

FINAL
12/21/2012

SETTLEMENT AGREEMENT

This Class Action Settlement Agreement is entered into, subject to Court approval, by and between: (1) Beverly Beck-Ellman, both for herself in her individual capacity and on behalf of the Class in her capacity as Class Representative; and (2) defendants Kaz, Inc. and Kaz USA, Inc. ("Kaz" or "Defendants"). All capitalized terms used herein are as defined in Section 2 below.

1. RECITALS

1.1 This Settlement Agreement ("Agreement") is entered into with reference to the following facts:

PROCEDURAL BACKGROUND

1.2 WHEREAS, on October 13, 2010, Plaintiffs Beverly Beck-Ellman, John and Denise Bielis, and John and Sandy Mahoy filed a putative class action in the United States District Court for the Southern District of California, *Beverly Beck-Ellman, et al., individually and on behalf of all others similarly situated v. Kaz USA Incorporated, et al.*, Case No. 3:10-CV-02134-H (DHB), alleging they suffered personal injuries and property damage and bringing claims: on behalf of a California class of heating pad purchasers under California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*, False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500, *et seq.*, the Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750, *et seq.*, and asserting breach of express warranty under the Song Beverly Act, Cal. Civ. Code § 1790, *et seq.*, Cal. Comm. Code § 2313, and common law, breach of implied warranty under the Song Beverly Act, Cal. Civ. Code § 1790, *et seq.*, Cal. Comm. Code § 2314, and common law; on behalf of California, Michigan, and Pennsylvania classes of heating pad purchasers asserting breach of written warranty under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, and unjust enrichment; on behalf of Michigan and Pennsylvania classes of heating pad purchasers, asserting breach of express and implied warranty; on behalf of a Michigan class of heating pad purchasers under the Michigan Consumer Protection Act, M.C.L.A. § 445.901 *et seq.*; and on behalf of a Pennsylvania class of heating pad purchasers under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Const. St. § 201-1 *et seq.* (the "Complaint").

1.3 WHEREAS, the Complaint alleges that Defendants misrepresented characteristics about its electric heating pads and omitted from the packaging and

FINAL
12/21/2012

the point of purchase information material to a consumer's decision to purchase a heating pad.

1.4 WHEREAS, on September 9, 2011, the parties filed a motion entitled Joint Stipulation for Voluntary Dismissal (Dkt. No. 26) as to plaintiffs John and Denise Bielis individually and on behalf of the Michigan class, which the Court granted on September 20, 2011 (Dkt. No. 27), thereby dismissing plaintiffs John and Denise Bielis and the Michigan claims from this Action.

1.5 WHEREAS, on June 27, 2012, the parties participated in mediation with the Honorable Judge Leo S. Papas (ret.), but were unable to agree on terms of a settlement of the Action.

1.6 WHEREAS, on July 20, 2012, plaintiffs Beverly Beck-Ellman and Sandy Mahoy moved for class certification of the California and Pennsylvania classes and appointment of class representatives and class counsel (Dkt. No. 43), which Kaz opposed, denying that class treatment was proper in this Action, as reflected in its August 21, 2012 opposition (Dkt. No. 56).

1.7 WHEREAS, on August 16, 2012, the parties participated in a second session of mediation with Judge Papas but were unable to agree on terms of a settlement of the Action.

1.8 WHEREAS, on September 14, 2012, plaintiffs filed a reply to Kaz's opposition to class certification, limited the remedies sought on behalf of the putative classes to restitution, injunctive relief, and diminished value/overpayment, and proposing to amend the class definition to exclude those seeking claims for personal injury or property damage (Dkt. No. 63).

1.9 WHEREAS, following oral argument on October 4, 2012, the Court granted in part and denied in part plaintiffs' motion for class certification, denying certification of the Pennsylvania class and granting certification of a California class defined as: "All residents of California who purchased Kaz-manufactured electric heating pads bearing the words "Kaz" and/or "SoftHeat" and/or "SmartHeat" and/or "Dunlap" and/or the number 1-800-477-0457 on the packaging or heating pads themselves for primarily personal, family, or household purposes from October 13, 2006, through the date of class notice. The Court excludes from the class anyone seeking damages for personal injury or property damage caused by Kaz heating pads, as well as anyone with a conflict of interest in this matter." (Dkt. Nos. 69, 71.) The Court appointed Beverly Beck-Ellman as Class Representative and Eppsteiner & Fiorica Attorneys, LLP as Class Counsel.

FINAL
12/21/2012

1.10 WHEREAS, on October 5, 2012, the Court issued an Amended Scheduling Order scheduling a Mandatory Settlement Conference with Magistrate Judge David H. Bartick for November 6, 2012(Dkt. Nos. 70, 73).

1.11 WHEREAS, on October 26, 2012, the parties participated in a third session of mediation with Judge Papas and made progress towards agreement on terms of a settlement, but were unable to reach agreement on all key terms.

1.12 WHEREAS, on November 6, 2012, the Parties attended a Mandatory Settlement Conference with Judge Bartick and made further progress towards agreement on terms of a settlement, after which, Judge Bartick scheduled another Mandatory Settlement Conference for November 9, 2012 to continue settlement discussions (Dkt. No. 75).

1.13 WHEREAS, on November 9, 2012, the Parties attended a second Mandatory Settlement Conference and continued to make progress towards agreement on terms of a settlement, after which Judge Bartick scheduled a telephonic Status Conference for November 16, 2012 (Dkt. No. 77).

1.14 WHEREAS, on November 16, 2012, the Parties participated telephonically in a Status Conference with Judge Bartick and reported to Judge Bartick that a settlement had been reached, and subsequently executed a term sheet and filed a joint Notice of Settlement with the Court (Dkt. No. 80).

1.15 WHEREAS, counsel for the settling parties have conducted extensive discovery, each having served and responded to multiple discovery requests, including requests for production of documents, interrogatories, and depositions, as well as third party depositions and subpoenas for records, including expert discovery, and conducted extensive research and investigation into the facts and law relating to the claims and defenses at issue in the Action.

1.16 WHEREAS, based upon the discovery, investigation and research conducted to date, the Class Representative and Class Counsel have agreed to settle the claims asserted in the Action pursuant to the provisions of this Agreement. Without conceding any lack of merit in plaintiffs' claims, the Class Representative and Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action through trial and potential appeals. They also have taken into account the uncertain outcome and risk of any litigation, as well as the difficulties, complexities, and delays inherent in litigation, including the potential for decertification of the Class. They believe the settlement set forth

FINAL
12/21/2012

in this Agreement confers substantial benefits upon the Class and that the settlement is fair, reasonable, and adequate and in the best interests of the Class.

