

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

VALERIE BEZDEK, Individually and on Behalf of All Others Similarly Situated,)	
)	Case No. 12-10513-DPW
Plaintiff,)	
)	
v.)	
)	
VIBRAM USA INC. and VIBRAM FIVEFINGERS LLC,)	
)	
Defendants.)	
)	
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BRIAN DE FALCO, Individually and on Behalf of All Others Similarly Situated,)	
)	Case No. 13-10764-DPW
Plaintiff,)	
)	
v.)	
)	
VIBRAM USA INC. and VIBRAM FIVEFINGERS LLC,)	
)	
Defendants.)	
)	

AMENDED SETTLEMENT AGREEMENT

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IT IS HEREBY STIPULATED AND AGREED, by, between and among Plaintiffs Valerie Bezdek, Brian De Falco, and Ali Safavi (“Plaintiffs”), and Defendant Vibram USA Inc. and Vibram FiveFingers LLC (collectively, “Vibram”), with all terms as defined below, through their duly-authorized counsel, that the above-captioned actions, *Bezdek v. Vibram USA Inc., et al.*, Case Number 1:12-cv-10513-DPW (D. Mass.), *De Falco v. Vibram USA Inc., et al.*, Case Number 1:13-cv-10764-DPW (D. Mass.), and *Safavi v. Vibram USA Inc., et al.*, Case Number 12-5900-BRO-JCG (C.D. Cal.), and the matters raised therein, are settled, compromised, and dismissed on the merits with prejudice, on the terms and conditions set forth in this Settlement Agreement and the release set forth herein, subject to the approval of the Court.

I. INTRODUCTION

A. On March 21, 2012, Plaintiff Valerie Bezdek filed the first above-captioned action in this Court, *Bezdek v. Vibram USA Inc., et al.*, Case Number 1:12-cv-10513-DPW (D. Mass.) (“*Bezdek*”). She filed an Amended Complaint on June 25, 2012. In her Amended Complaint, which focuses its allegations on Vibram’s marketing campaign relating to its FiveFingers footwear, Bezdek alleged violations of Mass. Gen. Laws ch. 26, §91, Mass. Gen. Laws ch. 93A, §2, Florida Statutes §501.201 *et seq.*, and unjust enrichment. She further sought to represent a class of “all others similarly situated consisting of all persons in the United States who purchased FiveFingers running shoes during the period from March 21, 2009 until notice is disseminated to the Class.”

B. On July 9, 2012, a putative class action lawsuit captioned *Safavi v. Vibram USA Inc., et al.*, Case Number CV 12-5900-BRO-JCG (“*Safavi*”) was filed in the United States District Court for the Central District of California. Plaintiff Safavi is represented by the same counsel as Bezdek, and his complaint is substantially similar to hers. Safavi’s Complaint

includes claims for violations of California's Unfair Competition Law, Business and Professions Code §17200 *et seq.*, California's Consumer Legal Remedies Act, Civil Code §1750 *et seq.*, and breach of express warranty. Safavi proposes to represent "all others similarly situated consisting of all persons in California who purchased FiveFingers running shoes from the time they were first sold in California until notice is disseminated to the Class." This proposed class is subsumed by the class proposed by Bezdek. After Vibram moved to dismiss or stay *Safavi*, the parties stipulated to a stay of that case pending a ruling on class certification in *Bezdek*.

C. On August 8, 2012, Plaintiff Brian De Falco filed an action in the Superior Court for Will County, Illinois, No. 2012L601. In his Complaint, De Falco asserted claims for violation of the Illinois Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.*, breach of express warranty, and unjust enrichment. De Falco sought to represent a class of "all Illinois residents who purchased Vibram FiveFingers running shoes from an authorized retailer located in Illinois or online for shipping to an Illinois address." This proposed class is subsumed by the class proposed by Bezdek. The *De Falco* action was removed to Federal Court on September 11, 2012, and was docketed as *De Falco v. Vibram USA LLC et al.*, 1:12-CV-07238. On March 18, 2013, the Court, Hon. Virginia M. Kendall, granted in part and denied in part Vibram's Motion to Dismiss De Falco's Complaint, and by an Order dated April 3, 2013, transferred the case to the United States District Court for the District of Massachusetts, *De Falco v. Vibram USA Inc., et al.*, Case Number 1:13-cv-10764-DPW (D. Mass.) ("*De Falco*", and together with *Bezdek* and *Safavi*, the "Actions").

D. Vibram filed Answers to the *Bezdek* Amended Complaint and the *De Falco* Complaint, which are both pending before Hon. Douglas P. Woodlock.

E. Vibram expressly denied and continues to deny any and all wrongdoing alleged in the Actions, and neither admits nor concedes any actual or potential fault, wrongdoing or liability in connection with any of the facts or claims that have been or could have been alleged against it in these actions.

F. To date, Lead Class Counsel has conducted an extensive and thorough examination, investigation, and evaluation of the relevant law, facts and allegations to assess the merits of the claims and potential claims and the strength of both defenses and liability sought in the Actions. The Parties agree that throughout the course of the litigation, all Parties and their counsel complied with the provisions of Federal Rule of Civil Procedure 11.

G. Vibram produced to Plaintiffs, through Lead Class Counsel, extensive discovery, including documents and written responses to Plaintiffs' discovery requests. In particular, Vibram produced voluminous documentation to Lead Class Counsel regarding the FiveFingers footwear in the following categories: (i) product design, creation and development; (ii) scientific studies and research; (iii) marketing, advertising, media, and public relations; (iv) sales and accounting records; and (v) e-mail correspondence kept by key Vibram custodians. In total, Vibram produced over 52,000 pages of documents. Plaintiffs and Lead Class Counsel have thoroughly reviewed the documents.

H. Based upon their review, investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, Plaintiffs and Lead Class Counsel, on behalf of the Plaintiffs in the Actions and the other members of the proposed Class, have agreed to settle the Actions pursuant to the provisions of this Agreement, after considering, among other things: (1) the substantial benefits to Plaintiffs and the other Class Members under the terms of this Agreement; (2) the risks, costs, and uncertainty of protracted litigation, especially in complex

actions such as this, as well as the difficulties and delays inherent in such litigation; and (3) the desirability of consummating this Agreement promptly in order to provide effective relief to Plaintiffs and the other Class Members.

I. Vibram expressly denies any of the wrongdoing alleged in the pleadings and does not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged against it in the Actions and / or any other actions. Even though Vibram expressly denies any wrongdoing, Vibram considers it desirable for these cases to be settled and dismissed, because this Settlement will finally put Plaintiffs' claims and the underlying matters to rest and will avoid the substantial expense, burdens, and uncertainties associated with the continued litigation of these claims and cases.

II. DEFINITIONS

A. As used in this Agreement and the attached exhibits (which are an integral part of this Agreement and are incorporated in their entirety by reference), the following terms have the following meanings, unless this Agreement specifically provides otherwise:

1. "Action" means *Valerie Bezdek v. Vibram USA Inc., et al.*, Case Number 1:12-cv-10513-DPW (D. Mass.).

2. "Actions" means *Valerie Bezdek v. Vibram USA Inc., et al.*, Case Number 1:12-cv-10513-DPW (D. Mass.), *Brian De Falco v. Vibram USA Inc., et al.*, Case Number 1:13-cv-10764-DPW (D. Mass.), and *Safavi v. Vibram USA Inc., et al.*, Case Number CV 12-5900-BRO-JCG (C.D. Cal.).

3. “Agreement” or “Settlement” means this Settlement Agreement and the exhibits attached hereto or incorporated herein, including any subsequent amendments and any exhibits to such amendments.

4. “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court to Lead Class Counsel from Vibram to compensate all Plaintiffs’ Counsel for their fees and expenses in connection with the Actions and the Settlement, as described in Section VIII of this Agreement (below).

5. “California Case” means *Ali Safavi v. Vibram USA Inc. and Vibram FiveFingers, LLC*, Case Number 11-cv-10632 (C.D. Cal).

6. “Claim” means the claim of a Class Member or his or her representative attested to on a Claim Form as provided in this Agreement.

7. “Claim Form” means the document, in substantially the same form as Exhibit 1 attached to this Agreement.

8. “Claim Period” means the time period in which Class Members may submit a Claim Form for review to the Class Action Settlement Administrator. The Claim Period shall run for one hundred twenty (120) days from the date of the first dissemination of the Summary Settlement Notice or Class Notice, whichever is earlier.

9. “Claim Process” means that process for submitting Claims via the Claim Form as described in this Agreement.

10. “Claimant” means a Class Member who has submitted a completed Claim Form.

11. “Class” means all people who, during the Class Period, purchased in the United States certain FiveFingers footwear (as defined herein) from Vibram and/or its

authorized retailers including, without limitation, vibramfivefingers.com. Excluded from the Class are: (a) Vibram's Board members, executive-level officers, or employees, including its attorneys; (b) persons or entities who purchased the FiveFingers footwear primarily for the purpose of resale; (c) any claims for personal injury relating to the use of the FiveFingers footwear; (d) distributors or re-sellers of the FiveFingers footwear; (e) the judge and magistrate judge presiding over the Actions and their immediate families; (f) governmental entities; and (g) persons or entities who timely and properly exclude themselves from the Class as provided in this Agreement.

12. "Class Action Settlement Administrator" means the third-party agent or administrator agreed to by the Parties and appointed by the Court. The Parties agree that Heffler Claims Group LLC shall be retained to implement the claims and Settlement requirements of this Agreement, subject to the Court's approval.

13. "Class Member" means a member of the Class.

14. "Class Notice" means a notice substantially in the form attached hereto as Exhibit 2.

15. "Class Period" means the time period from March 21, 2009, up to and including the date of the first dissemination of the Summary Settlement Notice or Class Notice, whichever is earlier.

16. "Class Representative" means Valerie Bezdek.

17. "Court" means the United States District Court for the District of Massachusetts.

18. "Escrow Agent" means Huntington National Bank.

19. “Fairness Hearing” means the hearing at or after which the Court shall make a final decision whether to approve this Settlement and this Agreement as fair, reasonable, and adequate. The Parties shall request that the Court schedule the Fairness Hearing for a date that is at least one hundred and fifty-five (155) days, but no later than one hundred and seventy-five (175) days, after entry of the Court’s Order Authorizing Notice.

20. “Final Order” and “Final Judgment” mean the Court’s order approving the Settlement and this Agreement, as described in Section IX.B of this Agreement, which are to be substantially in the forms attached hereto as Exhibits 3 and 4, respectively.

21. “Final Settlement Date” means the date on which the Final Order and Final Judgment approving the Settlement and this Agreement becomes final. For purposes of this Agreement:

a. if no appeal has been taken from the Final Order and Final Judgment, “Final Settlement Date” means the date on which the time to appeal therefrom has expired; or

b. if any appeal has been taken from the Final Order and Final Judgment, “Final Settlement Date” means the date on which all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing *en banc* and petitions for *certiorari* or any other form of review, have been finally disposed of in a manner that affirms the Final Order and Final Judgment; or

c. if the Lead Class Counsel and Vibram agree in writing, “Final Settlement Date” can occur on any other agreed date.

22. “FiveFingers footwear” means the following models of Vibram shoes purchased as new by Class Members during the Class Period:

Alitza, Bikila, Bikila EVO, Bikila EVO WP, Bikila LS, Classic, Classic Smartwool, EL-X, Estrada, Flow, Fresca, Jaya, Komodo Sport, Komodo Sport LS, KMD Sport, KMD Sport LS, KSO, KSO EVO, KSO Trek, Lontra, SeeYa, SeeYa LS, SeeYa LS Night, Signa, Speed, Speed XC, Sprint, Spyridon, Spyridon LS, Spyridon MR, Trek LS, TrekSport, TrekSport Sandal, V-On, and Vybrid Sneak.

23. “Lead Class Counsel” means: Wolf Haldenstein Adler Freeman & Herz LLP.

24. “Notice Administrator” means the Court-appointed third-party agent or administrator agreed to by the Parties and appointed by the Court. The Parties agree that Heffler Claims Group shall be retained to implement the notice and related requirements of this Agreement.

25. “Order Authorizing Notice” means the order to be entered by the Court preliminarily approving the Settlement as outlined in Section IX.A of this Agreement and substantially in the form attached hereto as Exhibit 5.

26. “Parties” means Plaintiffs and Vibram, collectively, as each of those terms is defined in this Agreement.

27. “Plaintiffs” means Valerie Bezdek, Ali Safavi, and Brian De Falco.

28. “Plaintiffs’ Counsel” means the following counsel of record: Wolf Haldenstein Adler Freeman & Herz LLP; Blood Hurst & O’Reardon, LLP; Berman Devalerio; Shepherd, Finkelman, Miller & Shah, LLP; Gary Roberts & Associates, P.A.; Pomerantz LLP; The Breeden Law Firm; Sweetnam LLC; Milberg LLP; and Whatley Drake & Kallas.

29. “Postcard Notice” means a notice substantially in the form attached hereto as Exhibit 8.

30. “Release” means the Release and Waiver set forth in Section VII of this Agreement and in the Final Order and Final Judgment.

31. “Released Parties” means Vibram, its parents (including but not limited to Vibram SpA, and any intermediary and/or ultimate parents), officers, directors, employees, stockholders, agents, attorneys, administrators, successors, reorganized successors, spin-offs, assigns, holding companies, subsidiaries, affiliates, joint-ventures, partners, members, divisions predecessors, Vibram-owned U.S. Retailers, Vibram-owned Stores and www.vibramfivefingers.com.

32. “Service Award” means a sum of money, to be paid exclusively out of the Settlement Fund, to compensate a named plaintiff for representing the Class, as is more specifically provided in Section VIII hereof.

33. “Settlement Claim Procedures and Claim Calculation Protocol” means the protocol attached hereto as Exhibit 7.

34. “Summary Settlement Notice” means the Summary Class Notice for publication substantially as attached hereto as Exhibit 6.

35. “Vibram” means Vibram USA Inc. and Vibram FiveFingers LLC.

36. “Vibram’s Counsel” means Jones Day.

B. Other capitalized terms used in this Agreement but not defined in this Section II shall have the meanings ascribed to them elsewhere in this Agreement.

C. The terms “he or she” and “his or her” include “it” or “its” where applicable.

III. SETTLEMENT RELIEF

Settlement relief shall consist of two primary components: (1) refunds to Class Members who submit valid and completed Claim Forms; and (2) Vibram’s agreement to discontinue certain marketing and advertising campaigns relating to its FiveFingers footwear.

A. Relief Amount:

1. Vibram shall deposit \$3,750,000.00 (the “Settlement Fund”) in escrow to be held by the Escrow Agent within ten (10) business days of the issuance of the Order Authorizing Notice and upon notice from Lead Class Counsel to Vibram’s Counsel that Lead Class Counsel has executed and delivered agreements with the Escrow Agent, the Class Action Settlement Administrator, and the Notice Administrator all in form satisfactory to Lead Class Counsel. At the written direction of Lead Class Counsel, the Escrow Agent shall invest the Settlement Fund exclusively in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Money Market Fund or a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit. At the written direction of Lead Class Counsel, the Escrow Agent shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. Defendants shall not bear any responsibility for or liability related to the deposit of the Settlement Fund with or investment of the Settlement Fund by the Escrow Agent.

2. All payments, including (a) payments made to any Class Member or any Plaintiff, including any Court-approved Service Awards; (b) administrative/notice costs to the Class Action Settlement Administrator for (i) charges and invoices by the Class Action Settlement Administrator and Notice Administrator relating to this Settlement; (ii) the costs and expenses associated with disseminating the notice, including, but not limited to, the Class Notice and the Summary Settlement Notice, to the Class; (iii) the costs and expenses associated with the claims administration; (iv) the costs and expenses associated with the timely, valid, and approved Claim Forms submitted by Class Members pursuant to the Claim Process

(collectively, the “Administrative Costs”); and (c) Plaintiffs’ Counsel’s Attorneys’ Fees and Expenses shall be paid exclusively from the Settlement Fund. In no event shall Vibram’s liability or obligations hereunder exceed the Settlement Fund.

B. Claim Form Submission and Review:

1. Class Members may submit a Claim via a Claim Form through the Claim Process during the Claim Period and the Class Action Settlement Administrator shall review and process the Claim Form pursuant to the Settlement Claim Procedures and Claim Calculation Protocol, which is attached hereto as Exhibit 7. As part of the Claim Process, Class Members shall be eligible for the relief provided for in this Agreement, provided Class Members complete and timely submit a Claim Form to the Class Action Settlement Administrator within the Claim Period.

2. As further specified in the Settlement Claim Procedures and Claim Calculation Protocol, the Claim Form shall advise Class Members that the Class Action Settlement Administrator has the right to request verification of the purchase of FiveFingers footwear, including, but not limited to, receipt(s) or other documentation demonstrating purchase of any and all of the FiveFingers footwear during the Class Period. Adequate and customary procedures and standards will be used by the Class Action Settlement Administrator to prevent payment of fraudulent claims and to pay only legitimate claims.

3. The Class Action Settlement Administrator shall provide periodic updates to Lead Class Counsel and to Vibram regarding Claim Form submissions beginning not later than one week after the entry of an order granting Approval of Notice and continuing on a monthly basis thereafter.

4. The Class Action Settlement Administrator shall pay timely, valid, and approved Claims commencing ten (10) days after the close of the Claim Period so long as this period is after the Final Settlement Date, or sooner upon Vibram and Lead Class Counsel's joint direction, but not before the issuance of the Court's Final Order and Final Judgment approving

the Settlement. In the event the Final Settlement Date falls after the close of the Claim Period, then the Class Action Settlement Administrator shall begin to pay timely, valid, and approved Claims commencing ten (10) days after the Final Settlement Date. The Class Action Settlement Administrator shall have completed the payment to Class Members who have submitted timely, valid and approved Claims pursuant to the Claim Process no later than one hundred twenty (120) days after either the Final Settlement Date or the close of the Claim Period, whichever is later.

5. The relief to be provided to eligible Class Members for each pair of FiveFingers footwear purchased by an eligible Class Member shall be paid on a pro rata basis from the balance of the Settlement Fund after payment of Administrative Costs, necessary taxes and expenses, Attorneys' Fees and Expenses, and Service Awards, up to a maximum of \$94.00 per pair, the average manufacturer's suggested retail price of FiveFingers footwear. Based on the experience of similar settlements of class actions, it is reasonable to expect that Class Members may receive payment in the range of \$20.00 to \$50.00 per pair. Class Members may recover payment for up to two pairs of FiveFingers footwear by timely submitting a valid Claim Form. Class Members may recover payment for more than two pairs of FiveFingers footwear only by timely submitting a valid Claim Form and providing Proof of Purchase or other documentation or evidence reasonably establishing the purchase of FiveFingers footwear, as the Class Action Settlement Administrator may in its discretion determine to be sufficient proof in accordance with the Settlement Claim Procedures and Claim Calculation Protocol for each pair of FiveFingers footwear for which payment is sought.

