteen years. In that time, he has represented aggrieved individuals, nonprofit organizations and public entities in litigation that has curbed abusive and illegal corporate practices. Mr. Todzo's varied work has, among other things, helped to remove toxic chemicals from the environment, increased staffing in nursing homes, reformed deceptive advertising practices and recovered millions of dollars for the benefit of consumers. Mr. Todzo has argued cases in state and federal trial courts as well as courts of appeal and the California Supreme Court.

Mr. Todzo has served as class counsel in numerous class action lawsuits as well as liaison counsel in complex coordinated actions. He was recently lead counsel in a case that resulted in the removal of over 500,000 pounds of lead per year from California roadways. Mr. Todzo is currently representing classes of individuals in a variety of different cases, including a class of Blue Shield subscribers seeking to recover increased health care payments and a class of Comcast subscribers who were blocked from using peer-to-peer file sharing programs in breach of their contracts.

Mr. Todzo joined the Lexington Law Group in 1998 and is a principal of the firm. Mr. Todzo received his law degree from Hastings College of the Law in 1993 and received a A.B. from Duke University in 1986.

**Howard Hirsch** has devoted his career to representing plaintiffs in public interest litigation to enforce consumer protections, conserve natural resources, and protect human health from toxic chemicals. After obtaining two years of training and experience at complex litigation with a large commercial law firm, Mr. Hirsch spent five years as a staff attorney at a national, non-profit environmental group representing individuals and other non-profits in citizen suits against polluters under the Clean Water Act, Clean Air Act, and other federal statutes. In that capacity, Mr. Hirsch helped secure the largest penalty ever assessed against a Pennsylvania polluter in a citizens' suit to date.

Mr. Hirsch joined the Lexington Law Group in 2003 and is a principal of the firm. Since joining LLG, Mr. Hirsch's practice has included significant experience enforcing California's Proposition 65 and litigating class actions against, among others, technology companies, airlines, and health care providers and insurers. These cases have resulted in significant reductions in human exposures to toxic chemicals, changes in deceptive business practices, and the significant monetary recoveries for the benefit of consumers. Mr. Hirsch has also volunteered his legal services to the homeless community of San Francisco and currently serves as a volunteer arbiter for the San Francisco Department of Human Services resolving disputes between homeless shelters and their residents.

Mr. Hirsch graduated in the top ten percent of his class from the University of California Berkeley Boalt Hall School of Law in 1996 and in the top one percent of his class from Boston College in 1993.

**Lisa Burger** joined the Lexington Law Group as an associate in the Spring of 2008. Since earning her law degree from the University of Notre Dame Law in 2005, Ms. Burger has devoted her practice of law to exclusively representing plaintiffs in environmental, consumer protection, and civil rights litigation. Her current practice includes enforcing California's Proposition 65 to remove toxic chemicals from a wide range of consumer products as well as representing consumers in complex class action matters alleging unfair and deceptive advertising practices.

Before joining Lexington Law Group, Ms. Burger was a litigation fellow with Disability Rights Advocates (DRA), a non-profit law center in Berkeley, California, that specializes in class action litigation on behalf of people with disabilities. As the David Boies / LD Access Fellow, Ms. Burger's practice focused on increasing access to standardized testing for people with learning disabilities and ADHD and involved nearly every aspect of civil litigation in both federal and state court. While attending Notre Dame Law School, Ms. Burger also interned with the Lawyers' Committee for Civil Rights Under Law in Washington, D.C., and the Natural Resources Defense Council in New York City. In 2001, Ms. Burger volunteered with the United States Peace Corps in the Kyrgyz Republic, Central Asia.