1.17 WHEREAS, Defendants have denied and continue to deny all liability with respect to any and all of the Released Claims, all charges of wrongdoing or liability against them arising out of or relating to any conduct, acts, or omissions alleged in the Action, that any plaintiff or Class member has been damaged or that there exists a basis for recovery or remedy of any kind whatsoever, and that class treatment is appropriate. Defendants are willing to resolve the Action and the Released Claims on the terms and conditions set forth in this Agreement based on, among other things, the time and expense associated with litigating the Released Claims through trial and potential appeals; the risk of the Class prevailing at trial or on appeal; the benefits of resolving the Released Claims, including limiting further expense, inconvenience, and distraction, disposing of burdensome and protracted litigation, and permitting Defendants to conduct their business unhampered by the distractions of continued litigation; and the uncertainty and risks inherent in litigation.

1.18 WHEREAS, settlement was reached following protracted, good faith, arms' length negotiations conducted with the assistance of Judge Papas and Judge Bartick.

NOW THEREFORE, subject to Court approval, as hereinafter provided and by applicable laws and rules, it is hereby agreed by the Parties that, in consideration of the mutual promises and covenants set forth in this Agreement, and upon the entry by the Court of a Final Approval Order and Judgment approving the settlement and directing the implementation of the terms and conditions of the settlement as set forth in this Agreement, this Action shall be settled and compromised upon the terms and conditions contained herein.

2. DEFINITIONS

As used in this Agreement, in addition to any definitions elsewhere in this Agreement, the following terms shall have the meanings set forth below:

2.1 "Action" means and refers to *Beverly Beck-Ellman, et al., individually and on behalf of all others similarly situated v. Kaz USA Incorporated, et al.*, Case No. 3:10-CV-02134-H (DHB), in the United States District Court for the Southern District of California, and all related proceedings and appeals.

FINAL
12/21/2012

2.2 “Settlement Fund” means and refers to the financial institution account established to hold the proceeds to fund the notice and administration of this settlement and to pay Participating Claimants as set forth in Section 8.3.

2.3 “Agreement” means and refers to this Settlement Agreement.

2.4 “Settlement Administrator” means and refers to the Person(s) selected by the Parties and approved by the Court to oversee and administer, among other things, publication of Class Notice, the Settlement Website, and the processing, handling, reviewing, approving, and paying of claims made by Class members.

2.5 “Claim Form” means and refers to written and electronic forms agreed to by the Parties and attached hereto as Exhibit “1”.

2.6 “Claims Period” means and refers to the time commencing on the date the Notice Program first begins, the date Notice is mailed to members of the Settlement Class or Notice is first published, whichever first occurs, and ending on June 17, 2013, the 90th day after March 19, 2013, the projected last date of publication of Notice. Members of the Settlement Class may submit a completed Claim Form postmarked by June 17, 2013. If, prior to commencement of the Notice Program, the projected last date of publication of Notice changes to March 20, 2013 or later, the Claims Period shall end on the 90th day after the new projected last date of publication of Notice and Settlement Class members may submit a Claim Form postmarked up to the new Claims Period end date.

2.7 “Class” means and refers to “All residents of California who purchased Kaz-manufactured and/or distributed electric heating pads bearing the words "Kaz" and/or "SoftHeat" and/or "Smart/Heat" and/or "Dunlap" and/or the number 1-800-477-0457 on the packaging or heating pads themselves for primarily personal, family, or household purposes from October 13, 2006, through the date of class notice. The Court excludes from the class anyone seeking damages for personal injury or property damage caused by Kaz heating pads, as well as anyone with a conflict of interest in this matter.”

i. The California Class certified by the Court was defined by the Court as: “All residents of California who purchased Kaz-manufactured electric heating pads bearing the words "Kaz" and/or "SoftHeat" and/or "Smart/Heat" and/or "Dunlap" and/or the number 1-800-477-0457 on the packaging or heating pads themselves for primarily personal, family, or household purposes from October 13, 2006, through the date of class notice. The Court excludes from the class anyone

FINAL
12/21/2012

seeking damages for personal injury or property damage caused by Kaz heating pads, as well as anyone with a conflict of interest in this matter.” (Dkt. No. 71.)

ii. This Agreement is based on a Class definition that includes heating pads distributed by Kaz.

iii. The Parties agree to jointly move the Court to modify the definition of the certified Class by inserting the words “and/or distributed” after “Kaz-manufactured”.

2.8 “Class Notice” means and refers to written and electronic notices agreed to by the Parties and attached hereto as Exhibits “2-a” and “2-b”.

2.9 “Class Period” means and refers to the period between October 13, 2006 and the date of the Court Order preliminarily approving this Settlement.

2.10 “Court” means and refers to the United States District Court for the Southern District of California.

2.11 “Defendants” means and refers to Kaz USA, Inc. and Kaz, Inc.

2.12 “Defendants’ Counsel” means and refers to Tharpe & Howell, LLP.

2.13 “Final Fairness Hearing” means and refers to the hearing to be conducted by the Court to finally determine the fairness, adequacy and reasonableness of this Agreement.

2.14 “Final Approval Order and Judgment” means and refers to the Court’s judgment granting final approval of this class settlement following the motion as set forth in Section 5.3, in the form attached hereto as Exhibit “4.”

2.15 “Final Effective Date” means and refers to (i) the date of final affirmance of an appeal of the Final Approval Order and Judgment; (ii) the date of final dismissal with prejudice of any appeal from the Final Approval Order and Judgment; or (iii) if no appeal is filed, thirty-five days after the entry of the Court’s Final Approval Order and Judgment.

2.16 “Heating Pads” means and refers to Kaz-manufactured and/or distributed electric heating pads bearing the words “Kaz” and/or “SoftHeat” and/or “Smart/Heat” and/or “Dunlap” and/or the number 1-800-477-0457 on the packaging

FINAL
12/21/2012

or heating pads themselves purchased for primarily personal, family, or household purposes.

2.17 “Notice Program” means and refers to the notice procedures set forth in Section 6.

2.18 “Opt Out Period” means and refers to the period of time starting with the commencement of the Notice Program and ending April 18, 2013, the 30th day after March 19, 2013, the projected last date of publication of Notice. If, prior to commencement of the Notice Program, the projected last date of publication of Notice changes to March 20, 2013 or later, the Opt Out Period shall end on the 30th day after the new projected last date of publication of Notice, during which members of the Settlement Class may exercise the right to opt out of the Settlement Class pursuant to the provisions of Section 7.

2.19 “Parties” means and refers to the Class Representative, for herself and on behalf of the Class, and Defendants.

2.20 “Person” means and refers to any individual, proprietorship, corporation, partnership, association, trustee, unincorporated association, or any other type of legal entity, except a governmental entity.

2.21 “Participating Claimant” means and refers to a Person in the Settlement Class who submits a fully completed and valid Claim Form prior to the expiration of the Claims Period and that is approved to receive cash benefits under this Agreement.

2.22 “Preliminary Approval Order” means and refers to the Court’s order granting preliminary approval of this Agreement and approval of the timing, content, and manner of Class Notice following the application as set forth in Section 5.1, substantially in the form attached hereto as Exhibit “3.”