C. Adjustments and Remaining Funds:

6. If there are any funds remaining in the Settlement Fund after payment of Administrative Costs, necessary taxes and expenses, Attorneys' Fees and Expenses, Service Awards, and all Claims to eligible Class Members (taking into account un-cashed distributions made payable to eligible Class Members) ("Residual Funds"), the Class Action Settlement Administrator shall distribute the Residual Funds to the American Heart Association with specific earmark relating to research regarding health benefits associated with running or exercise or substantially similar research, or such other beneficiary as the Parties and the Court shall agree at the time of the Final Judgment and Final Order. The Residual Funds will not be returned to Vibram. Vibram represents and warrants that any payment of Residual Funds to any charities, non-profit organizations, or governmental entit(ies) shall not reduce any of its donations or contributions to any entity, charity, charitable foundation or trust, and / or non-profit organization.

D. Agreement to Refrain from Certain Conduct

In addition to the relief discussed above, as part of this Agreement, Vibram will agree to take commercially reasonable efforts to discontinue certain aspects of its advertising and marketing campaign, including: (i) Vibram will not make or assist others in making any claims that the FiveFingers footwear or products similar to the FiveFingers footwear are effective in strengthening muscles or preventing injury unless that representation is true, non-misleading and is supported by competent and reliable scientific evidence; (ii) Vibram will not make or assist others in making any health benefit claim about FiveFingers footwear or products similar to the FiveFingers footwear unless Vibram possesses and relies upon competent and reliable scientific evidence to substantiate that the claim is true and non-misleading; and (iii) Vibram will not

misrepresent or assist others in misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research relating to Vibram's FiveFingers footwear or products similar to the FiveFingers footwear. For the purposes of this Agreement, third party sales of FiveFingers footwear in connection with advertising or promotional material no longer in active use by Vibram shall not constitute a violation of this Agreement.

IV. NOTICE TO THE CLASS

A. Duties of the Class Action Settlement Administrator and the Notice Administrator

1. The Parties shall jointly recommend and retain Heffler Claims Group LLC to be the Class Action Settlement Administrator and the Notice Administrator to help implement the terms of this Agreement. Following the Court's preliminary review of this Agreement and the Court's appointment of the proposed Class Action Settlement Administrator and the proposed Notice Administrator, the Notice Administrator shall disseminate notice to the Class as specified in the Order Authorizing Notice and in this Agreement, and in order to comply with all applicable laws, including, but not limited to, the Due Process Clause of the Constitution.

2. The Notice Administrator shall be responsible for, without limitation: (a) printing, mailing, emailing, or arranging for dissemination of Class Notice; (b) arranging for the publication of the Summary Settlement Notice; (c) handling returned e-mail and mail not delivered to Class Members; (d) attempting to obtain updated address information; (e) making any additional mailings required under the terms of this Agreement; (f) responding to requests for Class Notice; (g) receiving and maintaining on behalf of the Court any Class Member correspondence regarding requests for exclusion and objections to the Settlement; (h) forwarding written inquiries to Lead Class Counsel or their designee for a response, if warranted; (i) establishing a post office box for the receipt of any correspondence; (j) responding to requests from Lead Class Counsel and/or Vibram's Counsel; (k) establishing a

web site and toll-free voice response unit to which Class Members may refer for information about the Actions and the Settlement; and (l) otherwise implementing and/or assisting with the dissemination of the notice of the Settlement. The Class Action Settlement Administrator shall be responsible for, without limitation, implementing the terms of the Claim Process and related administrative activities.

3. If the Class Action Settlement Administrator and/or the Notice Administrator fail to perform adequately on behalf of Vibram or the Class, the Parties may agree to remove the Class Action Settlement Administrator and/or the Notice Administrator. The other Party shall not unreasonably withhold consent to remove the Class Action Settlement Administrator and/or the Notice Administrator, but this shall occur only after Vibram and Lead Class Counsel have attempted to resolve any disputes regarding the retention or dismissal of the Class Action Settlement Administrator and/or the Notice Administrator in good faith, and, if they are unable to do so, after the matter has been referred to the Court for resolution.

4. The Class Action Settlement Administrator and/or the Notice Administrator may retain one or more persons to assist in the completion of its responsibilities.

5. Not later than ten (10) days before the date of the Fairness Hearing, the Notice Administrator shall provide Vibram's Counsel and Lead Class Counsel: (a) a list of those persons who have opted out or excluded themselves from the Settlement; and (b) the details outlining the scope, methods and results of the notice program.

6. The Notice Administrator shall promptly after receipt provide copies of any requests for exclusion, objections, and/or related correspondence to Lead Class Counsel and Vibram's Counsel.

B. Class Notice:

1. Dissemination of the Mailed Class Notice

a. No later than three (3) business days after the entry of the Order Authorizing Notice, Vibram shall provide the Notice Administrator with the name, mailing address, and e-mail address of each reasonably identifiable Class Member, subject to the existence and availability of such information and its current possession, if at all, by Vibram.

b. Beginning not later than ten (10) business days after entry of the Order Authorizing Notice and to be substantially completed not later than twenty (20) days after entry of the Order Authorizing Notice, and subject to the requirements of the Order Authorizing Notice and the Settlement Agreement, the Notice Administrator shall send the Class Notice and Claim Form by Electronic Mail (“E-Mail”) to: (i) each reasonably identifiable Class Member’s last known E-Mail address; and (ii) each appropriate State and Federal official, as specified in 28 U.S.C. § 1715, and shall otherwise comply with Fed. R. Civ. P. 23 and any other applicable statute, law, or rule, including but not limited to, the Due Process Clause of the United States Constitution.

c. No later than thirty-five (35) days after entry of the Order Authorizing Notice, the Notice Administrator shall send the Postcard Notice, substantially in the form of Exhibit 8 hereto, by First Class U.S. Mail, proper postage prepaid, to each Class Member whose E-mail address returned a message as undeliverable, subject to the existence of such

information as provided by Vibram pursuant to Section IV.B.1.a of this Agreement, notifying the Class Member of the Settlement and directing them to the Settlement Website and/or the toll-free telephone number to obtain a Class Notice and Claim Form.

d. No later than fifty (50) days after entry of the Order Authorizing Notice, the Notice Administrator shall: (i) re-mail any Postcard Notice returned by the United States Postal Service with a forwarding address that are received by the Notice Administrator; (ii) by itself or using one or more address research firms, as soon as practicable following receipt of any returned Postcard Notices that do not include a forwarding address, research any such returned mail for better addresses and promptly mail the Postcard Notice to the better addresses so found.

2. Contents of the Class Notice: The Claim Form and the Class Notice shall be in a form substantially similar to the document attached to this Agreement as Exhibits 1 and 2, respectively, and shall advise Class Members of the following:

a. General Terms: The Class Notice shall contain a plain and concise description of the nature of the Actions, the history of the litigation of the claims, the preliminary certification of the Class, and the proposed Settlement, including information on the identity of Class Members, how the proposed Settlement would provide relief to the Class and Class Members, what claims are released under the proposed Settlement and other relevant terms and conditions.

b. Opt-Out Rights: The Class Notice shall inform Class Members that they have the right to opt out of the Settlement. The Class Notice shall provide the deadlines and procedures for exercising this right.

c. Objection to Settlement: The Class Notice shall inform Class Members of their right to object to the proposed Settlement and appear at the Fairness Hearing. The Class Notice shall provide the deadlines and procedures for exercising these rights.

d. Fees and Expenses: The Class Notice shall inform Class Members about the amounts being sought by Plaintiffs' Counsel as Attorneys' Fees and Expenses and individual Service Awards to the Plaintiffs, and shall explain that Vibram will pay the fees and expenses awarded to Plaintiffs' Counsel and individual Service Awards to the Plaintiffs.

e. Claim Form: The Class Notice shall include the Claim Form, which shall inform the Class Member that he or she must fully complete and timely return the Claim Form within the Claim Period to be eligible to obtain relief pursuant to this Agreement.

C. The Summary Settlement Notice: The Notice Administrator shall have the publication of the Summary Settlement Notice substantially completed no later than seventy-five (75) days after entry of the Order Authorizing in such additional newspapers, magazines, and/or other media outlets as shall be agreed upon by the Parties. The form of Summary Settlement Notice agreed upon by the Parties is in the form substantially similar to the one attached to the Agreement as Exhibit 6.

D. Settlement Website: Prior to the dissemination of the Class Notice pursuant to Section IV.B.1 to Section IV.C, the Notice Administrator shall establish an Internet website, www.fivefingerssettlement.com, that will inform Class Members of the terms of this Agreement, their rights, dates and deadlines and related information (the “Settlement Website”). This Settlement Website shall include, in .pdf format, materials agreed upon by the Parties and/or required by the Court, which shall include, at a minimum, orders Authorizing Notice and Final Approval, the Class Notice, the Claim Form, the Summary Settlement Notice and this Agreement. Notice to the Class shall be supplemented by banner ads on the Internet that shall direct Class Members to the Settlement Website through an embedded hyperlink posted on the following families of sites, or networks, for a period of time sufficient to deliver approximately 300,000,000 impressions: RunnersWorld.com; The Time Access Network; Facebook; The Xaxis Network; Gannett.com (including on mobile web versions of those sites); and on the Mobile APP network. The form of the banner advertisements agreed upon by the Parties is in the form substantially similar to the one attached to this Settlement Agreement as Exhibit 10.

E. Toll-Free Telephone Number: Prior to the dissemination of the Class Notice pursuant to Section IV.B.1 to Section IV.C, the Notice Administrator shall establish a toll-free telephone number that will provide Settlement-related information to Class Members.

V. REQUESTS FOR EXCLUSION

A. Any Class Member who wishes to be excluded from the Class must mail a written request for exclusion to the Notice Administrator at the address provided in the Class Notice, postmarked no later than ninety-five (95) days after entry of the Order Authorizing Notice, or as the Court otherwise may direct, and specifying that he or she wants to be excluded. The Notice Administrator shall forward copies of any written requests for exclusion to Lead Class Counsel

and Vibram's Counsel. A list reflecting all requests for exclusion shall be filed with the Court by Vibram no later than ten (10) days before the Fairness Hearing.

B. Any potential Class Member who does not file a timely written request for exclusion as provided in the preceding Section V.A shall be bound by all subsequent proceedings, orders, and judgments, including, but not limited to, the Release, in the Action, even if he or she has litigation pending or subsequently initiates litigation against Vibram relating to the claims and transactions released in the Action. Vibram's Counsel shall provide to the Notice Administrator, within ten (10) business days of the entry of the Order Authorizing Notice, a list of all counsel for anyone who has litigation against Vibram that involves FiveFingers footwear. The Notice Administrator shall mail copies of the Class Notice to all such legal counsel. Vibram will promptly direct the Notice Administrator to serve the Class Notice on counsel for any Class Members who subsequently initiate litigation, arbitration or other proceedings against Vibram relating to claims alleging events occurring during the Class Period, FiveFingers footwear, and/or otherwise involving the Release.

VI. OBJECTIONS TO SETTLEMENT

A. Any Class Member who has not filed a timely written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement, or to the award of Attorneys' Fees and Expenses, or the individual Service Awards to Plaintiffs, must deliver to the Lead Class Counsel identified in the Class Notice and to Vibram's Counsel, and file with the Court, no later than ninety-five (95) days after entry of the Order Authorizing Notice, or as the Court otherwise may direct, a written statement of the objections containing the objector's dated signature, as well as the specific reason(s), if any, for each objection, including any legal support the Class Member wishes to bring to the Court's attention, any evidence or other information the Class Member wishes to introduce in support of

the objections, a statement of whether the Class Member intends to appear and argue at the Fairness Hearing, and a list of the Class Member's purchase(s) of the FiveFingers footwear. Class Members may do so either on their own or through an attorney retained at their own expense. The objection must include proof of purchase for the FiveFingers footwear. Acceptable proof of purchase includes a cash register receipt, a credit card receipt or a credit card statement or other verifiable information that sufficiently indicates the purchase of the FiveFingers footwear. The objection must also contain the objector's name, address, telephone number and, if represented by counsel, the same information for his/her counsel (in any event, the objector's actual residential address must be included). The Parties shall request that the Court allow any interested party to file a reply to any objection, as described in this Section VI.A, no later than seven (7) days before the Fairness Hearing.

B. Any Class Member who files and serves a written objection, as described in the preceding Section VI.A, may appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement, or to the award of Attorneys' Fees and Expenses or Service Awards to the individual Plaintiffs. Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must deliver a notice of intention to appear to the Lead Class Counsel identified in the Class Notice and to Vibram's Counsel, and file said notice with the Court, no later than ninety-five (95) days after entry of the Order Authorizing Notice, or as the Court may otherwise direct.

C. Any Class Member who fails to comply with the provisions of Sections VI.A and VI.B above shall waive and forfeit any and all rights he or she may have to appear separately

and/or to object, and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments, including, but not limited to, the Release, in the Action.

D. Any Class Member who objects to the Settlement shall be entitled to all of the benefits of the Settlement if this Agreement and the terms contained therein are approved, as long as the objecting Class Member complies with all requirements of this Agreement applicable to Class Members, including the timely submission of Claim Forms and other requirements discussed herein.

VII. RELEASE AND WAIVER

A. The Parties agree to the following release and waiver, which shall take effect upon entry of the Final Order and Final Judgment.

B. In consideration for the Settlement benefits described in this Agreement, Plaintiffs and the other members of the Class, on behalf of themselves, their heirs, guardians, assigns, executors, administrators, predecessors, and/or successors, will fully, finally and forever release, relinquish, acquit, and discharge the Released Parties from – and shall not now or hereafter institute, maintain, or assert on their own behalf, on behalf of the Class or on behalf of any other person or entity – any and all manner of claims, actions, causes of action, suits, rights, debts, sums of money, payments, obligations, reckonings, contracts, agreements, executions, promises, damages, liens, judgments and demands of whatever kind, type or nature and whatsoever, both at law and in equity, whether past, present or future, mature or not yet mature, known or unknown, suspected or unsuspected, contingent or noncontingent, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Plaintiffs or Class Members ever had, now have, may have, or hereafter can, shall or may ever have against the Released Parties in any other court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other

adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever relating to the purchase of FiveFingers footwear during the Class Period and the claims alleged in the complaints (amended and otherwise) in the Actions, and, more particularly, but without in any way limiting the generality of the foregoing, arising from, directly or indirectly, or in any way whatsoever pertaining or relating to the claims alleged in the complaints (amended and otherwise) in the Actions, including, but not limited to, communications, disclosures, nondisclosures, representations, statements, claims, omissions, messaging, design, testing, marketing, advertising, promotion, packaging, displays, brochures, studies, manufacture, distribution, operation, performance, functionality, notification, providing, offering, dissemination, replacement, sale and/or resale by the Released Parties of the FiveFingers footwear; any claims for rescission, restitution or unjust enrichment for all damages of any kind relating to the purchase of FiveFingers footwear during the Class Period and the claims alleged in the complaints (amended and otherwise) in the Actions; violations of any state's deceptive, unlawful and/or unfair business and/or trade practices, false, misleading or fraudulent advertising, consumer fraud and/or consumer protection statutes relating to the purchase of FiveFingers footwear during the Class Period and the claims alleged in the complaints (amended and otherwise) in the Actions; any violation of the Uniform Commercial Code, any breaches of express, implied and/or any other warranties, any similar federal, state or local statutes, codes, damages, costs, expenses, extra-contractual damages, compensatory damages, exemplary damages, special damages, penalties, punitive damages and/or damage multipliers, disgorgement, declaratory relief, expenses, interest, and/or attorneys' fees and costs against the Released Parties pertaining to or relating to the claims alleged in the complaint in the Action relating to the purchase of FiveFingers footwear during the Class Period and the claims alleged

in the complaints (amended and otherwise) in the Actions, notwithstanding that Plaintiffs and the Class acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action and/or the Release herein.

C. Notwithstanding the language in this section and/or this Agreement, the Plaintiffs and the other members of the Class are not releasing any claims of or relating to personal injury.

D. Plaintiffs represent and warrant that they are the sole and exclusive owner of all claims that they personally are releasing under this Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action. Class Members submitting a Claim Form shall represent and warrant therein that they are the sole and exclusive owner of all claims that they personally are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that such Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action.

E. Without in any way limiting its scope, and, except to the extent otherwise specified in the Agreement, this Release covers by example and without limitation, any and all

claims for attorneys' fees, costs, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs, and/or disbursements incurred by Plaintiffs' Counsel, or by Plaintiffs or the Class Members.

F. Plaintiffs expressly understand and acknowledge, and all Class Members will be deemed by the Final Order and Final Judgment to acknowledge, that certain principles of law, including, but not limited to, Section 1542 of the Civil Code of the State of California, provide that "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." To the extent that anyone might argue that these principles of law are applicable – notwithstanding that the Parties have chosen Massachusetts law to govern this Agreement – Plaintiffs hereby agree that the provisions of all such principles of law or similar federal or state laws, rights, rules, or legal principles, to the extent they are found to be applicable herein, are hereby knowingly and voluntarily waived, relinquished and released by Plaintiffs and all Class Members.

G. Nothing in this Release shall preclude any action by the Parties hereto to enforce the terms of the Agreement, including participation in any of the processes detailed therein.

H. Plaintiffs and Defendants hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Agreement and shall be included in any Final Order and Final Judgment entered by the Court.

VIII. ATTORNEYS' FEES AND EXPENSES AND INDIVIDUAL PLAINTIFF SERVICE AWARDS

A. On behalf of Plaintiffs' Counsel, Lead Class Counsel agrees to make and Vibram agrees not to oppose, an application for an award of Attorneys' Fees and Expenses in the Actions no later than fourteen (14) days before the objection deadline set forth in Section VI that will not

exceed 25% of the Settlement Fund, or \$937,500.00 in fees, and for an award of out-of-pocket expenses reasonably incurred in the prosecution of the Actions up to \$70,000, which shall be the sole aggregate compensation paid by Vibram for all Plaintiffs' Counsel representing the Class. Any such fee and expense amount approved by the Court shall be paid solely and exclusively from the Settlement Fund within ten (10) business days after the occurrence of the Final Settlement Date.

B. Lead Class Counsel, in its sole discretion, shall allocate and distribute this award of Attorneys' Fees and Expenses among Plaintiffs' Counsel. Lead Class Counsel shall be responsible for allocating and distributing the Attorneys' Fees and Expenses award to Plaintiffs' Counsel.

C. Lead Class Counsel may petition the Court for Service Awards of \$2,500.00 per Plaintiff. The purpose of such awards shall be to compensate the Plaintiffs for efforts and risks taken by them on behalf of the Class. Any Service Awards made by the Court shall be paid out of the Settlement Fund, as instructed by Lead Class Counsel, within ten (10) business days after the occurrence of the Final Settlement Date. The Service Awards to these Plaintiffs will be in addition to the other consideration to the Class Members as set forth in Section III.B.5. above.

D. In accordance with the *cy pres* doctrine, any amount remaining in the Settlement Fund after payment of Notice and Claim Administration Expenses, necessary taxes and tax expenses, Attorneys' Fees and Expenses, Service Awards and Eligible Claims (the "Residual Settlement Amount") shall, subject to Court approval, be paid to the American Heart Association for special earmark for research relating to health benefits of exercise or running or substantially similar research, or such other beneficiary as the Parties and the Court shall agree at the time of the Final Judgment and Final Order.

E. Vibram shall not be liable for or obligated to pay any fees, expenses, costs, or disbursements to, or incur any expense on behalf of, any person or entity, either directly or indirectly, in connection with the Actions or this Settlement Agreement, other than the amount or amounts expressly provided for in this Settlement Agreement.