2.23 “Released Party(ies)” means and refers to: Defendants; their past, present, and future parents, subsidiaries (whether or not wholly owned), divisions, units, component companies, and/or affiliates, officers, directors, shareholders, employees, owners, agents, representatives, attorneys, insurers, successors, predecessors, creditors, servants, executors, administrators, accountants, investigators, partners, distributors, retailers, licensors, manufacturers, vendors, heirs, and assigns.

FINAL
12/21/2012

2.24 “Releasing Party(ies)” means and refers to members of the Settlement Class and their agents, partners, joint venturers, affiliates, predecessors, successors, spouses, heirs, assigns, executors, administrators, conservators, insurers, and any other Persons or entities claiming by or through a member of the Settlement Class, in their capacities as such.

2.25 “Released Claims” means and refers to any and all claims the Releasing Party had or has, whether as individual claims or as claims asserted on a class basis or by the Releasing Party on behalf of the general public, that is, has been, could reasonably have been or in the future might reasonably be asserted, in this Action or any related action, regardless of legal theory and regardless of the type or amount of relief or damages claimed (including attorney’s fees), against the Released Party arising out of or relating to the allegations in the Complaint or Defendants’ marketing and advertising of Heating Pads at issue in the Complaint and prior to the effective date of this Settlement, including but not limited to all claims that were brought or could have been brought in this Action. Released Claims shall expressly exclude claims for personal injury or property damage caused by Heating Pads, except as to any Participating Claimant, for whom Released Claims shall expressly include any and all claims for personal injury or property damage caused by Heating Pads prior to the date of Final Approval Order and Judgment.

2.26 “Settlement Class Counsel” or “Class Counsel” means and refers to Eppsteiner & Fiorica Attorneys, LLP.

2.27 “Settlement Class” means and refers to the Class, excluding Persons who timely and validly opt out of the Class. At the expiration of the Opt Out Period, all Class members who did not timely and validly opt out of the Class will be deemed Settlement Class members.

2.28 “Settlement Class Representative” or “Class Representative” or “Plaintiff” means and refers to Beverly Beck-Ellman.

2.29 “Settlement Orders” means and refers to the orders entered to implement the terms of this Agreement including, but not limited to, the Preliminary Approval Order and the Final Approval Order and Judgment.

3. SETTLEMENT PURPOSES ONLY

3.1 General. This Agreement is for settlement purposes only.

FINAL
12/21/2012

3.2 Non-Admission. This Agreement, whether or not consummated, and any communications exchanged or actions taken pursuant to or during the negotiation of this Agreement are for settlement purposes only. Neither the fact of nor the contents of this Agreement or its exhibits nor any communications exchanged nor actions taken pursuant to or during the negotiation of this Agreement, shall constitute, be construed as, or be admissible in evidence as an admission of the validity of any claim asserted or fact alleged in this Action or any related action or of any wrongdoing, fault, violation of law or liability of any kind on the part of Defendants, the existence of any damages or basis for recovery or remedy of any kind whatsoever, or the appropriateness of class treatment. This Agreement shall not prejudice Defendants' right or ability to oppose or request modification of any class certification order in this Action if this Agreement is not finally approved.

3.3 Admissibility. To the extent permitted by law and consistent with the provisions of Federal Rule of Evidence 408, this Agreement, any negotiations or proceedings related hereto, the implementation hereof, and any papers submitted in support of the motions for approval hereof (collectively, the "Settlement Proceedings") shall not be construed as, nor deemed to be, or offered as, evidence of, any admission or concession by Defendants or any Released Party regarding liability, the existence of any damages or basis for recovery or remedy of any kind whatsoever, or the appropriateness of class treatment; provided, however, that this Agreement and the Settlement Proceedings may be presented to the Court in connection with the implementation or enforcement of this Agreement, or as may be necessary or appropriate to further the purposes sought to be achieved by this Agreement.

3.4 Denial of Liability. By entering into this Agreement, it is understood that Defendants and any Released Parties do not admit and, in fact, expressly deny: (i) that they have breached any duty, obligation, statute, or agreement; (ii) that they have engaged in any illegal, tortious, or wrongful activity; (iii) that they are liable to members of the Class; (iv) that any damages have been sustained by any member of the Class or by any other Person; or (v) that class treatment is appropriate.

4. JURISDICTION

4.1 Continuing Jurisdiction. The Court has, and shall continue to have, jurisdiction to make any orders as may be appropriate to effectuate, consummate, and enforce the terms of this Agreement.

FINAL
12/21/2012

5. COURT APPROVAL OF THE SETTLEMENT

5.1 Preliminary Approval and Notice Approval. Following execution of this Agreement, Class Counsel, with input from Defendants and their Counsel, shall promptly apply to the Court for an order granting preliminary approval of this Agreement and approval of the proposed Notice Program and, in connection therewith, submit to the Court the Preliminary Approval Order, in the form attached hereto as Exhibit "3," which (1) appoints KCC Class Action Services, LLC as the Settlement Administrator; (2) preliminarily approves this Agreement for purposes of the Notice Program; (3) approves the timing, content and manner of the Class Notice; (4) temporarily enjoins the commencement or continued prosecution by any Releasing Party of any Released Claim against any Released Party pending final approval of the Settlement, upon which a permanent injunction would issue; (5) schedules the Fairness Hearing; and (6) makes such orders as are necessary and appropriate to effectuate the terms and conditions of this Agreement.

5.1.1 Denial of Preliminary Approval. If the Court does not approve the Settlement Agreement and/or Notice Program, the Parties shall endeavor to reach agreement to modify the Agreement in the manner necessary to obtain Court approval. If the Parties cannot agree to a modified Settlement to present to the Court for approval within fourteen (14) days of the Court's non-approval of the Settlement Agreement, the Parties' Settlement shall be terminated, null and void, and of no force or effect.

5.1.2 Stay of this Action. All activity in the Action, except as specified below, shall be stayed except to the extent necessary to effectuate this Agreement unless and until this Agreement is terminated pursuant to its terms and conditions. All discovery in this Action shall be stayed except for pending requests for Class member names and contact information contained in subpoenas to third parties already served and pending. The Parties may receive responses to those subpoenas. However, the Parties shall not make any motion or request to any court to enforce compliance with the subpoenas.

5.2 Objections. The Preliminary Approval Order shall specify that members of the Settlement Class shall have until an agreed date certain, which shall be 30 calendar days before the date set for the Final Fairness Hearing pursuant to Section 6, to file and serve objections to this Agreement so that Class Counsel and Defendants' Counsel receive the objection by no later than that date.

5.3 Final Approval. Prior to the date set by the Court for the hearing for final settlement approval and entry of the Final Approval Order and Judgment,

FINAL
12/21/2012

Settlement Class Counsel, with input from Defendants and their Counsel, shall file a motion for final approval of this Agreement and, in connection therewith, submit to the Court the form of the Final Approval Order and Judgment, substantially in the form attached hereto as Exhibit "4".

6. CLASS NOTICE

Upon preliminary approval of this Agreement, Class Notice shall be made as follows:**6.1 Mailed Notice.** If the Court so orders, no later than seven (7) calendar days after entry of the Preliminary Approval Order, Defendants shall submit to the Settlement Administrator and Class Counsel, in secure electronic form, useable by the Settlement Administrator and Class Counsel, a list of (i) all individuals who purchased a Heating Pad through Kaz.com using a shipping address in California between October 13, 2006 and the date of entry of the Preliminary Approval Order and (ii) individuals who based on call center records (and MedWatch reports if disclosure is permitted by the FDA and applicable law)) appear to have purchased a Heating Pad in California between October 13, 2006 and the date of entry of the Preliminary Approval Order. The list provided to the Settlement Administrator shall include as much of the following information that Kaz has: each individual's name and last known address. The list to Class Counsel shall only include the individual's name. Within seven (7) calendar days after receipt of the foregoing list, the Settlement Administrator and/or its designee shall run an update of the names through the National Change of Address database. Within seven (7) calendar days after this update, the Settlement Administrator shall send by first class mail, postage pre-paid, a copy of the Class Notice and Claim Form approved by the Court to each Person on the final list. In the preliminary approval motion, the Parties shall present for the Court's consideration whether customer names and last known address should be disclosed to the Settlement Administrator for the purpose of mailing notice of the settlement. The Parties shall advocate that the right to receive notice of this Settlement should outweigh the privacy right in the customer's name and last known address, but acknowledge that the Court must decide whether customer names and last known address should be disclosed to the Settlement Administrator and request that the Court make an Order on the issue.

6.1.1 Handling of Confidential Information. All information provided to the Settlement Administrator and/or Class Counsel pursuant to this Agreement shall be deemed Confidential Information as that term is defined in the Amended Protective Order, dated August 16, 2011 (Dkt. No. 21), and shall be subject to the Amended Protective Order, a copy of which shall be provided to the Settlement Administrator, and the Settlement Administrator shall be deemed an

FINAL
12/21/2012

authorized Person to whom Confidential Information may be disclosed in order and to the extent necessary to effectuate the terms of this Agreement. In addition, the Settlement Administrator shall ensure that the information it receives from Defendants is secured and managed in such a way as to protect the security and confidentiality of the information, consistent with applicable law. Except as specifically provided in this Agreement, the Settlement Administrator shall not disclose or disseminate any information that it receives from Defendants, including without limitation Defendants' customer information, without the prior written consent of all Parties.

6.2 Publication Notice. As for unknown members of the Class, the Settlement Administrator will cause the Class Notice to be published to such Class members within 75 days of, but not before, entry of the Preliminary Approval Order. Subject to Court approval, the Parties shall agree on a notice plan to be detailed in a Settlement Notice Plan to be prepared by KCC. The Settlement Notice Plan is attached hereto as Exhibit 5.

6.2.1 Settlement Website. In addition, the Settlement Administrator will establish a Settlement Website for the purposes of disseminating to members of the Class the Class Notice, this Agreement, information relating to filing a claim, opting out of the Class, objecting to the Settlement, deadlines relating to the Settlement, the date time and place of the Final Fairness Hearing, the Court's orders preliminarily approving the Settlement, and its Final Approval Order and Judgment and other pleadings, and other information relevant to the settlement. The Settlement Administrator shall establish and have accessible to the public the Settlement Website as soon as practicable and not later than the date on which it mails Class Notice to Class members or first causes Notice to be published. The Settlement Website shall also contain an electronic Claim Form (in both English and Spanish) to allow on-line submission of claims as well as a Claim Form which can be downloaded, printed and mailed to the Settlement Administrator. The Settlement Website will have additional content available in Spanish, as will be agreed to by the Parties and to be detailed in the KCC Settlement Notice Plan.

6.3 Contents of Notice. The Class Notice shall fairly and neutrally advise Class members of the general nature of the litigation and of their rights, including the rights to make a claim or to opt-out or object to this Agreement and the applicable procedures for, and consequences of, doing so, as well as the financial and other terms of the Agreement of significance to the Class members, shall direct them to the Settlement Website, and shall contain other information as is agreed by the Parties. The Class Notice shall advise Class members that objections to the

FINAL
12/21/2012

Agreement, and papers submitted in support of said objections, shall only be considered at the Fairness Hearing if they are submitted pursuant to the terms of this Agreement. The Class Notice shall advise Class members that the time and place of the Fairness Hearing may change and shall be posted on the Settlement Website. The Class Notice shall also advise Class members to contact the Settlement Administrator and Class Counsel with any questions regarding the settlement and offer to mail Claim Forms to Settlement Class members upon request.

6.4 Cost of Notice and Administration. The notice and administration fees and costs for this settlement shall not exceed \$500,000 and shall be paid from the Settlement Fund pursuant to the terms of Section 8.3.

6.5 Records of Communications. The Settlement Administrator shall keep a record of all communications sent to and received from members of the Class. Promptly upon request from counsel for any Party or the Court, the Settlement Administrator shall make such records available by providing full and complete copies of such records, or for inspection by the requestor. All counsel shall ensure that any and all information received pursuant to this Section is not publicly disclosed except as part of any pleading or motion filed with the Court in this matter or as requested or approved by the Court, and not made publicly available.

6.6 Contact Information for Opt Outs and Persons Who Do Not Qualify for the Class. Notwithstanding the provisions of sections 6.5, 7.2, 9.7, or any other provision herein, no Party or Party's counsel shall be provided by the Settlement Administrator the contact information of any Person who opts out or does not qualify for the Class, unless the Settlement Administrator receives 25 or more valid and timely opt-outs, in which case contact information may be provided for the purpose of learning the reasons for the opt outs so that the Parties can address the issue of opt outs in support of their request for final approval of the Settlement.

7. OBJECTIONS AND OPT-OUTS

7.1 Objections. Settlement Class members shall have the right to appear and show cause, if they have any reason why the terms of this Agreement should not be given Final Approval. Any objection must be in writing, filed with the Court, with a copy delivered to Class Counsel and Defendants' Counsel, no later than thirty (30) calendar days before the Final Fairness Hearing. Any objection regarding or related to the Agreement shall contain a caption or title with the Action's case name and number, and shall also contain sufficient information to

FINAL
12/21/2012

identify and contact the objecting Settlement Class member, as well as a clear and concise statement of the Settlement Class member's objection, documents sufficient to establish the basis for their standing as a Settlement Class member, i.e., verification under oath as to the approximate date(s) and location(s) of their purchase of Kaz Heating Pads, the approximate price paid, or receipt(s) reflecting such purchase(s), the facts supporting the objection, and the legal ground on which the objection is based. If an objecting party chooses to appear at the Fairness Hearing, no later than thirty (30) calendar days before the hearing, a notice of intention to appear must be filed with the Court and must list the name, address, and telephone number of the attorney, if any, who will appear.