IX. ORDER AUTHORIZING NOTICE, FINAL ORDER, FINAL JUDGMENT AND RELATED ORDERS

A. The Parties shall seek from the Court, within fifteen (15) business days after the execution of this Agreement, an Order Authorizing Notice in a form substantially similar to Exhibit 5. The Order Authorizing Notice shall, among other things:

1. Certify a nationwide settlement-only class, approve Valerie Bezdek as Class Representative, and appoint Lead Class Counsel as counsel for the class pursuant to Fed. R. Civ. P. 23;
2. Preliminarily review the Settlement;
3. Require the dissemination of the Notice and the taking of all necessary and appropriate steps to accomplish this task;
4. Determine that the notice complies with all legal requirements, including, but not limited to, the Due Process Clause of the United States Constitution;
5. Schedule a date and time for a Fairness Hearing to determine whether the Order Authorizing Notice should be finally approved by the Court;
6. Require Class Members who wish to exclude themselves to submit an appropriate and timely written request for exclusion as directed in this Agreement and the Class Notice and that a failure to do so shall bind those Class Members who remain in the Class;
7. Require Class Members who wish to object to this Agreement to submit an appropriate and timely written statement as directed in this Agreement and the Class Notice;

8. Require Class Members who wish to appear to object to this Agreement to submit an appropriate and timely written statement as directed in this Agreement and the Class Notice;

9. Require attorneys representing individual Class Members, at their own expense, to file a notice of appearance as directed in this Agreement and the Class Notice;

10. Appoint the Class Action Settlement Administrator and/or the Notice Administrator;

11. Authorize Vibram to take all necessary and appropriate steps to establish the means necessary to implement the Agreement;

12. Issue other related orders to effectuate the preliminary review of the Settlement Agreement.

B. No later than fourteen (14) days from the deadline for filing objections to this Settlement Agreement as set forth in Section VI, Plaintiffs shall file an application for an award of Attorneys' Fees and Expenses in the Actions and a Motion for Final Approval of this Settlement Agreement. Such application and motion shall be supplemented, if necessary, no later than 14 days before the Fairness Hearing.

C. After the Fairness Hearing, the Parties shall seek to obtain from the Court a Final Order and Final Judgment in the forms substantially similar to Exhibits 3 and 4, respectively. The Final Order and Final Judgment shall, among other things:

1. Find that the Court has personal jurisdiction over all Class Members, the Court has subject matter jurisdiction over the claims asserted in the Amended Complaint and/or Actions, and that venue is proper.

2. Finally approve the Agreement and Settlement, pursuant to Fed. R. Civ. P. 23;
3. Finally certify the Class for settlement purposes only;
4. Find that the notice and the notice dissemination methodology complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution;
5. Dismiss the Actions with prejudice;
6. Incorporate the Release set forth in the Agreement and make the Release effective as of the date of the Final Order and Final Judgment;
7. Issue a permanent injunction;
8. Authorize the Parties to implement the terms of the Agreement;
9. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Order and Final Judgment, and for any other necessary purpose; and
10. Issue related Orders to effectuate the final approval of the Settlement Agreement and its implementation.

D. Within ten (10) days following the Final Settlement Date, Plaintiffs shall file a stipulation of dismissal with prejudice in the California Case, in the form attached hereto as Exhibit 9.

X. MODIFICATION OR TERMINATION OF THIS AGREEMENT

A. The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however that, after entry of the Final Order and Final Judgment, the Parties may by written agreement effect such amendments, modifications, or expansions of this Agreement and its implementing

documents (including all exhibits hereto) without further notice to the Class or approval by the Court if such changes are consistent with the Court's Final Order and Final Judgment and do not limit the rights of Class Members under this Agreement.

B. This Agreement shall terminate at the discretion of either Vibram or the Plaintiffs, through Lead Class Counsel, if: (1) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of this Agreement or the proposed Settlement that the terminating party in its (or their) sole judgment and discretion reasonably determine(s) is material, including, without limitation, the terms of relief, the findings, or conclusions of the Court, the provisions relating to notice, the definition of the Class, and/or the terms of the Release; or (2) the Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the Final Order and Final Judgment, or any of the Court's findings of fact or conclusions of law, that the terminating party in its (or their) sole judgment and discretion reasonably determine(s) is material. The terminating party must exercise the option to withdraw from and terminate this Agreement, as provided in this Section X, by a signed writing served on the other Parties no later than 20 days after receiving notice of the event prompting the termination. The Parties will be returned to their positions *status quo ante*.

C. If an option to withdraw from and terminate this Agreement arises under Section X.B above, neither Vibram nor Plaintiffs are required for any reason or under any circumstance to exercise that option and any exercise of that option shall be in good faith.

D. If this Agreement is terminated pursuant to Section X.B, above, then:

1. this Agreement shall be null and void and shall have no force or effect, and no Party to this Agreement shall be bound by any of its terms, except for the terms of Sections X.D herein;

2. the Parties will petition to have any stay orders entered pursuant to this Agreement lifted;

3. all of its provisions, and all negotiations, statements, and proceedings relating to it shall be without prejudice to the rights of Vibram, Plaintiffs or any Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of this Agreement, except that the Parties shall cooperate in requesting that the Court set a new scheduling order such that neither Party's substantive or procedural rights is prejudiced by the attempted Settlement;

4. Released Parties, as defined in Section II, above, including, without limitation, Vibram, expressly and affirmatively reserve all defenses, arguments, and motions as to all claims that have been or might later be asserted in the Actions, including, without limitation, the argument that the Actions may not be litigated as a class action;

5. Plaintiffs and all other Class Members, on behalf of themselves and their heirs, assigns, executors, administrators, predecessors, and successors, expressly and affirmatively reserve and do not waive all motions as to, and arguments in support of, all claims, causes of actions or remedies that have been or might later be asserted in the Actions including, without limitation, any argument concerning class certification, consumer fraud, and treble or other damages;

6. neither this Agreement, the fact of its having been made, nor the negotiations leading to it, nor any discovery or action taken by a Party or Class Member pursuant to this Agreement shall be admissible or entered into evidence for any purpose whatsoever;

7. any Settlement-related order(s) or judgment(s) entered in this Action after the date of execution of this Agreement shall be deemed vacated and shall be without any force or effect;

8. all costs incurred in connection with the Settlement, including, but not limited to, notice, publication, and customer communications, will be paid from the Settlement Funds. Neither Plaintiffs nor Lead Class nor Plaintiffs' Counsel shall be responsible for any of these costs or other Settlement-related costs;

9. any attorneys' fees and expenses previously paid to Plaintiffs' Counsel shall be returned to Vibram; and

10. notwithstanding the terms of this paragraph, if Settlement is not consummated, Plaintiffs' Counsel may include any time spent in Settlement efforts as part of any statutory fee petition filed at the conclusion of the case, and Vibram reserves the right to object to the reasonableness of such requested fees.

XI. GENERAL MATTERS AND RESERVATIONS

A. The obligations of the Parties to conclude the proposed Settlement is and shall be contingent on the following:

1. entry by the Court of the Final Order and Final Judgment approving the Settlement, from which the time to appeal has expired or which has remained unmodified after any appeal(s); and

2. Vibram's payments as set forth in Section III.A. and Section VIII.C. of this Settlement Agreement, and Vibram's full and complete performance of any and all obligations, terms and conditions set forth in the Agreement.

B. The Parties and their counsel agree to keep the contents of this Agreement confidential until the date on which the Motion for Preliminary Review and Authorization of

Class Notice is filed; *provided, however*, that this section shall not prevent Vibram from disclosing such information, prior to the date on which the Motion for Preliminary Review and Authorization of Class Notice is filed, to state and federal agencies, independent accountants, actuaries, advisors, financial analysts, insurers or attorneys, nor shall it prevent the Parties and their counsel from disclosing such information to persons or entities (such as experts, courts, co-counsel, and/or administrators) to whom the Parties agree disclosure must be made in order to effectuate the terms and conditions of this Agreement.

C. Plaintiffs, their counsel, and Lead Class Counsel agree that the confidential information made available to them solely through the settlement process was made available, as agreed to, on the condition that neither Plaintiffs nor their counsel may disclose it to third parties (other than experts or consultants retained by Plaintiffs in connection with this case); that it not be the subject of public comment; that it not be used by Plaintiffs or Plaintiffs' Counsel in any way in this litigation should the Settlement not be achieved, and that it is to be returned if a Settlement is not concluded; *provided, however*, that nothing contained herein shall prohibit Plaintiffs from seeking such information through formal discovery if not previously requested through formal discovery or from referring to the existence of such information in connection with the Settlement of this litigation.

D. All information marked as "Attorneys' Eyes Only" or "Confidential" provided by Vibram to Plaintiffs, Plaintiffs' Counsel, or any individual Class Member, counsel for any individual Class Member and/or administrators, pursuant to the implementation of this Agreement or by Court Order, constitutes trade secrets and highly confidential and proprietary business information and shall be deemed "Attorneys' Eyes Only" or "Confidential" pursuant to the protective orders that have been or will be entered in the Actions, and shall be subject to all

of the provisions thereof. Any materials inadvertently produced shall, upon Vibram's request, be promptly returned to Vibram's Counsel, and there shall be no implied or express waiver of any privileges, rights, and defenses.

E. Within ninety (90) days after the Final Settlement Date (unless the time is extended by agreement of the Parties), Plaintiffs' Counsel, and any expert or other consultant employed by them in such capacity or any other individual with access to documents provided by Vibram to Plaintiffs' Counsel shall either: (i) return to Vibram's Counsel, all such documents and materials (and all copies of such documents in whatever form made or maintained) produced by Vibram in the Actions and any and all handwritten notes summarizing, describing or referring to such documents; or (ii) certify to Vibram's Counsel that all such documents and materials (and all copies of such documents in whatever form made or maintained) produced by Vibram in the Actions and any and all handwritten notes summarizing, describing or referring to such documents have been destroyed; *provided, however*, that this section shall not apply to any documents made part of the record in connection with a Claim, nor to any documents made part of a Court filing, nor to Plaintiffs' Counsel's work product. Vibram's Counsel agrees to hold all documents returned by Plaintiffs' Counsel, and any expert or other consultant or any other individual employed by Plaintiffs' Counsel in such capacity with access to documents provided by Vibram, until six months after the distribution of the Settlement Funds to Class Members who submitted acceptable Claim Forms. Six months after the distribution of the Settlement Funds to Class Members who submitted acceptable Claim Forms, the Class Action Settlement Administrator shall return all document and materials to Vibram and/or Lead Class Counsel that produced the documents and materials, except that it shall destroy any and all Claim Forms, including any and all information and/or documentation submitted by Class Members.

F. Vibram's execution of this Agreement shall not be construed to release - and Vibram expressly does not intend to release - any claim Vibram may have or make against any insurer for any cost or expense incurred in connection with this Settlement, including, without limitation, for attorneys' fees and costs.

G. Lead Class Counsel represent that: (1) they are authorized by the Plaintiffs to enter into this Agreement on behalf of Plaintiffs, their respective present or past law firms and any other attorneys who have represented or who now represent Plaintiffs in these Actions with respect to the claims in these Actions; and (2) they are seeking to protect the interests of the Class.

H. Plaintiffs represent and certify that, as applicable to each Plaintiff: (1) they have agreed to serve as representatives of the Class proposed to be certified herein; (2) they are willing, able, and ready to perform all of the duties and obligations of representatives of the Class, including, but not limited to, being involved in discovery and fact finding; (3) they have read the substantive pleadings in the Actions, including the complaint and/or the Amended Complaints, or have had the contents of such pleadings described to them; (4) they are familiar with the results of the fact- finding undertaken by Lead Class and Plaintiffs' Counsel; (5) they have been kept apprised of settlement negotiations among the Parties, and have either read this Agreement, including the exhibits annexed hereto, or have received a detailed description of it from Lead Class Counsel or Plaintiffs' Counsel and they have agreed to its terms; (6) they have consulted with Lead Class Counsel or Plaintiffs' Counsel about the Actions and this Agreement and the obligations imposed on representatives of the Class; (7) they have authorized Lead Class Counsel to execute this Agreement on their behalf; and (8) they shall remain and serve as representatives of the Class until the terms of this Agreement are effectuated, this Agreement is

terminated in accordance with its terms, or the Court at any time determines that said Plaintiff(s) cannot represent the Class.

I. Vibram represents and warrants that the individual(s) executing this Agreement is authorized to enter into this Agreement on behalf of Vibram.

J. This Agreement, complete with its exhibits, sets forth the sole and entire agreement among the Parties with respect to its subject matter, and it may not be altered, amended, or modified except by written instrument executed by Lead Class Counsel and Vibram's Counsel on behalf of Vibram. The Parties expressly acknowledge that no other agreements, arrangements, or understandings not expressed in this Agreement exist among or between them and that in deciding to enter into this Agreement, they rely solely upon their judgment and knowledge. This Agreement supersedes any prior agreements, understandings, or undertakings (written or oral) by and between the Parties regarding the subject matter of this Agreement.

K. This Agreement and any amendments thereto shall be governed by and interpreted according to the law of the Commonwealth of Massachusetts, notwithstanding its conflict of laws provisions.

L. Any disagreement and/or action to enforce this Agreement shall be commenced and maintained only in the Court in which these Actions are pending.

M. Whenever this Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturdays, Sundays, and Federal Holidays) express delivery service as follows:

1. If to Vibram, then to:

Christopher M. Morrison
Dana Baiocco
Jones Day
100 High Street, 21st Floor
Boston, Massachusetts 02108
Tel.: 617.960.3939
Fax: 617.449-6969
E-Mail: cmorrison@jonesday.com
dbaiocco@jonesday.com

2. If to Plaintiffs, then to:

Janine Pollack
Wolf Haldenstein Adler Freeman & Herz LLP
270 Madison Avenue
New York, New York 10016
Tel.: 212.545.4600
Fax: 212.545.4762
E-Mail: pollack@whafh.com

N. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a Federal Holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days. As used in this section “Federal Holiday” includes New Year’s Day, Birthday of Martin Luther King, Jr., Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Patriot’s Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

O. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

P. The Class, Plaintiffs, Plaintiffs' Counsel, Lead Class Counsel, Vibram and/or Vibram's Counsel shall not be deemed to be the drafter of this Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter or otherwise resort to the *contra proferentem* canon of construction. All Parties agree that this Agreement was drafted by counsel for the Parties during extensive arm's length negotiations. No parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Agreement was made or executed.

Q. The Parties expressly acknowledge and agree that this Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event shall this Agreement, any of its provisions or any negotiations, statements or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Actions, any other action, or in any judicial, administrative, regulatory or other proceeding, except in a proceeding to enforce this Agreement or the rights of the Parties or their counsel. Without limiting the foregoing, neither this Agreement nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the

Released Parties, Plaintiffs, or the Class or as a waiver by the Released Parties, Plaintiffs or the Class of any applicable privileges, claims or defenses.

R. Plaintiffs expressly affirm that the allegations contained in the various complaints were made in good faith and have a basis in fact, but consider it desirable for the Actions to be settled and dismissed because of the substantial benefits that the proposed Settlement will provide to Class Members.

S. The Parties, their successors and assigns, and their counsel undertake to implement the terms of this Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Agreement.

T. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of this Agreement.

U. If one Party to this Agreement considers another Party to be in breach of its obligations under this Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Agreement.

V. The Parties, their successors and assigns, and their counsel agree to cooperate fully with one another in seeking Court approval of this Settlement Agreement and to use their best efforts to effect the prompt consummation of this Agreement and the proposed Settlement.

W. This Agreement may be signed with a facsimile signature or .pdf and in counterparts, each of which shall constitute a duplicate original.

Agreed to on the date indicated below.

APPROVED AND AGREED TO BY
LEAD CLASS COUNSEL

By: /s/ Janine Pollack
Janine Pollack
Wolf Haldenstein Adler Freeman & Herz LLP
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DATE: May 11, 2014

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Plaintiffs' Counsel

APPROVED AND AGREED TO BY
AND ON BEHALF OF VIBRAM USA INC. and
VIBRAM FIVEFINGERS LLC

By: /s/ Christopher M. Morrison
Christopher M. Morrison (BBO #651335)
Dana Baiocco
JONES DAY
100 High Street
Boston, MA 02110
Telephone: 617-960-6999
Facsimile: 617-449-6999
cmorrison@jonesday.com
dbaiocco@jonesday.com

DATE: May 11, 2014

CERTIFICATE OF SERVICE

I, Christopher M. Morrison, hereby certify that a true copy of the foregoing document filed through the ECF system will be electronically sent to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on May 11, 2014.

/s/ Christopher M. Morrison

VIBRAM FIVEFINGERS CLASS ACTION SETTLEMENT**CLAIM FORM****You can also file online at: www.FiveFingersSettlement.com**

You must complete this form by providing all required information below. If submitting a claim for more than 2 pairs of eligible Vibram FiveFingers™ footwear that you purchased, you must send a receipt or other proof of purchase with this Claim Form. Do NOT send original receipts – photocopies are required. **All claim forms must be postmarked or electronically submitted no later than ____, 2014.** If mailing, please return this claim form to:

Vibram FiveFingers Class Action Settlement Administrator

[Address]

[City, State]

CLASS MEMBER INFORMATION

Name:					
Address:					
City:		State:		Zip Code:	
Telephone Number:	() -	E-mail Address:			

PURCHASE INFORMATION – ELIGIBLE VIBRAM FIVEFINGERS FOOTWEAR

<u>Eligible Vibram FiveFingers footwear</u> Indicate number of pairs purchased if more than one		<u>Location(s) Purchased</u> (if known)
<input type="checkbox"/> Alitza ____ <input type="checkbox"/> Bikila ____ <input type="checkbox"/> Bikila EVO ____ <input type="checkbox"/> Bikila EVO WP ____ <input type="checkbox"/> Bikila LS ____ <input type="checkbox"/> Classic ____ <input type="checkbox"/> Classic Smartwool ____ <input type="checkbox"/> EL-X ____ <input type="checkbox"/> Estrada ____ <input type="checkbox"/> Flow ____ <input type="checkbox"/> Fresca ____ <input type="checkbox"/> Jaya ____ <input type="checkbox"/> Komodo Sport ____ <input type="checkbox"/> Komodo Sport LS ____ <input type="checkbox"/> KMD Sport ____ <input type="checkbox"/> KMD Sport LS ____ <input type="checkbox"/> KSO ____ <input type="checkbox"/> KSO EVO ____	<input type="checkbox"/> KSO Trek ____ <input type="checkbox"/> Lontra ____ <input type="checkbox"/> SeeYa ____ <input type="checkbox"/> SeeYa LS ____ <input type="checkbox"/> SeeYa LS Night ____ <input type="checkbox"/> Signa ____ <input type="checkbox"/> Speed ____ <input type="checkbox"/> Speed XC ____ <input type="checkbox"/> Sprint ____ <input type="checkbox"/> Spyridon ____ <input type="checkbox"/> Spyridon LS ____ <input type="checkbox"/> Spyridon MR ____ <input type="checkbox"/> Trek LS ____ <input type="checkbox"/> TrekSport ____ <input type="checkbox"/> TrekSport Sandal ____ <input type="checkbox"/> V-On ____ <input type="checkbox"/> Vybrid Sneak ____	<input type="checkbox"/> www.vibramfivefingers.com <input type="checkbox"/> Vibram company store <input type="checkbox"/> Other (specify)

Reminder: Send in proof of purchase if you are submitting a claim for more than 2 pairs of Vibram FiveFingers™ footwear.