7.2 Opt- Out Procedure. Persons in the Class may elect to opt out of the Class and thus exclude themselves from the Action and the Settlement Class at any time during the Opt-Out Period. To exercise the opt out right, Persons in the Class must submit a written request for exclusion from the Class, which request shall contain the Person's name and address. The request for exclusion must be personally signed by the Person seeking to opt out. Such requests for exclusion must be sent to the Settlement Administrator and must be postmarked on or before the end of the Opt-Out Period. All Persons in the Class who do not opt out in accordance with this Agreement during the Opt-Out Period will be deemed to have waived their right to opt out of the Class and will be deemed members of the Settlement Class for all purposes under this Agreement. Persons who timely and validly opt out of the Class shall not be entitled to any relief under this Agreement but shall not release any claims against Defendants or any Released Party. The Settlement Administrator shall provide weekly updates to Class Counsel and Defendants' Counsel as to any and all Persons who opt out of the Class.

7.3 Responding to Objectors. Class Counsel and Defendants shall have the right, but not the obligation, to respond to any objection no later than seven (7) days prior to the Final Fairness Hearing. The Settling Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objector (or counsel for the objector) and to counsel for Plaintiffs and Defendants.

8. SETTLEMENT RELIEF

8.1 If Final Approval Not Granted. In the event the Final Approval Order and Judgment is not entered, Defendants shall have no obligations under this Agreement.

FINAL
12/21/2012

8.2 Injunctive Relief. To the extent Defendants control the packaging (rather than, i.e., a private-label distributor/retailer (an entity which sells heating pads under a trademark owned or used solely by that entity)), Defendants agree to the following with respect to Heating Pad packaging that contains any image or marketing claims

i. Heating Pad packaging will not feature models whose eyes are closed and who are in a prone or reclining position. This Agreement does not prohibit use of models who are in a prone or reclining position but whose eyes are clearly open.

ii. The following warning shall appear on the side panel of the Heating Pad box in legible (capable of being read) print: "WARNING: During use, do not sit on or against, or lie on, sleep with, fold or crush the pad. Not for use with infants. Do not use with ointments or salves. Check skin frequently. ADDITIONAL IMPORTANT SAFETY WARNINGS INSIDE BOX."

iii. Heating Pad packaging describing an "Auto Shut Off" feature will describe it as "60 minute auto-off" or its equivalent or if the time length is different or variable the description will make equally clear that it is a time-based function. (Items 8.2 (i-iii) are, hereafter, in the aggregate referred to as "Injunctive Remedy")

8.2.1 Timing. The Injunctive Remedy shall be implemented on a "going-forward" basis to new, unproduced Heating Pads packaging. The Injunctive Remedy shall be implemented, subject to Court approval, on Kaz Heating Pad packaging produced thirty (30) days or more following the Final Approval Order and Judgment.

8.3 Settlement Fund. Defendants shall pay a guaranteed minimum of \$1,450,000 and a maximum of \$2,700,000 to be distributed to Settlement Class members based on the number of valid timely claims submitted (with any balance of the guaranteed minimum to be paid by Defendants to a cy pres recipient(s) as set forth in Section 9.3(i)). No later than fourteen (14) calendar days after the Final Effective Date, Defendants shall deposit the total amount to be paid to Participating Claimants into an account established by the Settlement Administrator for the Settlement Fund.

8.3.1 Cost of Notice and Administration. Defendants shall pay up to but no more than \$500,000 for the cost of notice and settlement claim administration. Defendants shall deposit the money into an account established by

FINAL
12/21/2012

the Settlement Administrator for the Settlement Fund, when and to the extent the Administrator requires payment of the cost of notice and settlement administration. If the cost of notice and administration is less than \$500,000, Defendants shall retain or be repaid the difference.

8.3.2 Limits on Settlement Fund. Under no circumstances shall Defendants be required to pay more than \$2.7 million to Settlement Class members or \$500,000 for notice and claim administration. No withdrawal or payment may be made from the Settlement Fund prior to the Effective Date, except for costs related to notice and claims administration, without the prior written consent of Defendants. Withdrawal for the payment of costs related to notice and claims administration shall jointly be authorized by the Parties. Defendants and/or Released Parties shall have no liability for payment of any taxes accrued on interest from the Settlement Fund.

8.4 Payment of Settlement Class Counsel Fees, Costs, and Expenses. Defendants shall not object to or oppose Settlement Class Counsel's application to the Court for an award of attorneys' fees in an amount not to exceed one and a half million dollars (\$1,500,000). Settlement Class Counsel shall not request or accept from the Court more than \$1,500,000 in attorneys' fees. In the instance where the Court were to order any award of attorney fees of more than \$1,500,000, Defendants shall have no obligation to pay more than \$1,500,000 to Settlement Class Counsel, or any other attorney, for representation of the Class. In addition, Defendants shall not object to or oppose Settlement Class Counsel's application for an award of litigation expenses and costs in an amount not to exceed \$350,000, subject to review by the Honorable Judge Leo S. Papas or the Court. Settlement Class Counsel shall not request or accept from the Court more than \$350,000 for litigation expenses and costs.

8.4.1 Timing of Application. Settlement Class Counsel's application for an award of attorneys' fees and litigation expenses and costs shall be submitted to the Court for approval no later than thirty (30) days prior to the Fairness Hearing.

8.4.2 "Clear Sailing" Provision. An award by the Court of \$1,500,000 in attorneys' fees and/or \$350,000 in litigation expenses and costs is expressly not a condition of the settlement. In the event the Court were to award Settlement Class Counsel less than \$1,500,000 in attorneys' fees or less than \$350,000 in litigation expenses and costs, this shall not serve as a basis to terminate the settlement or contest the Court's approval of the settlement.

FINAL
12/21/2012

8.5 Payment of Class Representative Incentive Award. Defendants shall not object to or oppose Settlement Class Counsel's application to the Court for an incentive award for the Settlement Class Representative in an amount not to exceed \$20,000. In the instance where the Court were to order any incentive award of more than \$20,000, Defendants shall have no obligation to pay more than \$20,000 to the Settlement Class Representative for representation of the Class.

8.5.1 Release of All Claims. Payment of an incentive award to the Settlement Class Representative in any amount approved by the Court shall be made in consideration for a release of any and all claims the Settlement Class Representative has or may have had against Defendants, as well as agreement by the Settlement Class Representative not to serve as representative for any other class of Persons, now or in the future, that pertains to any of Defendants' Heating Pad products.

8.5.2 "Clear Sailing" Provision. An incentive award to the Settlement Class Representative by the Court of \$20,000 is expressly not a condition of the settlement. In the event the Court were to award the Settlement Class Representative less than \$20,000, this shall not serve as a basis to terminate the settlement or contest the Court's approval of the settlement.

8.6 Timing of Payments. An award of attorneys' fees and litigation expenses and costs to Settlement Class Counsel and/or an award of a Class Representative incentive award shall be received by Settlement Class Counsel within 10 days after the Final Effective Date, provided that Settlement Class Counsel timely provides Defendants with a Form W-9 Request for Taxpayer Identification Number and Certification and instructions for wire transfer of the payment of funds.

8.7 Interest on the Settlement Fund. All interest generated by the monies in the Settlement Fund shall accumulate and become part of the Settlement Fund.