You may elect to receive your payment by Automatic Clearing House ("ACH") or by check mailed to your address provided above.

To receive payment via ACH, please provide your bank account information for payment via ACH. (See graphic illustration at right. Please check with your financial institution for your routing number if you are unsure.)

Your bank routing number: _____

Your bank account number: _____

The Bank Name
Address
Phone Number
Memo: _____
 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20
 ABA Routing Number Check Number Account Number

LEAVE THIS SECTION BLANK IF YOU PREFER TO RECEIVE YOUR PORTION OF THE SETTLEMENT FUND BY CHECK VIA U.S. MAIL.

AFFIRMATION

I declare or affirm, under penalty of perjury, that the information in this claim form is true and correct to the best of my knowledge and that I purchased the applicable product(s) claimed above between March 21, 2009 and [DATE 2014].

I understand that the decision of the Class Action Settlement Administrator is final and binding and that my claim form may be subject to audit, verification and Court review.

Signature: _____ Date: _____

Payment amounts to eligible Class Members will vary depending upon, among other factors, the number and amounts claimed by all Class Members and other adjustments and deductions as specified in the Settlement Agreement.

CLAIM FORMS MUST BE POSTMARKED OR SUBMITTED ONLINE BY [MONTH DAY, 2014]
QUESTIONS? CALL 800-XXX-XXXX OR VISIT www.FiveFingersSettlement.com

NOTICE OF CLASS ACTION, PROPOSED SETTLEMENT, AND FAIRNESS HEARING

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

YOU ARE NOT BEING SUED.

Your legal rights may be affected whether you act or not. **Read this notice carefully because it explains decisions you must make and actions you must take now.**

If you purchased certain models of Vibram FiveFingers footwear listed below in the United States from March 21, 2009 up to and including [DATE], the proposed settlement of a class action lawsuit may affect your rights.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:		
DO NOTHING	You get no payment. You give up your rights.	
SUBMIT A CLAIM FORM	This is the only way to get a payment.	The Claim Form, which is attached to this notice, must be completed and electronically submitted no later than [DATE] or mailed postmarked no later than [DATE] .
EXCLUDE YOURSELF	You get no payment under the settlement. This is the only choice that will allow you to sue Vibram on your own about the claims discussed in this notice.	An exclusion request must be in writing and mailed to the Settlement Administrator postmarked on or before [DATE] .
OBJECT TO THE SETTLEMENT	You can write to the Court and object, setting forth why you do not agree with any aspect of the settlement.	An objection must be in writing, filed with the Court, and served on the parties of record on or before [DATE] .
GO TO A HEARING	You can ask to speak to the Court about the “fairness” of the settlement.	If you wish to appear and speak to the Court, you must submit a notice of Intention to Appear form, in writing, and file it with the Court on or before [DATE] .

- These rights and options – and the deadlines within which to exercise them – are explained in this notice.
- The Court still has to decide whether to approve the settlement. Payments will be distributed if the Court approves the settlement and after appeals, if any, are resolved in favor of the settlement. Please be patient.

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PART I: WHY YOU HAVE RECEIVED THIS NOTICE

1. WHY DID I RECEIVE THIS NOTICE?

You received this Notice because you may be a Class Member able to receive payment from a proposed settlement of a class action. This lawsuit was brought on behalf of people who purchased in the United States certain models of FiveFingers footwear (more fully described below) from Vibram USA Inc. and Vibram FiveFingers LLC (“Vibram”), and/or their authorized retailers.

The Court approved this notice because you have a right to know about the proposed settlement, and about your rights and options, before the Court decides whether to approve the settlement. You will be informed of the progress of this settlement and may receive payment if you are a Class Member and choose to submit a completed and timely Claim Form.

This notice package explains: (1) the lawsuits, (2) the proposed settlement, (3) your legal rights, (4) what payments are available, (5) who is eligible to receive payments under the settlement, (6) how to get a payment, and (7) other important information.

Information about the settlement is summarized below. The Settlement Agreement, available on the Settlement Website (www.fivefingerssettlement.com), gives greater detail on the rights and duties of the parties. If there is any conflict between this notice and the Settlement Agreement, the Settlement Agreement controls.

2. WHAT IS THIS LAWSUIT ABOUT AND WHY DID IT SETTLE?

The lawsuit, captioned as *Valerie Bezdek, et al. v. Vibram USA Inc. et al.*, Case Number 12-10513-DPW (D. Mass.), along with one captioned *Safavi v. Vibram USA Inc., et al.*, Case Number CV 12-5900-BRO-JCG (C.D. Cal.) and another captioned *De Falco v. Vibram USA Inc., et al.*, Case Number 1:13-cv-10764-DPW (D. Mass.) (collectively, the “Actions”), concerns allegations that Vibram violated certain state laws and consumer protection statutes in connection with the marketing and sale of FiveFingers footwear since March 21, 2009. Plaintiffs claim that Vibram, in connection with the marketing and sale of FiveFingers footwear, misrepresented the benefits of wearing FiveFingers footwear to consumers. Plaintiffs further claim that FiveFingers footwear did not provide the benefits to consumers set forth in Vibram marketing and advertising materials.

Vibram denies any and all claims of wrongdoing and does not admit any fault, wrongdoing, or liability.

The Plaintiffs in the Actions, through their attorneys, investigated the facts and law relating to the issues in the Actions. The Parties believe that the settlement is fair, reasonable, and adequate and will provide substantial benefit to the Class. The Court has not decided whether the Plaintiffs’ claims or Vibram’s defenses have any merit, and it will not do so if the proposed settlement is approved. The proposed settlement does not suggest that Vibram has or has not done anything wrong, or that the Plaintiffs and the Class would or would not win their case if it were to go to trial.

3. WHAT DOES THE SETTLEMENT PROVIDE?

The settlement provides that Vibram will create a Settlement Fund of \$3.75 million USD. This Settlement Fund will be used to resolve all approved Claims submitted through the Claim Process. The Settlement Fund is subject to certain terms, requirements, and deductions, as described below in Questions 9 and 12. As part of the Settlement, Vibram has also agreed to certain changes in its marketing campaigns. Notice and administration costs, as well as Plaintiffs' Counsel's attorneys' fees and costs and any Service Award(s) to the Plaintiffs will also be paid from the \$3.75 million Settlement Fund.

PART II: DESCRIPTION OF THE CLASS

4. WHY IS THIS A "CLASS ACTION"?

In a class action, one or more people, called named Plaintiffs (in this case, Valerie Bezdek, Brian De Falco, and Ali Safavi), sue on behalf of themselves and other people who they contend have similar claims. All these people are a Class or Class Members. The companies they sue, in this case Vibram, are called the Defendants. One Court resolves the issues and disputes for all Class Members in a class action, except for those who exclude themselves from the Class. The Court in charge of this case is the United States District Court for the District of Massachusetts, located at the following address: 1 Boston Courthouse Way, Boston, Massachusetts 02210.

5. AM I A MEMBER OF THE CLASS?

Except as noted below, the Class includes all people who purchased in the United States FiveFingers footwear described in Question 7 from Vibram U.S. Retailers, Vibram Stores, vibramfivefingers.com, or other third-party retailers from March 21, 2009 through [DATE].

6. ARE THERE EXCEPTIONS TO BEING INCLUDED?

The Class does not include the following persons, entities, or claims:

- Vibram's board members or executive-level officers, including its attorneys;
- Persons or entities who purchased the FiveFingers footwear primarily for purposes of resale;
- Any claims for personal injury relating to the use of FiveFingers footwear;
- Distributors or re-sellers of FiveFingers footwear;
- The judge and magistrate judge presiding over the Actions and their immediate families;
- Governmental entities; and
- Persons or entities who or which timely and properly exclude themselves from the Class as provided in the Settlement Agreement.

7. WHAT ARE THE "FIVEFINGERS FOOTWEAR" SUBJECT TO THIS SETTLEMENT?

"FiveFingers footwear" means the following models of Vibram shoes purchased as new by Class Members during the Class Period:

Alitza, Bikila, Bikila EVO, Bikila EVO WP, Bikila LS, Classic, Classic Smartwool, EL-X, Estrada, Flow, Fresca, Jaya, Komodo Sport, Komodo Sport LS, KMD Sport, KMD Sport LS, KSO, KSO EVO, KSO Trek, Lontra, SeeYa, SeeYa LS, SeeYa LS Night, Signa, Speed, Speed XC, Sprint, Spyridon, Spyridon LS, Spyridon MR, Trek LS, TrekSport, TrekSport Sandal, V-On, and Vybrid Sneak.

8. I'M STILL NOT SURE IF I'M INCLUDED.

If you do not understand whether or not you are a Class Member, you can call 800-xxx-xxxx, visit the Settlement Website, www.fivefingerssettlement.com, or you can contact Lead Class Counsel. Lead Class Counsel's contact information is listed in response to Question 18 below.

PART III: SETTLEMENT BENEFITS

9. WHAT BENEFITS DOES THE SETTLEMENT PROVIDE?

Your eligibility to receive a payment from this settlement depends upon the approval of your Claim and the total sum of all approved Claims submitted by all other Class Members and other factors specified in the Settlement Agreement and in this Class Notice (particularly in this section and in Question 12). As a result, the amount of relief available to eligible Class Members may vary.

More specifically, the relief to be provided to eligible Class Members for each pair of FiveFingers footwear purchased by an eligible Class Member shall be paid on a *pro rata* basis from the balance of the Settlement Fund after payment of Administrative Costs, necessary taxes and expenses, Attorneys' Fees and Expenses, and Service Awards, up to a maximum of \$94.00 per pair, the average manufacturer's suggested retail price of FiveFingers footwear. Based on experience from other similar settlements of class actions, it is reasonable to expect that Class Members may receive a payment in the range of \$20.00 to \$50.00 per pair.

As part of this settlement, Vibram has also agreed to take commercially reasonable efforts to change certain aspects of its advertising and marketing campaign, including: (i) Vibram will not make or assist others in making any claims that the FiveFingers footwear or products similar to the FiveFingers footwear are effective in strengthening muscles or preventing injury unless that representation is true, non-misleading and is supported by competent and reliable scientific evidence; (ii) Vibram will not make or assist others in making any health benefit claim about FiveFingers footwear or products similar to the FiveFingers footwear unless Vibram possesses and relies upon competent and reliable scientific evidence to substantiate that the claim is true and non-misleading; and (iii) Vibram will not misrepresent or assist others in misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research relating to Vibram's FiveFingers footwear or products similar to the FiveFingers footwear.

10. HOW CAN I MAKE A CLAIM?

To receive a payment under the settlement, you must submit a Claim Form. A Claim Form and directions for completing and submitting it are attached as **Appendix B** to this Class Notice. You may also obtain and print a Claim Form and other relevant documents by visiting

www.fivefingerssettlement.com. Please read the instructions and certification carefully, and fill out the form completely and accurately. Claim forms must be **electronically submitted** no later than **[DATE]** or, mailed and be **postmarked** no later than **[DATE]** and addressed to:

Vibram Settlement c/o Heffler Claims Group
1515 Market Street
Suite 1700
Philadelphia, PA 19102

If you submit a claim for **two pairs of eligible FiveFingers footwear or less**, no proof of purchase is necessary. Claim Forms that include more than two pairs of eligible FiveFingers footwear must include proof of purchase.

11. WHAT IS THE CLAIM PROCESS?

The Class Action Settlement Administrator will review each Claim Form. If your Claim includes more than two pairs of the FiveFingers footwear, you must verify your purchases by providing receipt(s) or other documentation. If you do not do so, it may result in the denial of your Claim. You will have thirty-five (35) days from the date of the Settlement Administrator's request to respond.

If a Claim is not contested, you will receive payment for that Claim in accordance with the terms of the Settlement Agreement. All usual and customary steps to prevent fraud and abuse in the Claim Process will be taken. This includes denying claims in whole or in part to prevent fraud or abuse. Lead Class Counsel and Vibram's Counsel will be provided a report on the denial of any claim due to insufficient documentation and may recommend additional action including payment.

The payment of approved Claims shall begin ten (10) days after the close of the Claim Period, which will be after the date the settlement is final and approved, including any appeals that must be resolved in favor of the settlement (the "Final Settlement Date"). Please see the Settlement Agreement and Question 14 for further information on how the Final Settlement Date is determined.

12. HOW MUCH IS THE SETTLEMENT WORTH TO THE CLASS?

The settlement includes a Settlement Fund of \$3.75 million that will be used to pay (i) the costs and expenses associated with the notice and claims administration; (ii) Service Awards up to \$2,500.00 to each of the three named plaintiffs, as ordered by the Court; (iii) a Court-approved award of Plaintiffs' Counsel's attorneys' fees up to 25% of the Settlement Fund, or \$937,500, plus reimbursement of expenses not to exceed \$70,000.00; and (iv) payment of valid and approved Claims submitted by Class Members pursuant to the Claim Process.

The fund will not be used to pay Vibram's attorneys' fees and costs.

13. WHAT IF THERE ARE FUNDS REMAINING AFTER ALL CLAIMS ARE PROCESSED?

If there are any funds remaining in the Settlement Fund after all Claims are processed, those funds shall be awarded *cy pres* and paid to the American Heart Association, with a specific request that such funds be used to facilitate research regarding the health benefits associated with exercise or running or substantially similar research, or to such other beneficiary as Vibram, its counsel, Lead Class Counsel, and the Court shall agree. No remaining funds will be returned to Vibram.

14. WHEN WILL I GET MY PAYMENT, IF ANY?

The Court will hold a Fairness Hearing on [DATE] at [TIME] to decide whether or not to approve the proposed settlement. The Court must finally approve the proposed settlement before any payments can be made. The Court will grant its Final Approval only if it finds that the proposed settlement is fair, reasonable, and adequate. In addition, the Court's order may be subject to appeals. It is always uncertain whether these appeals can be resolved, and resolving them takes time, sometimes more than a year. Finally, there remains a possibility that this settlement may be terminated for other reasons. Everyone who sends in a Claim Form will be informed of the progress of the settlement. Please be patient. **The payment of approved Claims will begin ten (10) days after the close of the Claim Period so long as this is after the Final Settlement Date. It may begin sooner if agreed to by Plaintiffs' Counsel and Vibram.**

The Class Action Settlement Administrator shall have completed the Claim payments to Class Members who have submitted timely, valid, and approved Claim Forms, no later than one hundred and twenty (120) days after the Final Settlement Date or the close of the Claim Period, whichever is later.

15. WHAT DO I GIVE UP IF I CHOOSE TO STAY IN THE CLASS?

You will be deemed to have given Vibram and the Released Parties the Release and Waiver of Claims set forth in **Appendix A**. You will also be bound by all Court actions, orders, and judgments entered. You will not be able to sue or otherwise proceed against Vibram on any claims related to this lawsuit. This settlement will not release any claims for personal injuries. Unless you exclude yourself from the Class, if the settlement is approved all of the Court's orders will apply to you and you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Vibram about the claims in this lawsuit, ever again, regardless of whether you submit a Claim Form.

16. DO I HAVE TO SIGN A RELEASE?

No. If you remain in the Class, you will automatically release Vibram and the Released Parties from any claims set forth in **Appendix A** and will give up your rights to pursue or continue any action against Vibram relating to your FiveFingers footwear and the claims at issue in this lawsuit. **A word-for-word copy of the Release section from the Settlement Agreement is attached to this Notice as Appendix A.** Because Class Members will release a wide range of claims in order to receive the benefits in the Settlement Agreement, please carefully read the "Release And Waiver of Claims" attached to this Notice as **Appendix A**.

17. WHAT IF I DO NOTHING?

If you are a Class Member and do nothing, you will not receive any payment from the Settlement Fund, but will be bound by the settlement's Release and Waiver of Claims. You must complete and submit a Claim Form on or before the deadline, which is [DATE], in order to be considered for payment under the settlement.

PART IV: THE LAWYERS REPRESENTING THE CLASS

18. DO I HAVE A LAWYER IN THIS CASE?

The Court has designated attorneys at the law firm of **Wolf Haldenstein Adler Freeman & Herz LLP** to represent you and the other Class Members in this lawsuit. If you are a member of the Class, the lawyers representing you and the other Class Members are called "Lead Class Counsel." **You will not be charged for the services of the Lead Class Counsel.** No later than fourteen (14) days prior to the objection deadline (see Part VIII), Lead Class Counsel shall submit a request to the Court for payment of attorneys' fees and costs. Any fees and costs awarded by the Court may reduce the settlement relief available to Class Members.

You may contact Lead Class Counsel about this lawsuit and proposed settlement at the following address:

Janine Pollack, Esq.
Wolf Haldenstein Adler Freeman & Herz LLP
270 Madison Avenue
New York, New York 10016

You have the right to retain your own lawyer to represent you in this case, but you are not obligated to do so. If you do hire your own lawyer, you will have to pay his or her fees and expenses. You also have the right to represent yourself before the Court without a lawyer.

19. HOW WILL THE LAWYERS BE PAID?

Lead Class Counsel have prosecuted this case on a completely contingent basis and have not been paid anything to date for their services. Lead Class Counsel will ask the Court to award attorneys' fees not to exceed 25% of the Settlement Fund, or \$937,500.00, plus out-of-pocket expenses incurred not to exceed \$70,000.00. These amounts will be paid by Vibram from the Settlement Fund.

Lead Class Counsel will petition the Court for Service Awards of up to \$2,500.00 for each of the named plaintiffs, Valerie Bezdek, Brian De Falco, and Ali Safavi. The purpose of such awards is to compensate them for efforts and risks taken by them on behalf of the Class. Any such amount awarded by the Court as Service Awards for the named Plaintiffs will be paid out of the \$3.75 million Settlement Fund.

Vibram shall not be responsible for, or obligated to pay, any other fees, expenses, or costs in connection with this lawsuit or the Settlement Agreement, other than the amounts expressly provided for in the Settlement Agreement.

PART V: EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this settlement, but you want to keep the right to sue or continue to sue Vibram on your own about the legal issues in this case, then you must take steps to get out of the Class. This is called excluding yourself or “opting out” of the Class.

20. HOW DO I GET OUT OF OR EXCLUDE MYSELF FROM THE SETTLEMENT?

If you want to be excluded from the Class, you must write to the Class Action Settlement Administrator. To exclude yourself from the settlement, you must send a letter by mail. Your exclusion request letter must be **postmarked** no later than **[DATE]**. Send your letter to:

Vibram Settlement c/o Heffler Claims Group
1515 Market Street
Suite 1700
Philadelphia, PA 19102

Your letter requesting exclusion does not need to be in any particular form, but it must include the following information in order to be effective:

- (1) your name;
- (2) your address;
- (3) your telephone number;
- (4) the FiveFingers footwear for which you are requesting exclusion;
- (5) a statement that you wish to be excluded from the Class;
- (6) your signature; and
- (7) the case name and case number: *Valerie Bezdek et al. v. Vibram USA Inc., et al.*, Case Number 12-10513-DPW (D. Mass.)

Please write “**EXCLUSION REQUEST**” on the lower left-hand corner of the *front* of the envelope.

21. WHAT HAPPENS IF I EXCLUDE MYSELF FROM THE CLASS?

If you request exclusion from the Class, then for each of the excluded FiveFingers footwear:

- You will **not** be eligible for payment under the proposed settlement;
- You will **not** be allowed to object to the terms of the proposed settlement, and
- You will **not** be bound by any subsequent rulings entered in this case if the proposed settlement is finally approved.

However, if your request for exclusion is late or deficient you will still be a part of the Class, you will be bound by the settlement and by all other orders and judgments in this lawsuit, and you will not be able to participate in any other lawsuits based on the claims in this case.

22. IF I DON'T EXCLUDE MYSELF, CAN I SUE VIBRAM LATER?

No. If the Court approves the proposed settlement and you do not exclude yourself from the Class, you release (give up) all claims that have been or could have been asserted in this lawsuit relating to your FiveFingers footwear.

PART VI: OBJECTING TO THE SETTLEMENT

You have the right to tell the Court that you do not agree with the settlement or any or all of its terms.

23. HOW CAN I OBJECT TO THE PROPOSED SETTLEMENT?

If you choose to remain a Class Member, you have a right to object to any part of the proposed settlement. The Court will consider your views.

To object, you must send a letter saying that you object to the proposed Settlement of *Valerie Bezdek et al. v. Vibram USA Inc., et al.*, Case Number 12-10513-DPW (D. Mass.). Your written objection must include:

- (1) your name;
- (2) your address;
- (3) your telephone number;
- (4) if you are represented by counsel, the name, address, and telephone number of your counsel;
- (5) proof of purchase of FiveFingers footwear, such as a cash register receipt, a credit card receipt, or a credit card statement that sufficiently indicates the purchase of the FiveFingers footwear;
- (6) a written statement of all grounds for your objection(s), including any legal support and/or any supporting evidence you wish to introduce;
- (7) a statement of whether you intend to appear and argue at the Fairness Hearing;
- (8) your dated signature (signature from your counsel is not sufficient); and
- (9) the case name and case number: *Valerie Bezdek et al. v. Vibram USA Inc., et al.*, Case Number 12-10513-DPW (D. Mass.)

If you choose to object, your written objections must be filed with the Court, and copies must be **received** by all of the following recipients no later than **[DATE]** in order to be considered by the Court:

COURT	LEAD CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court United States District Court District of Massachusetts John Joseph Moakley U.S. Courthouse 1 Courthouse Way Boston, Massachusetts 02210	Janine Pollack Wolf Haldenstein Adler Freeman & Herz LLP 270 Madison Avenue New York, New York 10016	Christopher Morrison Jones Day 100 High Street Boston, Massachusetts 02110

If you file objections, but the Court approves the settlement as proposed, you can still complete and submit a Claim Form to be eligible for payment under the settlement, subject to the terms and conditions discussed in this Notice and in the Settlement Agreement.

24. WHAT IS THE DIFFERENCE BETWEEN “OBJECTING” AND “EXCLUDING”?

Objecting is simply a way of telling the Court that you do not like something about the settlement. You can only object if you stay in the Class.

If you object to the Settlement, you will still be a Class Member and you will still be eligible to submit a Claim Form. You will also be bound by any subsequent rulings in this case and you will not be able to file or participate in any other lawsuit or proceeding based upon or relating to the claims, causes of action, facts, or circumstances of this case.

Excluding yourself is telling the Court that you do not want to be a part of the Class. If you exclude yourself, you have no basis to object to the settlement and/or appear at the Fairness Hearing because it no longer affects you.

PART VII: THE COURT’S FAIRNESS HEARING

The Court will hold a final hearing (called a Fairness Hearing) to decide whether to enter a Final Approval of the Settlement. You may attend and ask to speak, but you do not have to.

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

On [DATE], at [TIME], the Court will hold a Fairness Hearing at the United States District Court for the District of Massachusetts, before the Honorable Douglas P. Woodlock, in Courtroom 1, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Boston, Massachusetts 02210.

At the hearing, the Court will consider whether to grant final certification to the Class for settlement purposes only, whether to approve the proposed settlement as fair, reasonable, and adequate, and will make a final ruling on all related settlement issues. The Court will also decide whether to award attorneys’ fees and costs, as well as Plaintiffs’ Service Awards.

26. DO I HAVE TO COME TO THE HEARING?

No. Lead Class Counsel will answer questions the Court may have at the Fairness Hearing. But you are welcome to attend at your own expense. Please note that the Court has the right to change the date and/or time of the Fairness Hearing without further notice. If you are planning to attend the hearing, you should confirm the date and time before going to the Court.

27. MAY I SPEAK AT THE FAIRNESS HEARING?

Yes, if you have properly filed an objection, you may ask the Court for permission to speak at the hearing. To do so, you must submit an objection and also file a document called a “Notice of Intention to Appear.”

28. WHAT DO I HAVE TO DO TO SPEAK AT THE FAIRNESS HEARING?

If you are a member of the Class, and you (or your attorney) want to appear and speak at the Fairness Hearing, you (or your attorney) must have submitted an objection and must file a **Notice of Intention to Appear at the Fairness Hearing** with the Clerk of the Court, and deliver that Notice to the attorneys for both sides, at the addresses listed above. **Your Notice of Intention to Appear at the Fairness Hearing must be filed and received by the Court, Vibram’s Counsel, and Lead Class Counsel, at the addresses specified in Question 23 no later than [DATE].**

If you file an objection and appear at the Fairness Hearing, but the Court approves the settlement as proposed, you can still complete and submit a Claim Form to be eligible for payment under the settlement, subject to the terms and conditions discussed in this Notice and in the Settlement Agreement.

PART VIII: GETTING ADDITIONAL INFORMATION

This Notice and the accompanying documents summarize the proposed settlement. More details are contained in the Settlement Agreement. The full Settlement Agreement is on file with the Clerk of the Court. For a more detailed statement of the matters involved in this case, you may review the complaint and the other papers and Court orders on file in the Clerk’s office at any time during normal business hours, Monday through Friday, 8:30 a.m. to 5:00 p.m. EDT.

If you have questions after reading this Notice, you can visit **www.fivefingerssettlement.com** to obtain additional information about the proposed settlement and the Claim Form or you can call, toll-free, _____ to obtain additional information about the settlement. You may also direct your questions about the settlement to Lead Class Counsel, whose name and address is listed in Question 18 of this Notice.

PLEASE DO NOT CALL THE COURT OR THE CLERK OF THE COURT

Dated: [DATE], 2014	Clerk of the Court for the United States District Court for the District of Massachusetts
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APPENDIX A

Release And Waiver of Claims

The Parties agree to the following Release and Waiver of Claims, which is also set forth in Section VII(B) of the Settlement Agreement, which shall take effect upon entry of the Final Order and Final Judgment:

- a) In consideration for the Settlement benefits described in the Settlement Agreement, Plaintiffs and the other members of the Class, on behalf of themselves, their heirs, guardians, assigns, executors, administrators, predecessors, and/or successors, will fully, finally and forever release, relinquish, acquit, and discharge Vibram, its parents (including but not limited to Vibram SpA, and any intermediary and/or ultimate parents), officers, directors, employees, stockholders, agents, attorneys, administrators, successors, reorganized successors, spin-offs, assigns, holding companies, subsidiaries, affiliates, joint-ventures, partners, members, divisions predecessors, Vibram-owned U.S. Retailers, Vibram-owned Stores and www.vibramfivefingers.com (collectively, “the Released Parties”) from– and shall not now or hereafter institute, maintain, or assert on their own behalf, on behalf of the Class or on behalf of any other person or entity – any and all manner of claims, actions, causes of action, suits, rights, debts, sums of money, payments, obligations, reckonings, contracts, agreements, executions, promises, damages, liens, judgments and demands of whatever kind, type or nature and whatsoever, both at law and in equity, whether past, present or future, mature or not yet mature, known or unknown, suspected or unsuspected, contingent or noncontingent, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Plaintiffs or Class Members ever had, now have, may have, or hereafter can, shall or may ever have against the Released Parties in any other court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever relating to the purchase of FiveFingers footwear during the Class Period and the claims alleged in the complaints (amended and otherwise) in the Actions, and, more particularly, but without in any way limiting the generality of the foregoing, arising from, directly or indirectly, or in any way whatsoever pertaining or relating to the claims alleged in the complaints (amended and otherwise) in the Actions, including, but not limited to, communications, disclosures, nondisclosures, representations, statements, claims, omissions, messaging, design, testing, marketing, advertising, promotion, packaging, displays, brochures, studies, manufacture, distribution, operation, performance, functionality, notification, providing, offering, dissemination, replacement, sale and/or resale by the Released Parties of the FiveFingers footwear; any claims for rescission, restitution or unjust enrichment for all damages of any kind relating to the purchase of FiveFingers footwear during the Class Period and the claims alleged in the complaints (amended and otherwise) in the Actions; violations of any state’s deceptive, unlawful and/or unfair business and/or trade practices, false, misleading or fraudulent advertising, consumer fraud and/or consumer protection statutes relating to the purchase of FiveFingers footwear during the Class Period and the claims alleged in the complaints (amended and otherwise) in the Actions; any violation of the

Uniform Commercial Code, any breaches of express, implied and/or any other warranties, any similar federal, state or local statutes, codes, damages, costs, expenses, extra-contractual damages, compensatory damages, exemplary damages, special damages, penalties, punitive damages and/or damage multipliers, disgorgement, declaratory relief, expenses, interest, and/or attorneys' fees and costs against the Released Parties pertaining to or relating to the claims alleged in the complaint in the Action relating to the purchase of FiveFingers footwear during the Class Period and the claims alleged in the complaints (amended and otherwise) in the Actions, notwithstanding that Plaintiffs and the Class acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Actions and/or the Release and Waiver of Claims herein.

- b) Notwithstanding the language in this section and/or the Settlement Agreement, the Plaintiffs and the other members of the Class are not releasing any claims of or relating to personal injury.
- c) Plaintiffs represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under the Settlement Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Actions, including without limitation, any claim for benefits, proceeds or value under the Actions, and that Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Actions or in any benefits, proceeds or values under the Actions. Class Members submitting a Claim Form shall represent and warrant therein that they are the sole and exclusive owner of all claims that they personally are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Actions, including without limitation, any claim for benefits, proceeds or value under the Actions, and that such Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Actions or in any benefits, proceeds or values under the Actions.
- d) Without in any way limiting its scope, and, except to the extent otherwise specified in the Agreement, this Release and Waiver of Claims covers by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs, and/or disbursements incurred by Plaintiffs' Counsel, or by Plaintiffs or the Class Members.
- e) Plaintiffs expressly understand and acknowledge, and all Class Members will be deemed by the Final Order and Final Judgment to acknowledge, that certain principles of law, including, but not limited to, Section 1542 of the Civil Code of the State of California, provide that "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." To the extent that anyone might argue that these principles of law are applicable – notwithstanding that the Parties have chosen Massachusetts law to govern this Agreement – Plaintiffs hereby agree that the provisions of all such principles of law or similar federal or state laws, rights, rules, or legal principles, to the extent they are found to be applicable

herein, are hereby knowingly and voluntarily waived, relinquished and released by Plaintiffs and all Class Members.

- f) Nothing in this Release and Waiver of Claims shall preclude any action by the Parties hereto to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed therein.
- g) Plaintiffs and Released Parties hereby agree and acknowledge that the provisions of this Release and Waiver of Claims together constitute an essential and material term of the Settlement Agreement and shall be included in any Final Order and Final Judgment entered by the Court.

APPENDIX B**Claim Form**

VIBRAM FIVEFINGERS CLASS ACTION SETTLEMENT CLAIM FORM					
You can also file online at: www.FiveFingersSettlement.com					
<p>You must complete this form by providing all required information below. If submitting a claim for more than 2 pairs of eligible Vibram FiveFingers™ footwear that you purchased, you must send a receipt or other proof of purchase with this Claim Form. Do NOT send original receipts – photocopies are required. All claim forms must be postmarked or electronically submitted no later than ____, 2014. If mailing, please return this claim form to:</p> <p style="text-align: center;">Vibram FiveFingers Class Action Settlement Administrator [Address] [City, State]</p>					
CLASS MEMBER INFORMATION					
Name:					
Address:					
City:		State:		Zip Code:	
Telephone Number:	()	-	E-mail Address:		
PURCHASE INFORMATION – ELIGIBLE VIBRAM FIVEFINGERS FOOTWEAR					
<u>Eligible Vibram FiveFingers footwear</u> Indicate number of pairs purchased if more than one				<u>Location(s) Purchased</u> (if known)	
<div style="display: flex; flex-direction: row;"> <div style="flex: 1;"> <input type="checkbox"/> Alitza ____ <input type="checkbox"/> Bikila ____ <input type="checkbox"/> Bikila EVO ____ <input type="checkbox"/> Bikila EVO WP ____ <input type="checkbox"/> Bikila LS ____ <input type="checkbox"/> Classic ____ <input type="checkbox"/> Classic Smartwool ____ <input type="checkbox"/> EL-X ____ <input type="checkbox"/> Estrada ____ <input type="checkbox"/> Flow ____ <input type="checkbox"/> Fresca ____ <input type="checkbox"/> Jaya ____ <input type="checkbox"/> Komodo Sport ____ <input type="checkbox"/> Komodo Sport LS ____ <input type="checkbox"/> KMD Sport ____ <input type="checkbox"/> KMD Sport LS ____ <input type="checkbox"/> KSO </div> <div style="flex: 1;"> <input type="checkbox"/> KSO Trek ____ <input type="checkbox"/> Lontra ____ <input type="checkbox"/> SeeYa ____ <input type="checkbox"/> SeeYa LS ____ <input type="checkbox"/> SeeYa LS Night ____ <input type="checkbox"/> Signa ____ <input type="checkbox"/> Speed ____ <input type="checkbox"/> Speed XC ____ <input type="checkbox"/> Sprint ____ <input type="checkbox"/> Spyridon ____ <input type="checkbox"/> Spyridon LS ____ <input type="checkbox"/> Spyridon MR ____ <input type="checkbox"/> Trek LS ____ <input type="checkbox"/> TrekSport ____ <input type="checkbox"/> TrekSport Sandal ____ <input type="checkbox"/> V-On </div> </div>				<input type="checkbox"/> www.vibramfivefingers.com <input type="checkbox"/> Vibram company store <input type="checkbox"/> Other (specify) _____ _____	

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(continued)

Page

<input type="checkbox"/> KSO EVO ____	<input type="checkbox"/> Vybrid Sneak ____	
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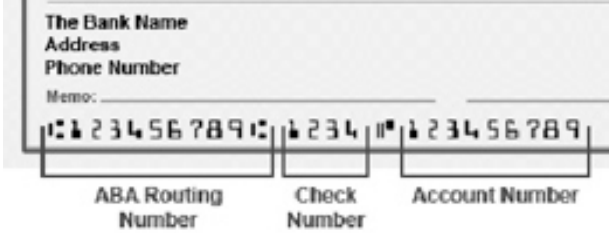
Reminder: Send in proof of purchase if you are submitting a claim for more than 2 pairs of Vibram FiveFingers™ footwear.

You may elect to receive your payment by Automatic Clearing House (“ACH”) or by check mailed to your address provided above.

To receive payment via ACH, please provide your bank account information for payment via ACH. (See graphic illustration at right. Please check with your financial institution for your routing number if you are unsure.)

Your bank routing number: _____

Your bank account number: _____



LEAVE THIS SECTION BLANK IF YOU PREFER TO RECEIVE YOUR PORTION OF THE SETTLEMENT FUND BY CHECK VIA U.S. MAIL.

AFFIRMATION
<p>I declare or affirm, under penalty of perjury, that the information in this claim form is true and correct to the best of my knowledge and that I purchased the applicable product(s) claimed above between March 21, 2009 and [DATE 2014].</p> <p>I understand that the decision of the Class Action Settlement Administrator is final and binding and that my claim form may be subject to audit, verification and Court review.</p> <p>Signature: _____ Date: _____</p>
<p>Payment amounts to eligible Class Members will vary depending upon, among other factors, the number and amounts claimed by all Class Members and other adjustments and deductions as specified in the Settlement Agreement.</p> <p>CLAIM FORMS MUST BE POSTMARKED OR SUBMITTED ONLINE BY [MONTH DAY, 2014]</p> <p>QUESTIONS? CALL 800-XXX-XXXX OR VISIT www.FiveFingersSettlement.com</p>

FINAL ORDER APPROVING CLASS ACTION SETTLEMENT

This motion for Final Approval of a Class Action Settlement in the above-captioned action, having been brought before the Court jointly by the Parties pursuant to their Settlement Agreement, with its attached exhibits (collectively, the “Settlement Agreement”), signed and filed with this Court on April 30, 2014, to settle *Valerie Bezdek et al. v. Vibram USA Inc., et al.*, 12-cv-10513-DPW (D. Mass.) and *Brian De Falco et al. Vibram USA Inc., et al.*, 13-10764-DPW (D.Mass.) (collectively, the “Actions”), with the express understanding that coincident with this Order, the Parties will stipulate to the dismissal with prejudice of *Ali Safavi v. Vibram USA Inc., et al.*, 12-5900-BRO-JCG (C.D. Cal.); and

The Court having entered an Order dated [DATE] (the “Order Authorizing Notice”), preliminarily certifying the putative class in this action for settlement purposes only under Fed. R. Civ. P. 23(a) and (b)(3), ordering individual and publication Notice to potential Class Members, scheduling a Fairness Hearing for [DATE], providing potential Class Members with an opportunity either to exclude themselves from the settlement class or to object to the proposed settlement and issuing related Orders; and

The Court having held a Fairness Hearing on [DATE] to determine whether to grant final approval of the proposed settlement and issue related relief; and

The Court having considered the papers submitted by the Parties and by all other persons who timely submitted papers in accordance with the Order Authorizing Notice, and having heard oral presentations by the Parties and all persons who complied with the Order Authorizing Notice, and based on all of the foregoing, together with this Court’s familiarity with the Actions, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. Incorporation of Other Documents. This Final Order Approving Class Action Settlement incorporates and makes a part hereof: (a) the Settlement Agreement, including all exhibits thereto, and definitions included therein, which was signed and filed with this Court on April 30, 2014; (b) the briefs, affidavits, declarations, and other materials filed in support of the settlement and Lead Class Counsel’s request for an award of attorneys’ fees and reimbursement of expenses on behalf of Plaintiffs’ Counsel; (c) the record at the Fairness Hearing; (d) the documents listed on the docket or otherwise submitted to the Court; and (e) all prior proceedings in the Actions.

2. Jurisdiction. Because due, adequate, and the best practicable Notice has been disseminated and all potential Class Members have been given the opportunity to exclude themselves from, or object to, this Class Action Settlement, the Court has personal jurisdiction over all Class Members (as defined below). The Court has subject-matter jurisdiction over the claims asserted in the complaint and/or the Actions pursuant to 28 U.S.C. §§ 1332 and 1367, including, without limitation, jurisdiction to approve the proposed settlement and the Settlement Agreement and all exhibits attached thereto, grant final certification to the Class for settlement purposes only, dismiss the Actions on the merits and with prejudice, and issue related orders. The Court finds that venue is proper in this district pursuant to 28 U.S.C. § 1391.