8.8 No Additional Fees, Costs, Or Expenses. Except as provided in this Agreement, each Party shall bear his/her/its own attorneys' fees, costs, and litigation and other expenses incurred in connection with the Action.

FINAL
12/21/2012

9. PROTOCOL FOR DISTRIBUTION OF SETTLEMENT FUND

9.1 Settlement Administrator. The Settlement Administrator shall have the sole authority to administer the Settlement, to process opt-outs, and to disburse sums from the Settlement Fund. The Settlement Administrator shall carry out its duties in accordance with the procedures set forth in this Agreement, and any Party may move the Court to compel such compliance, or to replace the Settlement Administrator if it fails to comply with the requirements set forth in this Agreement. Except for the specific funding obligations set forth in Section 8, the Parties shall have no responsibility to members of the Settlement Class for the administration of claims or the distribution of the cash benefits under this Agreement. The Settlement Administrator shall provide reports to Settlement Class Counsel and Defendants' Counsel on a weekly basis via electronic mail.

9.2 Resolution of Disputes. If any disputes arise during the opt-out and/or settlement administration process, the Parties shall meet and confer with each other and with the Settlement Administrator. If a resolution is not reached, the Parties shall submit the dispute to the Court for resolution.

9.3 Distribution to Authorized Participating Claimants. Each member of the Settlement Class may submit one Claim Form and as to each Class member who submits an accepted Claim Form, the Settlement Administrator will pay to that class member an estimated sum of between approximately \$10 and \$20 for a Heating Pad purchased during the Class Period. In no case shall a Class member receive more than \$20. All Participating Claimants shall receive a *pro rata* share of the Settlement Fund as follows:

i. If fewer than 145,000 timely and valid claims are received, then each Participating Claimant's share of the Settlement Fund will be increased *pro rata* up to \$20 per Participating Claimant until the total of claims reaches \$1,450,000. If fewer than 72,500 timely and valid claims are received, then the difference between the total amount to be paid to Participating Claimants and \$1,450,000 shall be paid by Defendants to one or more *cy pres* recipients, approved by the Court, when Participating Claimant payments are made.

ii. If between 145,000 and 270,000 timely and valid claims are received, then each Participating Claimant will receive \$10. If more than 270,000 timely and valid claims are received, then each Participating Claimant's share of the Settlement Fund will be decreased *pro rata* so that the total amount to be paid to Participating Claimants does not exceed \$2,700,000.

FINAL
12/21/2012

9.3.1 Eligibility for Relief. To be eligible for the relief identified in Section 9.3, Settlement Class members must make a claim to the Settlement Administrator by *either*: 1) completing, signing under penalty of perjury, and mailing to the Settlement Administrator the Claim Form mailed with Notice Class; 2) completing, signing under penalty of perjury, and mailing the Claim Form downloaded and printed from the Settlement Website or otherwise obtained from the Settlement Administrator to the Settlement Administrator; or 3) electronically completing, signing under penalty of perjury, and emailing the Claim Form on the Settlement Website. The Claim Form must be postmarked or electronically submitted no later than the last day of the applicable Claims Period. Claim Forms postmarked or electronically submitted after the end of the applicable Claims Period shall be denied by the Settlement Administrator and the Settlement Administrator shall not be obligated to make any payment on such claims.

9.3.2 Claim Form Information. To complete the Claim Form, a Settlement Class member must provide his/her name, address, estimated price paid for the Heating Pad, and approximate date of when and location where or company from which the Heating Pad was purchased. For Claim Forms submitted electronically, the Settlement Class member must also acknowledge legality of the online signature. The Claim Forms shall include language explaining that the Class excludes all Persons seeking damages for personal injury or property damage caused by Kaz Heating Pads and that submitting a Claim Form is a representation that such Person has no claims and/or will not pursue any such claims in the future.

9.3.3 Review of Claims. The Settlement Administrator shall review all submitted Claim Forms within a reasonable time to determine each claimant's eligibility for Settlement Class relief, and the amount of such relief, if any. Copies of submitted Claim Forms shall be provided to Defendants' Counsel and to Class Counsel upon request. Any claimant whose Claim is rejected may seek reconsideration by contacting the Settlement Administrator. The Parties may challenge the validity of claims. But Defendant shall not challenge claims based on the price paid for the Heating Pad unless the claimant's Claim Form states the claimant paid \$75 or more for a Heating Pad.

9.3.4 Incomplete Claim Forms. Submitted Claim Forms omitting required information shall be returned via first class mail by the Settlement Administrator to the claimant's address indicated on the Claim Form, with explanation from the Claims Administrator of what information is missing from the subject Claim Form. Settlement Class members whose Claim Forms are returned because of missing required information shall have until the end of the Claims Period, or 15 calendar days from when the Claims Administrator mailed its notice

FINAL
12/21/2012

of Claim Form deficiency, whichever is later, to post mark or submit online a new complete Claim Form or the required missing information. If a Settlement Class member is unable to cure the deficiency within the time allowed, then his/her right to pursue any claims covered by the Action will be extinguished and he/she will not be permitted to recover from the Settlement Fund.

9.4 Notification of Proposed Benefits. Within seven (7) calendar days after the determination of proposed benefits pursuant to Section 9.3, the Settlement Administrator shall send a report to Settlement Class Counsel and Defendants' Counsel showing the total number of claims received, those determined to be invalid, those missing required information, those to whom required missing information was requested, the proposed benefits to be paid to the Participating Claimants, individually and in total ("Participating Claimant Total").

9.5 Payments to Participating Claimants. The Settlement Administrator shall distribute via check to the Participating Claimants the total cash payment such Participating Claimants are entitled to receive pursuant to the terms of Section 9.3. This distribution shall be made after the Final Effective Date, but no later than thirty (30) calendar days after the Final Effective Date.

9.6 Cy Pres Recipient. The cy pres distribution as referenced in Section 9.3(i) and Section 8.3, if any, shall be made to one or more of the following nonprofit organizations or foundations, which support projects that will benefit the Class or similarly situated persons, and/or promote the law consistent with the objectives and purposes of the underlying cause of action: (1) Consumer Reports/Consumer Union, (2) Consumer Federation of California (Education Fund), (3) AARP Foundation, and (4) Better Business Bureau Center. The Consumers Union, the Better Business Bureau and AARP Foundation will each receive 27% of the cy pres distribution. The Consumer Federation of California will receive the other 19%. The maximum amount given to the Consumer Federation of California will be \$125,000. If 19% is more than \$125,000, the Consumers Union, Better Business Bureau and AARP Foundation will receive the difference in equal amounts.

The selection of any one of Consumer Reports/Consumer Union, Consumer Federation of California (Education Fund), AARP Foundation or Better Business Bureau Center is expressly not a condition of the settlement. In the event the Court were to find any one of the Cy Pres Recipients inappropriate or invalid, this shall not serve as a basis to terminate the settlement or contest the Court's approval of the settlement. Any Cy Pres Award shall be distributed to the remaining Cy Pres Recipients pursuant to a percentage allocation subsequently agreed to by the parties.

FINAL
12/21/2012

9.7 Maintenance of Records. The Settlement Administrator shall maintain complete, accurate, and detailed records regarding the administration of the Settlement Fund, including but not limited to, all Claim Forms, all writings from Class members, proof of payment to Participating Claimants, any objection to proposed benefits and the resolution thereof, and any and all receipts by and disbursements from the Settlement Fund. The Settlement Administrator shall provide to counsel for the Parties a copy of Settlement Administration records in the form of PDF file(s) on a disc or portable drive. The Settlement Administrator shall prepare and provide to counsel for the Parties monthly accountings showing all receipts by and disbursements from the Settlement Fund. The Settlement Administrator shall prepare and provide to Settlement Class Counsel, Defendants, and Defense Counsel a final accounting, including the names of all Persons who received notice and names of all Participating Claimants, prior to the cy pres distribution. The Settlement Administrator shall maintain all records for a period of not less than two years following the expiration of the Final Effective Date.

9.8 Cy Pres Award. Any amounts not claimed in the Settlement Fund, such as any payments to Participating Claimants that are not cashed before the stale date on the check, shall be distributed by the Settlement Administrator to the Cy Pres Recipient(s) identified in accordance with Paragraph 9.6 and approved by the Court, no later than fourteen (14) calendar days after the stale date on the checks. For any cy pres payment(s) made by Defendants pursuant to Section 9.3(i), Settlement Class Counsel will be provided confirmation of payment.

10. FINAL ACCOUNTING AND DISPOSITION OF SETTLEMENT MONIES

10.1 Final Accounting. By no later than thirty (30) calendar days after the occurrence of both the Final Effective Date and the distribution of all checks referenced in Section 9.5, the Settlement Administrator shall submit to the Parties a final accounting of all monies paid into and out of the Settlement Fund.

10.2 No Further Obligations. Upon receipt of the final accounting referenced in Section 10.1, the Released Parties shall have no obligation to provide further funding pursuant to this Agreement.

11. RELEASES

11.1 Final Approval Order and Judgment. The Final Approval Order and Judgment shall include the releases described in this Agreement, including the releases of Released Claims by the members of the Settlement Class, the general

FINAL
12/21/2012

release by the Settlement Class Representative, and the releases by all Released Parties, as set forth herein.

11.2 Releases. Except for the obligations and rights created by this Agreement, the Persons in the Settlement Class and the other Releasing Parties hereby release and absolutely and forever discharge the Defendants and all Released Parties of and from any and all Released Claims. The Settlement Class Representative also hereby releases the Defendants and all Released Parties from any and all additional claims she has or may have against Defendants.

11.3 Civil Code Section 1542. Beverly Beck-Ellman (as an individual) acknowledges and agrees that as to her as an individual, this Agreement is intended to be a full settlement and compromise of all of her claims, causes of action, demands, debts, obligations, liabilities and agreements of whatever kind or nature, whether known or unknown, suspected or unsuspected, against Defendants and the Released Parties in existence at the time of executing this Agreement. No such claims, causes of action, demands, debts, obligations, liabilities or agreements are reserved and Beverly Beck-Ellman expressly waives any and all rights that she may have under the provisions of California Civil Code §1542 or under any statute, rule, or principle of common law or equity, in any jurisdiction, that is similar to Civil Code §1542, which provides as follows:

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

Beverly Beck-Ellman acknowledges and agrees that her knowing and voluntary waiver of the provisions of California Civil Code §1542 is an essential and material term of this Agreement. Beverly Beck-Ellman may hereafter discover facts in addition to or different from those now known to her with respect to the subject matter of the Action, her purchase and use of a Heating Pad prior to signing this Agreement, or any other released claim, but upon signing this Agreement she shall be deemed to have fully, finally, and forever settled, released and assumed the risk of any and all such claims, pending final approval of this Agreement, following which she shall be deemed permanently to have fully, finally, and forever settled, released and assumed the risk of any and all such claims.

12. NOTICES

12.1 Designated Recipients. Unless otherwise specified in this Agreement or agreed to in writing by the Party receiving such communication or

FINAL
12/21/2012

document, all notices, requests, or other communications required or permitted by this Agreement, or document to be given by a Party to another Party, shall be in writing and shall be given/made/sent by e-mail and facsimile, with hard copies sent by first class mail, postage prepaid, to the following:

Settlement Class Counsel:

Stuart M. Eppsteiner, Esq.
EPPSTEINER & FIORICA ATTORNEYS, LLP
12555 High Bluff Dr., Ste. 155
San Diego, CA 92130
StuartEppsteiner@eppsteiner.com
Fax: (858) 350-1501

Defendants' Counsel:

Soojin Kang, Esq.
Tharpe & Howell, LLP
15250 Ventura Blvd., 9th Floor
Sherman Oaks, California 91403-3221
skang@tharpe-howell.com
Fax: (818) 205-9944

Notice shall be deemed effective: (1) when receipt is confirmed by the recipient; or (2) when e-mail transmission is evidenced by documented "sent" status and facsimile transmission is evidenced by successful transmission report.

12.2 Changes in Designated Recipients. Any Party may re-designate the Person to receive notices, requests, demands, or other communications required or permitted by this Agreement by providing written notice to the other Parties and the Settlement Administrator.

13. SETTLEMENT TERMINATION

13.1 Termination if Court Approval is Not Obtained. This Agreement is expressly conditioned upon: (i) entry of the Preliminary Approval Order; and (ii) entry of the Final Approval Order and Judgment. If the Court declines to enter either of these Orders, or modifies in what any Party reasonably determines to be a material way any aspect of this Agreement or of such Orders, such Party shall have the independent right to terminate this Agreement as set forth in Section 13.4.

FINAL
12/21/2012

13.2 Termination if Opt Out Limit is Exceeded. If the total number of Persons who opt out of the Class exceeds 500 Persons, Defendants shall have the right to terminate this Agreement as set forth in Section 13.4.

13.3 Termination After Review. If a reviewing court declares unenforceable, reverses, vacates, or modifies in what any Party reasonably determines to be a material way any aspect of this Agreement, the Preliminary Approval Order, or the Final Approval Order and Judgment, such Party shall have the independent right to terminate this Agreement as set forth in Section 13.4.

13.4 Termination Procedure and Effect. Any Party who elects to terminate this Agreement pursuant to Sections 13.1, 13.2, and /or 13.3, may do so by giving written notice to each of the other Parties.

- Notice of termination pursuant to Section 13.1 must be given within fourteen (14) calendar days after the Court declines to enter the Preliminary Approval Order or the Final Approval Order and Judgment or modifies either.
- Notice of termination pursuant to Section 13.2 must be given prior to entry of the Final Approval Order and Judgment.
- Notice of termination pursuant to Section 13.3 must be given within fourteen (14) calendar days after issuance of the final decision of the reviewing court that is the basis for the termination.