3. Final Class Certification. The Class preliminarily certified by this Court is hereby finally certified for settlement purposes only under Fed. R. Civ. P. 23(a), (b)(3), and (c)(2), the Court finding that the Class fully satisfies all the applicable requirements of Fed. R. Civ. P. 23 and due process. The Class shall consist of all persons who, during the Class Period, purchased in the United States certain models of FiveFingers footwear set forth below from Vibram and/or its authorized retailers including, without limitation, vibramfivefingers.com, between March 21, 2009, up to and including **[DATE]** (the “Class Period”). “FiveFingers footwear” as used herein and in connection with the Settlement Agreement means the following models of Vibram shoes purchased as new by Class Members during the Class Period:

Alitza, Bikila, Bikila EVO, Bikila EVO WP, Bikila LS, Classic, Classic Smartwool, EL-X, Estrada, Flow, Fresca, Jaya, Komodo Sport, Komodo Sport LS, KMD Sport, KMD Sport LS, KSO, KSO EVO, KSO Trek, Lontra, SeeYa, SeeYa LS, SeeYa LS Night, Signa, Speed, Speed XC, Sprint, Spyridon, Spyridon LS, Spyridon MR, Trek LS, TrekSport, TrekSport Sandal, V-On, and Vybrid Sneak.

Excluded from the Class are: (a) Vibram's Board members or executive-level officers, and employees, including its attorneys; (b) persons or entities who purchased the FiveFingers footwear primarily for the purpose of resale; (c) any claims for personal injury relating to the FiveFingers footwear; (d) distributors or re-sellers of the FiveFingers footwear; (e) the judge and magistrate judge presiding over the Actions and their immediate families; (f) governmental entities; and (g) persons or entities who or which timely and properly exclude themselves from the Class as provided in the Settlement Agreement.

4. Requests for Exclusion. The Court finds that only those people for the specific FiveFingers footwear listed in Exhibit A to the Affidavit of _____ and filed with the Court have submitted timely and valid requests for exclusion from the Class and are therefore not bound by this Final Order and accompanying Final Judgment. Lead Class Counsel and Vibram's Counsel may mutually agree to allow additional Class Members to exclude themselves or to withdraw their exclusion requests by filing an appropriate notice with the Court.

5. Adequacy of Representation. Valerie Bezdek has adequately represented the Settlement Class for purposes of entering into and implementing the settlement. Janine Pollack and Wolf Haldenstein Adler Freeman & Herz LLP are experienced and adequate Lead Class Counsel. The Class Representative and Lead Class Counsel have satisfied the requirements of Fed. R. Civ. P. 23(a)(4) and 23(g).

6. Class Notice. The Court finds that the dissemination of the Class Notice, the publication of the Summary Settlement Notice, the establishment of a website containing settlement-related materials, the establishment of a toll-free telephone number, and all other Notice methods set forth in the Settlement Agreement the Notice dissemination methodology

implemented pursuant to the Settlement Agreement and this Court's Order Authorizing Notice, a copy of which is incorporated herein and made a part hereof:

- (a) constituted the best practicable notice to Class Members under the circumstances of the Actions;
- (b) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of: (i) the pendency of these Actions; (ii) the terms of the proposed settlement; (iii) their rights under the proposed settlement; (iv) their right to exclude themselves from the Class and the proposed settlement; (v) their right to object to any aspect of the proposed settlement (including, but not limited to, final certification of the settlement class, the fairness, reasonableness, or adequacy of the proposed settlement, the adequacy of the Class's representation by the Class Representative or Lead Class Counsel, and/or the award of attorneys' fees); (vi) their right to appear at the Fairness Hearing – either on their own or through counsel hired at their own expense – if they did not exclude themselves from the Class; and (vii) the binding effect of the Orders and Judgment in this action, whether favorable or unfavorable, on all persons who did not request exclusion from the Class;
- (c) constituted notice that was reasonable, due, adequate, and sufficient notice to all persons and entities entitled to be provided with notice; and
- (d) constituted notice that met all applicable requirements of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, the Due Process Clause of the United States Constitution, and any other applicable law, as well as

complied with the Federal Judicial Center's illustrative class action notices.

7. **Final Settlement Approval.** The terms and provisions of the proposed settlement and Settlement Agreement, including all exhibits, have been entered into in good faith and are hereby fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of, each of the Parties and the Class Members, and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act (P.L. 109-2), the United States Constitution (including the Due Process Clause), and any other applicable law. The settlement is approved and all objections to the settlement are overruled as without merit. The Parties and Class Members are hereby directed to implement and consummate the Settlement Agreement according to its terms and provisions. Vibram shall take all steps necessary and appropriate to provide Class Members with the benefits to which they are entitled under the terms of the Settlement Agreement.

8. **Early Implementation.** Vibram and Lead Class Counsel are hereby authorized, and without requiring further approval of this Court, to implement the settlement before the Final Settlement Date (as defined in the Settlement Agreement), in which case all provisions in the Settlement Agreement specifying actions to be taken on or after the Final Settlement Date shall, to the extent necessary, be deemed to provide that those actions shall be taken on or after the date Vibram elects to implement the settlement.

9. **Binding Effect.** The terms of the Settlement Agreement and of this Final Order and the accompanying Final Judgment shall be forever binding on Plaintiffs, Vibram, and all Class Members, as well as their heirs, executors, administrators, predecessors, successors, and assigns, and those terms shall have res judicata and other preclusive effect in all pending and

future claims, lawsuits, or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits or other proceedings involve matters that were or could have been raised in the Actions or are otherwise encompassed by the Release and Waiver of Claims.

10. Release and Waiver of Claims. The following Release and Waiver of Claims, which is also set forth in Section VII(B) of the Settlement Agreement, is expressly incorporated herein in all respects, including all defined terms used therein, is effective as of the date of this Final Order and the accompanying Final Judgment, and forever discharges Vibram, its parents (including but not limited to Vibram SpA, and any intermediary and/or ultimate parents), officers, directors, employees, stockholders, agents, attorneys, administrators, successors, reorganized successors, spin-offs, assigns, holding companies, subsidiaries, affiliates, joint-ventures, partners, members, divisions predecessors, Vibram-owned U.S. Retailers, Vibram-owned Stores and www.vibramfivefingers.com (collectively, “the Released Parties”) from any claims or liabilities arising from or related to the Release and Waiver of Claims:

- (a) In consideration for the Settlement benefits described in the Settlement Agreement, Plaintiffs and the other members of the Class, on behalf of themselves, their heirs, guardians, assigns, executors, administrators, predecessors, and/or successors, will fully, finally and forever release, relinquish, acquit, and discharge the Released Parties from – and shall not now or hereafter institute, maintain, or assert on their own behalf, on behalf of the Class or on behalf of any other person or entity – any and all manner of claims, actions, causes of action, suits, rights, debts, sums of money, payments, obligations, reckonings, contracts, agreements, executions, promises, damages, liens, judgments and demands of whatever

kind, type or nature and whatsoever, both at law and in equity, whether past, present or future, mature or not yet mature, known or unknown, suspected or unsuspected, contingent or noncontingent, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Plaintiffs or Class Members ever had, now have, may have, or hereafter can, shall or may ever have against the Released Parties in any other court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever relating to the purchase of FiveFingers footwear during the Class Period and the claims alleged in the complaints (amended and otherwise) in the Actions, and, more particularly, but without in any way limiting the generality of the foregoing, arising from, directly or indirectly, or in any way whatsoever pertaining or relating to the claims alleged in the complaints (amended and otherwise) in the Actions, including, but not limited to, communications, disclosures, nondisclosures, representations, statements, claims, omissions, messaging, design, testing, marketing, advertising, promotion, packaging, displays, brochures, studies, manufacture, distribution, operation, performance, functionality, notification, providing, offering, dissemination, replacement, sale and/or resale by the Released Parties of the FiveFingers footwear; any claims for rescission, restitution or unjust enrichment for all damages of any kind relating to the purchase of

FiveFingers footwear during the Class Period and the claims alleged in the complaints (amended and otherwise) in the Actions; violations of any state's deceptive, unlawful and/or unfair business and/or trade practices, false, misleading or fraudulent advertising, consumer fraud and/or consumer protection statutes relating to the purchase of FiveFingers footwear during the Class Period and the claims alleged in the complaints (amended and otherwise) in the Actions; any violation of the Uniform Commercial Code, any breaches of express, implied and/or any other warranties, any similar federal, state or local statutes, codes, damages, costs, expenses, extra-contractual damages, compensatory damages, exemplary damages, special damages, penalties, punitive damages and/or damage multipliers, disgorgement, declaratory relief, expenses, interest, and/or attorneys' fees and costs against the Released Parties pertaining to or relating to the claims alleged in the complaint in the Action relating to the purchase of FiveFingers footwear during the Class Period and the claims alleged in the complaints (amended and otherwise) in the Actions, notwithstanding that Plaintiffs and the Class acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action and/or the Release and Waiver of Claims herein.

- (b) Notwithstanding the language in this section and/or the Settlement Agreement, the Plaintiffs and the other members of the Class are not releasing any claims of or relating to personal injury.

- (c) Plaintiffs represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under the Settlement Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Actions, including without limitation, any claim for benefits, proceeds or value under the Actions, and that Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Actions or in any benefits, proceeds or values under the Actions. Class Members submitting a Claim Form shall represent and warrant therein that they are the sole and exclusive owner of all claims that they personally are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Actions, including without limitation, any claim for benefits, proceeds or value under the Actions, and that such Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Actions or in any benefits, proceeds or values under the Actions.
- (d) Without in any way limiting its scope, and, except to the extent otherwise specified in the Agreement, this Release and Waiver of Claims covers by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, or consultant fees, interest, or litigation

fees, costs or any other fees, costs, and/or disbursements incurred by Plaintiffs' Counsel, or by Plaintiffs or the Class Members.

- (e) Plaintiffs expressly understand and acknowledge, and all Class Members will be deemed by the Final Order and Final Judgment to acknowledge, that certain principles of law, including, but not limited to, Section 1542 of the Civil Code of the State of California, provide that "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." To the extent that anyone might argue that these principles of law are applicable – notwithstanding that the Parties have chosen Massachusetts law to govern the Settlement Agreement – Plaintiffs hereby agree that the provisions of all such principles of law or similar federal or state laws, rights, rules, or legal principles, to the extent they are found to be applicable herein, are hereby knowingly and voluntarily waived, relinquished and released by Plaintiffs and all Class Members.
- (f) Nothing in this Release and Waiver of Claims shall preclude any action by the Parties hereto to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed therein.
- (g) Plaintiffs and Released Parties hereby agree and acknowledge that the provisions of this Release and Waiver of Claims together constitute an essential and material term of the Settlement Agreement and shall be included in any Final Order and Final Judgment entered by the Court.

11. Permanent Injunction. All Class Members and/or their representatives who have not been timely excluded from the Class are hereby permanently barred and enjoined from bringing, filing, commencing, prosecuting, maintaining, intervening in, participating in, continuing or receiving any benefits from, as Class Members or otherwise, any lawsuit (including putative class actions), arbitration, administrative, regulatory, or other proceeding in any jurisdiction that is covered by the Release. All Class Members are permanently barred and enjoined from organizing or soliciting the participation of any Class Members, who did not timely exclude themselves from the Class into a separate class or group for purposes of pursuing a putative class action, any claim or lawsuit in any jurisdiction that is covered by the Release. Pursuant to 28 U.S.C. §§ 1651 (a) and 2283, the Court finds that issuance of this permanent injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Action.

12. Enforcement of Settlement. Nothing in this Final Order or in the accompanying Final Judgment shall preclude any action to enforce the terms of the Settlement Agreement; nor shall anything in this Final Order or in the accompanying Final Judgment preclude Plaintiffs or other Class Members from participating in the Claim Process described in the Settlement Agreement if they are entitled to do so under the terms of the Settlement Agreement.

13. Attorneys' Fees and Expenses. Lead Class Counsel, on behalf of Plaintiffs' Counsel, are hereby awarded attorneys' fees in the amount of _____ and reimbursement of Plaintiffs' Counsel's disbursements and expenses in the amount of \$_____, which amounts are approved as fair and reasonable, pursuant to Fed. R. Civ. P. 23(h) and are in accordance with the terms of the Settlement Agreement. The Court finds that the above stated award of attorneys' fees is fair and reasonable in consideration of, among

other things, the efforts of Lead Class Counsel and Plaintiffs' Counsel and the settlement they achieved for the Class. The Court finds that the amount of expenses is reasonable and that the expenses were reasonably incurred in the course of the litigation. Lead Class Counsel, in their discretion, shall allocate and distribute this award of attorneys' fees and expenses among Plaintiffs' Counsel. All objections to any request for an award of attorneys' fees and reimbursement of expenses are hereby overruled.

14. Service Awards to Plaintiffs. The Court hereby awards \$2,500.00 as a Service Award to each of Valerie Bezdek, Brian De Falco, and Ali Safavi.

15. No Other Payments. The preceding two paragraphs of this Final Order cover, without limitation, any and all claims against the Released Parties for attorneys' fees and expenses, costs, or disbursements incurred by Lead Class Counsel or any other counsel representing Plaintiffs or Class Members, or incurred by Plaintiffs or the Class Members, or any of them, in connection with or related in any manner to the Actions, the settlement of the Actions, the administration of such settlement, and/or the Release and Waiver of Claims, except to the extent otherwise specified in this Final Order, and accompanying Final Judgment and the Settlement Agreement. Plaintiffs are not precluded from seeking attorneys' fees, expenses, costs, or disbursements from an objecting Class Member or his or her counsel (and not Vibram or its counsel) in connection with an appeal filed by an objecting Class Member.

16. Modification of Settlement Agreement. The Parties are hereby authorized, without needing further approval from the Court, to agree to and adopt such amendments to, and modifications and expansions of, the Settlement Agreement, and all exhibits attached, as are consistent with this Final Order and the accompanying Final Judgment and do not limit the rights of Class Members under the Settlement Agreement.

17. Retention of Jurisdiction. The Court has jurisdiction to enter this Final Order and the accompanying Final Judgment. Without in any way affecting the finality of this Final Order and/or the accompanying Final Judgment, this Court expressly retains jurisdiction as to all matters relating to the administration, consummation, enforcement and interpretation of the Settlement Agreement and of this Final Order and the accompanying Final Judgment, and for any other necessary purpose, including, without limitation:

- (a) enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims, or causes of action that, in whole or in part, are related to or arise out of the Settlement Agreement, this Final Order or the accompanying Final Judgment (including, without limitation, whether a person or entity is or is not a Class Member; and whether claims or causes of action allegedly related to this case are or are not barred by this Final Order and the accompanying Final Judgment);
- (b) entering such additional Orders as may be necessary or appropriate to protect or effectuate this Final Order and the accompanying Final Judgment, dismissing all claims on the merits and with prejudice, and permanently enjoining Class Members from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of this settlement; and
- (c) entering any other necessary or appropriate Orders to protect and effectuate this Court's retention of continuing jurisdiction; provided, however, that nothing in this paragraph is intended to restrict the ability of

the Parties to exercise their rights under paragraphs 8 and 16 or as otherwise provided in the Settlement Agreement.

18. No Admissions. Neither this Final Order, nor the accompanying Final Judgment, nor the Settlement Agreement (nor any other document referred to herein, nor any action taken to carry out this Final Order or the accompanying Final Judgment) is, may be construed as, or may be used as an admission or concession by or against Vibram or any other of the Released Parties of the validity of any claim or defense or any actual or potential fault, wrongdoing, or liability whatsoever. Entering into, or carrying out, the Settlement Agreement, and any negotiations or proceedings related to it, shall not in any event be construed as, or deemed evidence of, an admission or concession as to Vibram's denials or defenses and shall not be offered or received in evidence in any action or proceeding against any Party hereto in any court, administrative agency or other tribunal for any purpose whatsoever, except as evidence of the settlement or to enforce the provisions of this Final Order and the accompanying Final Judgment and the Settlement Agreement; provided, however, that this Final Order, the accompanying Final Judgment, and the Settlement Agreement may be filed in any action against or by Vibram or any other of the Released Parties to support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim.

19. Dismissal of Actions. The Actions (including all individual and Class claims presented therein) are hereby dismissed with prejudice, without fees or costs to any Party except as otherwise provided in this Order and the accompanying Final Judgment and the Settlement Agreement.

Hon. Douglas P. Woodlock
UNITED STATES DISTRICT COURT JUDGE

VALERIE BEZDEK, Individually and on)	
Behalf of All Others Similarly Situated,)	Case No. 12-10513-DPW
)	
Plaintiff,)	
)	
v.)	
)	
VIBRAM USA INC. and VIBRAM)	
FIVEFINGERS LLC,)	
)	
Defendants.)	
)	
<hr/>		
BRIAN DE FALCO, Individually and on)	
Behalf of All Others Similarly Situated,)	Case No. 13-10764-DPW
)	
Plaintiff,)	
)	
v.)	
)	
VIBRAM USA INC. and VIBRAM)	
FIVEFINGERS LLC,)	
)	
Defendants.)	
)	

IT IS on this __ day of _____, _____, HEREBY ADJUDGED
AND DECREED PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 58 THAT:

1. The settlement of *Valerie Bezdek v. Vibram USA Inc.*, et al., Case Number 1:12-cv-10513-DPW (D.Mass.) and *Brian De Falco v. Vibram USA Inc., et al.*, Case Number 1:13-cv-10764-DPW (D.Mass.) (the “Actions”) on the terms set forth in the Parties’ Settlement Agreement, with exhibits (collectively, the “Settlement Agreement”), and definitions included therein, signed and filed with this Court on April 30, 2014, is finally approved, and the following class is granted final certification for settlement purposes only under Fed. R. Civ. P. 23(a) and (b)(3): all persons that purchased in the United States certain Vibram FiveFingers footwear from

Vibram USA, Inc. and/or Vibram FiveFingers LLC (“Vibram”) and/or their authorized retailers including, without limitation, Vibram Retailers, www.vibramfivefingers.com, and/or other third-party retailers, from March 21, 2009, up to and including [DATE] (the “Class Period”).

Excluded from the Class are: (a) Vibram’s Board members and executive-level officers, including its attorneys; (b) persons or entities who purchased the FiveFingers footwear primarily for the purpose of resale; (c) claims for personal injury relating to the use of FiveFingers footwear; (d) distributors or re-sellers of FiveFingers footwear; (e) the judge and magistrate judge presiding over the Actions and their immediate families; (f) governmental entities; and (g) persons or entities who or which timely and properly exclude themselves from the Class as provided in the Settlement Agreement.

2. “FiveFingers footwear” means the following models of Vibram shoes purchased as new by Class Members during the Class Period:

Alitza, Bikila, Bikila EVO, Bikila EVO WP, Bikila LS, Classic, Classic Smartwool, EL-X, Estrada, Flow, Fresca, Jaya, Komodo Sport, Komodo Sport LS, KMD Sport, KMD Sport LS, KSO, KSO EVO, KSO Trek, Lontra, SeeYa, SeeYa LS, SeeYa LS Night, Signa, Speed, Speed XC, Sprint, Spyridon, Spyridon LS, Spyridon MR, Trek LS, TrekSport, TrekSport Sandal, V-On, and Vybrid Sneak.

3. The Court finds that only those persons listed in Exhibit __ to the Affidavit of _____, and filed with the Court have submitted timely and valid requests for exclusion from the Class and are therefore not bound by this Final Judgment and accompanying Final Order. Lead Class Counsel and Vibram’s Counsel may mutually agree to allow additional Class Members to exclude themselves or to withdraw their exclusion requests by filing an appropriate notice with the Court.