The Parties shall attempt to meet and confer before any Party exercises its right to terminate this Agreement. If any Party terminates this Agreement pursuant to Sections 13.1, 13.2, and/or 13.3, the termination shall void all of the rights, obligations, and releases under this Agreement, except for those provisions that are necessary to effectuate the termination. Within fourteen (14) calendar days after notice of termination, the Settlement Administrator shall return to Defendants all settlement payments made by them prior to such termination, inclusive of interest.

14. MISCELLANEOUS

14.1 Warranties and Representations. The Settlement Class Representative and Settlement Class Counsel warrant that they and they alone have the right to enter into this Settlement Agreement. The Settlement Class Representative and Settlement Class Counsel have not assigned the Released Claims and no other Person has an interest in the Released Claims. Settlement

Page 24 of 28

FINAL
12/21/2012

Class Counsel further warrants that no other attorneys have ever represented Plaintiff, the Class or putative class(es), in connection with this Action, and that no other attorneys have a lien or an interest in the award of attorneys' fees and costs in this Action.

14.2 Entire Agreement. This Agreement supersedes and replaces any and all other prior agreements and all negotiations leading up to the execution of this Agreement, whether oral or in writing, between the Parties with respect to the subject matter hereof. The Parties agree that no other covenant, representation, inducement, promise or statement not set forth in writing in this Agreement shall be valid or binding.

14.3 Modification or Amendment. This Agreement may not be modified or amended, except in a writing signed by the Parties and approved by the Court.

14.4 Execution in Counterparts. This Agreement may be executed by signature of the Parties hereto, on multiple copies of this Agreement, including copies transmitted by facsimile or electronic mail, and, upon being so executed by all Parties hereto, shall be effective as if all signatures appeared on the original of this Agreement.

14.5 Authority of Counsel. Counsel for the Parties are authorized to take all appropriate action required and permitted to be taken pursuant to this Agreement to effectuate its terms. Counsel may agree to reasonable extensions of time or minor procedural modifications, without express written authorization by the Parties. Such agreements must be in writing and, if they conflict with any terms explicitly stated in the Preliminary Approval Order or Final Approval Order and Judgment (as opposed to incorporated by reference), must be approved by the Court.

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

14.7 Liens. Defendants and Released Parties shall have no obligation to pay or otherwise resolve any liens that are or may be asserted against settlement payments to members of the Settlement Class or the payment of attorneys' fees and costs to Settlement Class Counsel. It is the sole responsibility of the Settlement Class member or Settlement Class Counsel to pay, compromise, or otherwise resolve any lien asserted against payments made to him/her/it at no cost to Defendants,

FINAL
12/21/2012

Defendants' Counsel, the Settlement Class Representative, the Released Parties, or the Settlement Fund.

14.8 Cooperation and Further Acts. The Parties shall act in good faith and cooperate to effectuate the terms and purposes of this Agreement and perform such further acts and execute such further documents as may be reasonably necessary or appropriate to effectuate the terms and purposes of this Agreement.

14.9 Beneficiaries. This Agreement shall be binding upon the Parties and each of them, and each of their respective heirs, successors, and assignees, and shall inure to the benefit of the Parties, as well as to each of the Released Parties and their respective affiliates, heirs, successors, and assignees, each of whom shall be deemed a third party beneficiary of this Agreement.

14.10 Choice of Law and Jurisdiction. This Agreement in all respects shall be interpreted, enforced, and governed by and under the laws of the State of California. Any proceeding to interpret or enforce the terms, conditions, and obligations of this Agreement shall be brought before the Court.

14.11 Warranty Regarding Advice. The Settlement Class Representative and Defendants represent that they have been fully advised of and agree to the terms of this Agreement. The Settlement Class Representative and Defendants hereby acknowledge that they have been represented by legal counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and on the advice of said counsel.

14.12 No Tax Advice. None of the Released Parties has any responsibility or liability for any tax matters relating to any payments made under this Agreement including, but not limited to, tax advice and/or withholding of, or reporting of taxes.

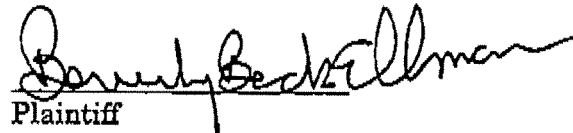
14.13 Disputes. Should any dispute arise between or among the parties regarding compliance with or enforcement of any provision or term of this Agreement in any respect, the Parties will use their best efforts to resolve the dispute through exchanging positions and oral communication between the Parties' counsel. However, should enforcement of the terms of this Agreement by the Court become necessary, the Parties acknowledge the Court's authority with regard to any sanction the Court determines to be appropriate.

FINAL
12/21/2012

AGREED TO AND ACCEPTED:

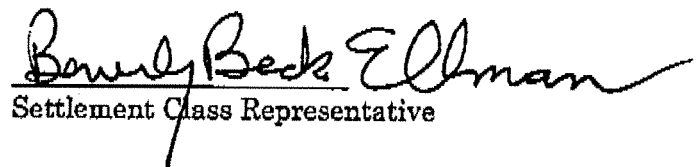
DATED: DECEMBER 21 2012

BEVERLY BECK-ELLMAN


Plaintiff

DATED: DECEMBER 21 2012

BEVERLY BECK-ELLMAN


Settlement Class Representative

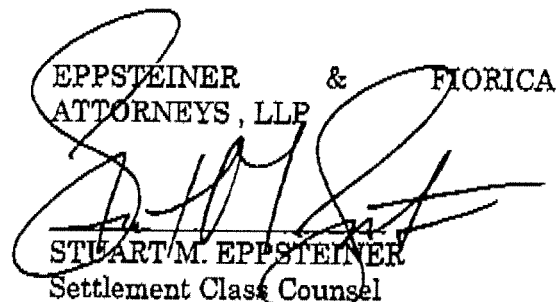
DATED: DECEMBER 2012

KAZ, INC. and KAZ USA, INC.

By: _____
Its: _____

APPROVED AS TO FORM:

DATED: DECEMBER 21 2012


EPPSTEINER & FLORICA
ATTORNEYS, LLP
STUART M. EPPSTEINER
Settlement Class Counsel

DATED: DECEMBER 2012

THARPE & HOWELL, LLP

FINAL
12/21/2012

AGREED TO AND ACCEPTED:

DATED: DECEMBER__, 2012

BEVERLY BECK-ELLMAN

Plaintiff

DATED: DECEMBER__, 2012

BEVERLY BECK-ELLMAN

Settlement Class Representative

DATED: DECEMBER21, 2012

KAZ, INC. and KAZ USA, INC.

By: Thomas J. Benson
Its: Vice President

APPROVED AS TO FORM:

DATED: DECEMBER__, 2012

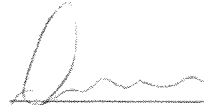
EPPSTEINER & FLORICA
ATTORNEYS, LLP

STUART M. EPPSTEINER
Settlement Class Counsel

DATED: DECEMBER24, 2012

THARPE & HOWELL, LLP

FINAL
12/21/2012



PAUL V. WAYNE
SOOJIN KANG
Counsel for KAZ,
INC. and KAZ USA, INC.