4. The Class Notice, the Summary Settlement Notice, the web site, the toll-free telephone number, and all other Notices in the Settlement Agreement, and the notice

methodology implemented pursuant to the Settlement Agreement: (a) constitute the best practicable Notice under the circumstances; (b) constitute Notice that was reasonably calculated to apprise Class Members of the pendency of the Actions, the terms of the settlement, and their rights under the settlement, including, but not limited to, their right to object to or exclude themselves from the proposed settlement and to appear at the Fairness Hearing; (c) are reasonable and deemed as due, adequate, and sufficient Notice to all persons entitled to receive Notice; and (d) met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and the Due Process Clause(s) of the United States Constitution, as well as comply with the Federal Judicial Center's illustrative class action notices.

5. All Class Members and/or their representatives who have not been timely excluded from the Class with respect to the FiveFingers footwear are permanently barred and enjoined from bringing, filing, commencing, prosecuting, maintaining, intervening in, participating (as class members or otherwise) in, or receiving any benefits from any other lawsuit (including putative class action lawsuits), arbitration, administrative, regulatory, or other proceeding, order, or cause of action in law or equity in any jurisdiction that is covered by the Release and Waiver of Claims.

6. In addition, all Class Members are permanently barred and enjoined from organizing Class Members who have not been excluded from the Class into a separate class for purposes of pursuing, as a purported class action, any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) that is covered by the Release and Waiver of Claims. Pursuant to 28 U.S.C. §§ 1651(a) and

2283, the Court finds that issuance of this permanent injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Actions.

7. Vibram shall take all steps necessary and appropriate to provide Class Members with the benefits to which they are entitled under the terms of the Settlement Agreement and pursuant to the Orders of the Court.

8. Lead Class Counsel shall be awarded, on behalf of all Plaintiffs' Counsel, attorneys' fees in the amount of \$_____ and reimbursement of costs in the amount of \$_____, which amounts are approved as fair and reasonable, in accordance with the terms of the Settlement Agreement.

9. Each of Valerie Bezdek, Brian De Falco, and Ali Safavi shall be awarded \$2,500.00 as Service Awards in their capacity as representative Plaintiffs in the Actions.

10. It is the understanding and expectation of the Court that in connection with the entry of this Final Judgment, Lead Class Counsel and Vibram's Counsel will promptly stipulate to the dismissal with prejudice of *Ali Safavi v. Vibram USA Inc. and Vibram FiveFingers, LLC*, Case Number 11-cv-10632 (C.D. Cal).

11. The Court will retain continuing jurisdiction over the Actions for the reasons and purposes set forth in this Court's Final Approval Order.

Hon. Douglas P. Woodlock
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

VALERIE BEZDEK, Individually and on Behalf of All Others Similarly Situated,)	
)	
Plaintiff,)	
)	
v.)	
)	
VIBRAM USA INC. and VIBRAM FIVEFINGERS LLC,)	
)	
Defendants.)	
)	
<hr style="width: 45%; margin-left: 0;"/>		
BRIAN DE FALCO, Individually and on Behalf of All Others Similarly Situated,)	
)	
Plaintiff,)	
)	
v.)	
)	
VIBRAM USA INC. and VIBRAM FIVEFINGERS LLC,)	
)	
Defendants.)	
)	
)	

Case No. 12-10513-DPW

Case No. 13-10764-DPW

ORDER AUTHORIZING NOTICE

Before the Court is a joint petition by the named Plaintiffs and by the defendants Vibram USA Inc. and Vibram FiveFingers LLC (“Vibram”), and briefs in support thereof submitted by Class Representative and Vibram requesting that the Court enter an Order (i) certifying pursuant to Fed. R. Civ. P. 23, a class for the purposes of settlement only; (ii) preliminarily reviewing the proposed settlement set forth in the Settlement Agreement, and exhibits thereto, which was filed with the Court on April 30, 2014; (iii) appointing Valerie Bezdek as Class Representative of, and Wolf Hadenstein Adler Freeman and Herz LLP as Lead Class Counsel for, the Class; (iv) approving Class Notice and Summary Settlement Notice attached as Exhibits 2 and 6,

respectively to the Settlement Agreement; (v) appointing Heffler Claims Group LLC as Notice Administrator and Class Action Settlement Administrator; and (vi) approving the Claim Form attached as Exhibit 1 to the Settlement Agreement.

Having reviewed and considered the Settlement Agreement, the Motion for an Order Authorizing Notice and the accompanying supporting brief as to the proposed settlement of this matter, and having heard and considered the argument of counsel, the Court makes the following findings and grants the relief set forth below, authorizing notice of the class settlement contained in the Settlement Agreement upon the terms and conditions set forth in this Order. Terms and phrases in this Order shall have the same meaning as defined in the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. On the basis of the findings set forth below, the Court hereby certifies a plaintiff class pursuant to Fed. R. Civ. P. 23 for settlement purposes only in accordance with the terms of the Settlement Agreement (the “Class”). The Class is defined as:

All persons that, during the Class Period, purchased in the United States certain FiveFingers footwear from Vibram and/or its authorized retailers including, without limitation, vibramfivefingers.com. Excluded from the Class are: (a) Vibram’s Board members, executive-level officers, or employees, including its attorneys; (b) persons or entities who purchased the FiveFingers footwear primarily for the purpose of resale; (c) any claims for personal injury relating to the use of the FiveFingers footwear; (d) distributors or re-sellers of the FiveFingers footwear; (e) the judge and magistrate judge presiding over the Actions and their immediate families; (f) governmental entities; and (g) persons or entities who timely and properly exclude themselves from the Class as provided in the Settlement Agreement.

“Class Member(s)” means a member of the Class.

As provided for in Section X of the Settlement Agreement, if this Court does not grant final approval of the settlement set forth in the Settlement Agreement, or if the settlement is terminated or cancelled pursuant to the terms of the Settlement Agreement, then the Settlement Agreement, and the certification of the Class provided for herein, will be vacated and the Actions

shall proceed as though the Class had never been certified, without prejudice to any party's position on the issue of class certification or any other issue.

2. The Class is so numerous that joinder of all members is impracticable.

3. The Court finds, based on the terms of the settlement described in the Settlement Agreement, and for settlement purposes only, that:

- a. There are questions of law and fact common to the Class.
- b. The claims of the Class Representative are typical of the claims of the Class.
- c. The Class Representative and Lead Class Counsel will fairly and adequately represent the interests of the Class. There are no conflicts of interest between members of the Class.
- d. Questions of law and fact common to the Class Members predominate over any questions affecting only individual members of the Class.
- e. Certification of the Class is superior to other methods for the fair and efficient adjudication of this controversy.

4. Neither subclassing nor the exclusion of residents of any particular jurisdiction from the settlement class is necessary or appropriate.

5. The Court authorizes notice that the settlement set forth in the Settlement Agreement appears fair, reasonable, and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure and the Class Action Fairness Act, subject to final consideration at the Final Fairness Hearing provided for below.

6. Valerie Bezdek is hereby appointed as Class Representative. Wolf Haldenstein Adler Freeman & Herz LLP is appointed as Lead Class Counsel.

7. A Fairness Hearing shall be held before this Court on _____ 00 a.m./p.m. in Courtroom 1 of the John Joseph Moakley United States Courthouse, One Courthouse Way, Boston, Massachusetts, to determine (a) whether the settlement set forth in the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class; (b) whether a Judgment as provided in the Settlement Agreement should be entered granting final approval of the Settlement; (c) whether, and in what amount, attorneys' fees and expenses should be awarded to Plaintiffs' Counsel; and (d) whether, and in what amount, Service Awards should be made to Valerie Bezdek, Brian De Falco, and Ali Safavi, each of whom has served as named plaintiff in substantially identical putative class actions. The Court may adjourn and/or continue the Fairness Hearing without further notice to Class Members.

8. The Court approves as to form and content the Class Notice, Summary Settlement Notice, and Postcard Notice in substantially the forms attached as Exhibits 2, 6, and 8 respectively, to the Settlement Agreement.

9. The Court approves and appoints Heffler Claims Group LLC as Class Action Settlement Administrator and Notice Administrator, as set forth in the Settlement Agreement.

10. The Court approves as to form and content the Claim Form substantially in the form attached as Exhibit 1 to the Settlement Agreement.

11. Notice is authorized as follows:

A. Dissemination of the Mailed Class Notice

1. No later than three (3) business days after the entry of this Order Authorizing Notice, Vibram shall provide the Notice Administrator with the name, mailing address, and e-mail address of each reasonably identifiable Class

Member, subject to the existence and availability of such information and its current possession, if at all, by Vibram.

2. Beginning not later than ten (10) business days after entry of this Order Authorizing Notice and to be substantially completed not later than twenty (20) days after entry of this Order Authorizing Notice, and subject to the requirements of this Order Authorizing Notice and the Settlement Agreement, the Notice Administrator shall send the Class Notice and Claim Form by Electronic Mail (“E-Mail”) to: (i) each reasonably identifiable Class Member’s last known E-Mail address; and (ii) each appropriate State and Federal official, as specified in 28 U.S.C. § 1715, and shall otherwise comply with Fed. R. Civ. P. 23 and any other applicable statute, law, or rule, including but not limited to, the Due Process Clause of the United States Constitution.

3. No later than thirty-five (35) days after entry of this Order Authorizing Notice, the Notice Administrator shall send the Postcard Notice, substantially in the form of Exhibit 8 hereto, by First Class U.S. Mail, proper postage prepaid, to each Class Member whose E-mail address returned a message as undeliverable, subject to the existence of such information as provided by Vibram pursuant to Section IV.B.1.a of the Settlement Agreement, notifying the Class Member of the Settlement and directing them to the Settlement Website and/or the toll-free telephone number to obtain a Class Notice and Claim Form.

4. No later than fifty (50) days after entry of this Order Authorizing Notice, the Notice Administrator shall: (i) re-mail any Postcard Notice returned by the United States Postal Service with a forwarding address that are received by

the Notice Administrator; (ii) by itself or using one or more address research firms, as soon as practicable following receipt of any returned Postcard Notices that do not include a forwarding address, research any such returned mail for better addresses and promptly mail the Postcard Notice to the better addresses so found.

B. The Summary Settlement Notice: The Notice Administrator shall have the publication of the Summary Settlement Notice substantially completed no later than seventy-five (75) days after entry of this Order Authorizing in such additional newspapers, magazines, and/or other media outlets as shall be agreed upon by the Parties. The form of Summary Settlement Notice agreed upon by the Parties is in the form substantially similar to the one attached to the Agreement as Exhibit 6.

C. Settlement Website: Prior to the dissemination of the Class Notice, the Notice Administrator shall establish an Internet website, www.fivefingerssettlement.com, that will inform Class Members of the terms of this Agreement, their rights, dates and deadlines and related information (the "Settlement Website"), which shall be activated no later than ten (10) business days after the entry of this Order Authorizing Notice. This Settlement Website shall include, in .pdf format, materials agreed upon by the Parties and/or required by the Court, which shall include, at a minimum, orders Authorizing Notice and Final Approval, the Class Notice, the Claim Form, the Summary Settlement Notice and this Agreement. Notice to the Class shall be supplemented by banner ads on the Internet that shall direct Class Members to the Settlement Website through an embedded hyperlink posted on the following families of sites, or networks, for a period of time sufficient to deliver approximately 300,000,000 impressions: RunnersWorld.com;

The Time Access Network; Facebook; The Xaxis Network; Gannett.com (including on mobile web versions of those sites); and on the Mobile APP network. The form of the banner advertisements agreed upon by the Parties is in the form substantially similar to the one attached to the Agreement as Exhibit 10.

D. Toll-Free Telephone Number: Prior to the dissemination of the Class Notice, the Notice Administrator shall establish a toll-free telephone number that will provide Settlement-related information to Class Members.

12. The Court finds that the publication of the Summary Settlement Notice and the availability of the Notice in the manner set forth herein is the best notice practicable under the circumstances, and constitutes due and sufficient notice of this Order to all persons entitled thereto and is in full compliance with the requirements of Fed. R. Civ. P. 23, applicable law, and due process.

13. No later than 10 calendar days before the Fairness Hearing, the Class Action Settlement Administrator shall file with the Court one or more declarations stating that, in accordance with the terms of this Order, the Summary Settlement Notice was published and that the Notice was posted at a dedicated settlement website.

14. Vibram shall comply with its obligations to give notice under CAFA, 28 U.S.C. § 1715, in connection with the proposed settlement. No later than 10 calendar days before the Fairness Hearing, counsel for Vibram shall file with the Court one or more declarations stating that Vibram, or the Class Action Settlement Administrator acting at its direction, has complied with its notice obligations under 28 U.S.C. § 1715.

15. Any Class Member who wishes to be excluded from the Class must mail a written request for exclusion to the Notice Administrator at the address provided in the Class Notice,

postmarked no later than ninety-five (95) days after entry of this Order Authorizing Notice, or as the Court otherwise may direct, and specifying that he or she wants to be excluded. The Notice Administrator shall forward copies of any written requests for exclusion to Lead Class Counsel and Vibram's Counsel. A list reflecting all requests for exclusion shall be filed with the Court by Vibram no later than ten (10) days before the Fairness Hearing.

16. All those falling within the definition of the Class who do not request to be excluded from the Class shall be bound by the terms of the Settlement Agreement, the Final Judgment entered thereon, and all Orders entered by this Court in connection with the settlement set forth in the Settlement Agreement. All those who submit valid and timely notices of their intent to be excluded from the Class shall not share in the distribution of the Settlement Fund and shall neither receive any benefits nor be bound by the terms of the Settlement Agreement.

18. Class Members who wish to participate in the settlement must submit a Claim in accordance with the instructions on the Claim Form. All Class Members who fail to submit a Claim Form shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth in the Settlement Agreement but will in all other respects be subject to and bound by the provisions of the Settlement Agreement, the releases contained therein, and the Final Judgment.

19. Any Class Member who has not filed a timely written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of Attorneys' Fees and Expenses, or the Service Awards described above, must deliver to the Lead Class Counsel identified in the Class Notice and to Vibram's Counsel, and file with the Court, no later than ninety-five (95) days after entry of this Order Authorizing Notice, or as the Court otherwise may direct, a written statement of the

objections containing the objector's dated signature, as well as the specific reason(s), if any, for each objection, including any legal support the Class Member wishes to bring to the Court's attention, any evidence or other information the Class Member wishes to introduce in support of the objections, a statement of whether the Class Member intends to appear and present their objections at the Fairness Hearing, and a list of the Class Member's purchase(s) of the FiveFingers footwear. Class Members may do so either on their own or through an attorney retained at their own expense. Any objections must include proof of purchase for the FiveFingers footwear. Acceptable proof of purchase includes a cash register receipt, a credit card receipt or a credit card statement or other verifiable information that sufficiently indicates the purchase of the FiveFingers footwear. The objection must also contain the objector's name, address, telephone number and, if represented by counsel, the same information for his/her counsel (in any event, the objector's actual residential address must be included).

20. No later than fourteen (14) days from the deadline for filing objections to this Settlement Agreement as set forth in Section VI, Plaintiffs shall file an application for an award of Attorneys' Fees and Expenses in the Actions and a motion for final approval of the Settlement Agreement. Such application and motion shall be supplemented, if necessary, no later than 14 days before the Fairness Hearing.

21. No later than ten (10) business days after the entry of this Order Authorizing Notice, Vibram's Counsel shall provide the Notice Administrator with a list of all counsel for anyone who has litigation pending against Vibram that involves FiveFingers footwear and Vibram shall deposit the sum of three million, seven hundred and fifty thousand dollars (\$3,750,000.00) into Escrow to be held by the Escrow Agent.

22. All discovery and pretrial proceedings in this Litigation are stayed and suspended until further order of this Court.

23. Pending the final determination of the fairness, reasonableness, and adequacy of the settlement set forth in the Settlement Agreement, no Class Member, either directly, representatively, or in any other capacity, shall institute, commence, or prosecute against Vibram, its parents (including but not limited to Vibram SpA, and any intermediary and/or ultimate parents), officers, directors, employees, stockholders, agents, attorneys, administrators, successors, reorganized successors, spin-offs, assigns, holding companies, subsidiaries, affiliates, joint-ventures, partners, members, divisions predecessors, Vibram-owned U.S. Retailers, Vibram-owned Stores or www.vibramfivefingers.com (the “Released Parties”) any claim encompassed by the Release and Waiver set forth in the Settlement Agreement in any action or proceeding in any court or tribunal.

24. The Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event shall the Settlement Agreement, any of its provisions or any negotiations, statements or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Actions, any other action, or in any judicial, administrative, regulatory or other proceeding, except in a proceeding to enforce the Settlement Agreement or the rights of the Parties or their counsel. Without limiting the foregoing, neither the Settlement Agreement nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever

on the part of any person or entity, including, but not limited to, the Released Parties, Plaintiffs, or the Class or as a waiver by the Released Parties, Plaintiffs or the Class of any applicable privileges, claims or defenses.

25. In the event the Court does not grant final approval of the Settlement Agreement or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, the Parties shall be restored to their respective positions in the Actions, except that all scheduled litigation deadlines shall be reasonably extended so as to avoid prejudice to any Party. In such event, the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Actions or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

SO ORDERED.

DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE

LEGAL NOTICE

If You Purchased Certain Vibram FiveFingers Footwear, You May Be Entitled To Settlement Benefits

A Settlement has been proposed in class action lawsuits about certain models of Vibram FiveFingers footwear. Consumers who bought certain models of FiveFingers footwear in the United States may be entitled to a cash payment. The lawsuits, *Bezdek v. Vibram USA Inc.*, 2012-CV-10513-DPW (D. Mass.), *Safavi v. Vibram USA Inc.*, CV 12-5900-BRO-JCG (C.D. Cal.), and *De Falco v. Vibram USA Inc.*, 2013-CV-10764-DPW (D. Mass.), allege Defendants falsely advertised certain benefits associated with FiveFingers footwear. The Settlement is not an admission of wrongdoing. The Court has not decided who is right or wrong. Instead, the parties are resolving the dispute by agreement.

To submit a claim, visit **www.FiveFingersSettlement.com**.

Am I a Member of the Class?

You're a Class Member if you purchased eligible FiveFingers footwear in the United States from March 21, 2009 through [MONTH, DAY], 2014. For a list of eligible FiveFingers footwear, visit the website below.

What Does the Settlement Provide?

Each Class Member who submits a valid claim may receive a payment for the FiveFingers footwear purchased. The anticipated recovery is in the range of \$20 to \$50 per pair, which could increase (up to the approximate average retail price of \$94) or decrease depending on various factors, including the number of valid claims. Class Members may recover payment for up to two pairs of FiveFingers footwear by submitting a Claim Form under penalty of perjury, and for more than two pairs by submitting proof of purchase for each additional pair. Vibram has agreed to pay \$3.75 million USD to establish a Settlement Fund to pay the claims of Class Members, costs of notice and settlement administration, Court-approved awards of plaintiffs' attorneys' fees not to exceed 25% of the Settlement Fund (\$937,500) and expenses not to exceed \$70,000, and service awards not to exceed \$2,500 for each of the three named plaintiffs. The motion for attorneys' fees, costs, and service awards will be posted on the website after it is filed. Any amounts remaining in the Settlement Fund will be paid to non-profit organization(s).

What are My Options?

To ask for a payment and remain in the Class, you must mail, fax, or submit online a completed claim form by _____, 2014. If you do not wish to participate in the Settlement, you may exclude yourself from the Class by _____, 2014, or you may stay in the Class and object to the Settlement by _____, 2014. If you do nothing, you will be bound by the decisions of the Court if the settlement is approved. Visit the website below for important information about these options.

Hearing on the Proposed Settlement.

The Court will hold a Final Approval Hearing on _____, 2014 at ____ (a.m./p.m.), at the U.S. District Court, District of Massachusetts, 1 Courthouse Way, Boston, Massachusetts 02210, to determine whether the proposed Settlement is fair, reasonable, and adequate, and to approve attorneys' fees and expenses and any plaintiff service awards. You may, but do not have to, attend the hearing. The hearing date may be changed by the Court. Check the website below for updates.

For additional information, including the detailed notice and claim form, visit **www.FiveFingersSettlement.com** or call 1-800-xxx-xxxx.

SETTLEMENT CLAIM PROCEDURES AND CLAIM CALCULATION PROTOCOL

This Settlement Claim Procedures and Claim Calculation Protocol (the “Protocol”) are part of the Settlement Agreement (“Agreement”) and shall be used by the Class Action Settlement Administrator to review, address, implement, and process those Claims submitted pursuant to the Agreement and otherwise implement the terms of the Claim Process in the Agreement. All capitalized terms used in this Protocol shall have the same meaning given them in the Agreement.

1. Class Action Settlement Administrator’s Role and Duties

- (a) The Class Action Settlement Administrator shall be selected by the agreement of the Parties and recommended to and approved by the Court.
- (b) The Class Action Settlement Administrator must consent, in writing, to serve and shall abide by the obligations of the Agreement, this Protocol, and the Orders issued by the Court.
- (c) The Class Action Settlement Administrator shall coordinate with the Escrow Agent regarding the Escrowed Funds. However, the Class Action Settlement Administrator shall have no authority, under any circumstance, to withdraw or disburse any Escrowed Funds. Distribution of any Escrowed Funds shall occur only upon written instructions of Vibram’s Counsel and Lead Class Counsel.
- (d) The Class Action Settlement Administrator shall have access to information about the balance in the Escrowed Funds to perform calculations relating to: (i) the costs and expenses associated with disseminating the notice, including, but not limited to, the Class Notice and the Summary Settlement Notice, to the Class; (ii) the costs and expenses associated with claims administration; and (iii) timely, valid, and approved Claims submitted by Class Members pursuant to the Claim Process.
- (e) The Class Action Settlement Administrator warrants that it knows of no reason why it cannot fairly and impartially administer the Claim Process set forth in the Agreement. The Class Action Settlement Administrator shall not process the Claim of any Class Member if the Class Action Settlement Administrator, Vibram, and/or Lead Class Counsel determines there is a conflict of interest. If the Class Action Settlement Administrator, Vibram, or Lead 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 Class Action Settlement Administrator shall indemnify and defend the Parties and their counsel against any liability arising from the Class Action Settlement Administrator’s breach of this provision.
- (f) The Class Action Settlement 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 Claim Process.

- (g) The Class Action Settlement Administrator shall provide periodic updates to Lead Class Counsel and to Vibram regarding Claim Form submissions beginning not later than one week after the entry of an order granting Approval of Notice and continuing on a monthly basis thereafter.
- (h) As provided in Section III.A.2 of the Agreement, all payments, including (a) payments made to any Class Member or any representative Plaintiff, including any Court-approved Service Awards; (b) administrative/notice costs to the Class Action Settlement Administrator for (i) charges and invoices by the Class Action Settlement Administrator and Notice Administrator relating to this Settlement; (ii) the costs and expenses associated with disseminating the notice, including, but not limited to, the Class Notice and the Summary Settlement Notice, to the Class; (iii) the costs and expenses associated with the claims administration; (iv) the costs and expenses associated with the timely, valid, and approved Claim Forms submitted by Class Members pursuant to the Claim Process (collectively, the “Administrative Costs”); and (c) Plaintiffs’ Counsel’s Attorneys’ Fees and Expenses shall be paid exclusively from the Settlement Fund.
- (i) The Class Action Settlement Administrator shall take all reasonable efforts to administer the Claims efficiently and avoid unnecessary fees and expenses. The Class Action Settlement 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 Class Action Settlement Administrator shall provide a detailed written accounting of all fees and expenses on a monthly basis to Lead Class Counsel and Vibram’s Counsel, and shall respond promptly to inquiries by Lead Class Counsel and Vibram’s Counsel concerning fees and expenses.
- (j) The Parties are entitled to observe and monitor the performance of the Class Action Settlement Administrator to assure compliance with the Agreement and this Protocol. The Class Action Settlement Administrator shall promptly respond to all inquiries and requests for information made by Vibram, its counsel, or Lead Class Counsel.

2. **Locating, Obtaining, and Submitting Claim Forms**

- (a) The Claim Form, which is substantially similar to the form attached as Exhibit 1 to the Agreement, shall be available as part of the Class Notice, on the Internet website at www.fivefingerssettlement.com, or by contacting by telephone or by mail or by other similar delivery service, the Class Action Settlement Administrator and/or Notice Administrator. The Claim Form on the Internet website and the hard copy Claim Form shall be identical in content.

- (b) Class Members may submit a Claim to the Class Action Settlement Administrator during the Claim Period. As part of the Claim Process, Class Members shall be eligible for the relief provided in the Agreement, provided Class Members complete and timely submit the Claim Form to the Class Action Settlement Administrator within the Claim Period, subject to the terms herein and in the Agreement.
- (c) Claims may be submitted by completing the Claim Forms in hard copy by mail or by other similar delivery service or on-line through a web-based Claim Form at the Internet website, www.fivefingerssettlement.com.
- (d) The Class Action Settlement Administrator and/or Notice Administrator shall establish and maintain an Internet website, www.fivefingerssettlement.com, that shall be easily accessible through commonly used Internet Service Providers for the submission of claims. The Internet website shall be designed to permit Class Members to readily and easily submit Claims and obtain information about the Class Members' rights and options under the Agreement. The Internet website shall be maintained continuously until the end of the Claim Period. The Class Action Settlement 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.
- (e) The Class Action Settlement Administrator also shall establish a toll-free telephone number that will have recorded information answering frequently asked questions about certain terms of the Settlement, including, but not limited to, the Claim Process and instructions about how to request a Claim Form and/or Class Notice.

3. **Claim Form Review and Processing**

- (a) The Class Action Settlement Administrator shall begin the Claim Process so that it is completed within the time period specified in the Agreement. Except as provided in Paragraph 3(b)(iii) (below), Class Members must submit their Claims so that they are postmarked or submitted online no later than the end of the Claim Period.
- (b) The Class Action Settlement Administrator shall gather, review, prepare, and address the Claim Forms received pursuant to the Claim Process and the Agreement.

- (i) Claims that have been properly submitted shall be designated as Approved Claims. The Class Action Settlement Administrator shall examine the Claim Form before designating the Claim as an Approved Claim, to determine that the information on the Claim Form is reasonably complete. In determining whether a Claim Form is reasonably complete, the Class Action Settlement Administrator shall consider what an ordinary person would be able to complete on the Claim Form, and shall readily deem a Claim as an Approved Claim provided that a sufficient amount of money is available in the Escrowed Funds to pay all properly completed Claim Forms and all fees and costs that are permitted to be deducted from the Escrowed Funds pursuant to Section III.A.2 of the Agreement and sufficient information is provided on the Claim Form to enable the settlement payment to the Claimant.
- (ii) No Claimant may submit more than one Claim Form for each pair of FiveFingers footwear owned by the Claimant, and two or more Claimants may not submit Claim Forms for all or part of the same purchase. The Class Action Settlement Administrator shall identify any Claim Forms that appear to seek relief on behalf of the same Claimant (“Duplicative Claim Forms”). The Class Action Settlement Administrator shall determine whether there is any duplication of Claims, if necessary by contacting the Claimant(s) or their counsel. The Class Action Settlement Administrator shall designate any such Duplicative Claims as rejected Claims to the extent they allege the same damages or allege damages on behalf of the same Claimant.
- (iii) The Class Action Settlement Administrator shall, in its discretion or pursuant to the joint instructions of the Parties, decide whether to accept Claim Forms submitted after the Claim Period. In deciding whether to accept a late-submitted Claim Form, the Class Action Settlement Administrator shall take into account whether enough money exists in the Escrowed Funds to pay all valid and timely submitted claims in full, including, but not limited to, any adjustments made pursuant to Section III.C in the Agreement, and the length of time the Claim Form was submitted after the close of the Claim Period, including, but not limited to, whether the late-submitted Claim would delay the distribution of the Escrowed Funds to Claimants and the reason(s) for the late submission of the Claim Form. Whenever reasonably possible, if a Claim Form is valid but untimely, it shall be paid provided the Escrowed Funds are sufficient to pay in full all valid and timely submitted Claims and applicable fees and costs. In the event the Class Action Settlement Administrator determines that the late-submitted Claim Form is materially incomplete, but may be cured by the Claimant, the Class Action Settlement Administrator shall contact the Claimant to cure any deficiency with the late-submitted Claim Form, if reasonably practical and if the Parties agree.

- (iv) The Class Action Settlement Administrator shall exercise, in its discretion, any and all reasonable steps to prevent fraud and abuse in the Claim Process, including without limitation requesting additional support for any Claim the Class Action Settlement Administrator determines, in its discretion, to require such intervention. The Class Action Settlement Administrator may, in its discretion, deny in whole or in part any Claim to prevent actual or possible fraud or abuse.
 - (v) By agreement of the Parties, the Parties can instruct the Class Action Settlement Administrator to take whatever steps they deem appropriate to preserve the Escrowed Funds to further the purposes of the Agreement if the Class Action Settlement Administrator identifies actual or possible fraud or abuse relating to the submission of Claims, including, but not limited to, denying in whole or in part any Claim to prevent actual or possible fraud or abuse.
- (c) The Class Action Settlement Administrator shall provide periodic reports to Lead Class Counsel and Vibram's Counsel regarding the implementation of the Agreement and this Protocol.
 - (i) For those claims where a Class Member files a Claim Form for more than two pairs of FiveFingers footwear, the Class Action Settlement Administrator may review timely submitted Claim Forms and approve or contest any of the Claims, including, but not limited to, requesting that the Class Member submit a receipt demonstrating purchase of the FiveFingers footwear during the Class Period. Failure to timely or fully respond to a deficiency letter from the Class Action Settlement Administrator may result in a reduction or denial of the Class Member's Claim, unless Vibram's Counsel or Lead Class Counsel otherwise agree.
 - (ii) If a Claim Form is not contested, that Claim shall be processed for payment by the Class Action Settlement Administrator. If a Claim Form is contested, including but not limited to, requesting supporting documentation, the Class Action Settlement Administrator shall promptly notify the Parties and mail a letter that advises the Claimant of the reason(s) why the Claim Form was contested and request, if applicable, any and all additional information and/or documentation, to validate the Claim and have it submitted for payment. The additional information and/or documentation can include, for example, receipts evidencing purchase of the FiveFingers footwear and/or the payment amount. The Claimant shall have thirty-five (35) days from the date of the postmarked letter sent by the Class Action Settlement Administrator to respond to the request from the Class Action Settlement Administrator and the Claimant shall be so advised.
 - (A) In the event the Claimant timely provides the requested information and/or documentation, the Claim shall be deemed

validated and shall be processed by the Class Action Settlement Administrator for payment.

- (B) In the event the Claimant does not timely and completely provide the requested information and/or documentation, the Class Action Settlement Administrator shall send the Claimant a letter stating that the Claim has been reduced or denied unless Vibram's Counsel and Lead Class Counsel otherwise agree.
- (d) The Class Action Settlement Administrator's reduction or denial of a Claim pursuant to paragraph 3(c)(ii) above is final and may not be appealed by the Claimant, Lead Class Counsel, Vibram, or Vibram's Counsel. However, if a Claimant's Claim is reduced or denied because the Class Action Settlement Administrator determined that the documentation submitted to support Claimant's Claim was not sufficient to prove the Claim, the Class Action Settlement Administrator shall provide a report to Lead Class Counsel and Vibram's Counsel who shall meet and confer in an attempt to resolve these deficient Claims. If Lead Class Counsel reasonably recommends payment of the Claim or payment of a reduced claim amount and Vibram agrees (and Vibram's agreement shall not be unreasonably withheld), then Lead Class Counsel shall instruct the Class Action Settlement Administrator to pay those Claims. Lead Class Counsel may petition the Court in the event Vibram's agreement is unreasonably withheld.
- (e) The Class Action Settlement Administrator shall provide all information gathered in investigating Claims, including, but not limited to, copies of all correspondence and email and all notes of the Class Action Settlement Administrator, the decision reached, and all reasons supporting the decision, if requested by Lead Class Counsel or Vibram's Counsel.

4. **Claim Calculation and Payment of Valid Claims**

- (a) As specified in Section III of the Agreement the relief to be provided to eligible Class Members for each pair of FiveFingers footwear purchased by an eligible Class Member shall be paid on a pro rata basis from the balance of the Settlement Fund after payment of Administrative Costs, necessary taxes and expenses, Attorneys' Fees and Expenses, and Service Awards, up to a maximum of \$94.00 per pair, the average manufacturer's suggested retail price of FiveFingers footwear.

- (b) The Class Action Settlement Administrator shall pay timely, valid, and approved Claims commencing ten (10) days after the close of the Claim Period so long as this period is after the Final Settlement Date, or sooner upon Vibram's Counsel and Lead Class Counsel's joint direction, but not before the issuance of the Court's Final Order and Final Judgment approving the Settlement. In the event the Final Settlement Date falls after the close of the Claim Period, then the Class Action Settlement Administrator shall begin to pay timely, valid, and approved Claims commencing ten (10) days after the Final Settlement Date. The Class Action Settlement Administrator shall have completed the payment to Class Members who have submitted timely, valid and approved Claims pursuant to the Claim Process no later than one hundred twenty (120) days after either the Final Settlement Date or the close of the Claim Period, whichever is later.
- (c) Adjustments and Remaining Funds
 - (i) If the total of the timely, valid, and approved Claims submitted by Class Members exceeds the available relief, minus any fees and costs set forth in the Agreement, each eligible Class Member's award shall be reduced on a pro rata basis.
 - (ii) If the total of the timely, valid, and approved claims submitted by Class Members is less than the available relief, minus any fees and costs set forth in the Agreement, each eligible Class Member's award shall be increased on a pro rata basis, with a maximum increase of up to, but not more than, the maximum amount stated in the chart in Paragraph 4(a) above, not including any applicable sales taxes.
 - (iii) If there are any funds remaining from the Claim Process, including, but not limited to, uncashed distributions made payable to eligible Class Members, any remaining funds shall be distributed to the American Heart Association in accordance with the terms set forth in the Agreement or such other beneficiary as the Parties and the Court shall agree at the time of the Final Judgment and Final Order. Such funds will not be returned to Vibram.

Vibram Settlement Administrator
c/o Heffler Claims Group
P.O. Box XXXXX
Philadelphia, PA 19102-XXXX

NOTICE OF PROPOSED
CLASS ACTION SETTLEMENT WITH
VIBRAM USA, INC. CONCERNING
VIBRAM FIVEFINGERS FOOTWEAR

THE BACK OF THIS CARD CONTAINS
IMPORTANT INFORMATION
INCLUDING A WEBSITE, TELEPHONE
NUMBER, AND ADDRESS WHERE YOU
CAN OBTAIN MORE INFORMATION
ABOUT SUBMITTING A CLAIM FORM

THIS NOTICE MAY AFFECT
YOUR LEGAL RIGHTS.
PLEASE READ IT CAREFULLY.

LEGAL NOTICE

If You Purchased Certain Vibram FiveFingers Footwear, You May Be Entitled To Settlement Benefits

A Settlement has been proposed in class action lawsuits about certain models of Vibram FiveFingers footwear. Consumers who bought certain models of FiveFingers footwear may be entitled to a cash payment. The lawsuits, *Bezdek v. Vibram USA Inc.*, 3:11-cv-973-W-KSC (D. Mass.), *Safavi v. Vibram USA Inc.*, CV 12-5900-BRO-JCG (C.D. Cal.), and *De Falco v. Vibram USA Inc.*, 1:12-CV-07238 (D. Mass.), allege Defendants falsely advertised certain benefits associated with FiveFingers footwear. The Settlement is not an admission of wrongdoing. The Court has not decided who is right or wrong. Instead, the parties are resolving the dispute by agreement.

To submit a claim, visit www.FiveFingersSettlement.com.

Am I a Member of the Class?

You're a Class Member if you purchased eligible FiveFingers footwear in the United States from March 21, 2009 through [MONTH, DAY], 2014. For a list of eligible FiveFingers footwear, visit the website below.

What Does the Settlement Provide?

Each Class Member who submits a valid claim may receive a payment for the FiveFingers footwear purchased. The anticipated recovery is in the range of \$20 to \$50 per pair, which could increase (up to the approximate average retail price of \$94) or decrease depending on various factors, including the number of valid claims. Class Members may recover payment for up to two pairs of FiveFingers footwear by submitting a Claim Form under penalty of perjury, and for more than two pairs by submitting proof of purchase for each additional pair. Vibram has agreed to pay \$3.75 million USD to establish a Settlement Fund to pay the claims of Class Members, costs of notice and settlement administration, Court-approved awards of plaintiffs'

attorneys' fees not to exceed 25% of the Settlement Fund (\$937,500) and expenses not to exceed \$70,000, and service awards not to exceed \$2,500 for each of the three named plaintiffs. The motion for attorneys' fees, costs, and service awards will be posted on the website after it is filed. Any amounts remaining in the Settlement Fund will be paid to non-profit organization(s).

What are My Options?

To ask for a payment and remain in the Class, you must mail, fax, or submit online a completed claim form by _____, 2014. If you do not wish to participate in the Settlement, you may exclude yourself from the Class by _____, 2014, or you may stay in the Class and object to the Settlement by _____, 2014. If you do nothing, you will be bound by the decisions of the Court if the settlement is approved. Visit the website below for important information about these options.

Hearing on the Proposed Settlement.

The Court will hold a Final Approval Hearing on _____, 2014 at _____ (a.m./p.m.), at the U.S. District Court, District of Massachusetts, 1 Courthouse Way, Boston, Massachusetts 02210, to determine whether the proposed Settlement is fair, reasonable, and adequate, and to approve attorneys' fees and expenses and any plaintiff service awards. You may, but do not have to, attend the hearing. The hearing date may be changed by the Court. Check the website below for updates.

For additional information, including the detailed notice and claim form, visit www.FiveFingersSettlement.com or call 1-800-xxx-xxxx.

1-000-000-0000

www.FiveFingersSettlement.com

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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17
18 ALI SAFAVI, on behalf of Himself,
All Others Similarly Situated and the
19 General Public,,
20

Plaintiff,
21

v.
22

VIBRAM USA INC. and VIBRAM
FIVEFINGERS LLC,
23

Defendant.
24
25
26
27
28

Case No. CV12-5900-ABC (JCGx)

Assigned for all purposes to
Honorable Audrey B. Collins

**STIPULATION OF DISMISSAL
OF ENTIRE ACTION WITH
PREJUDICE**

1 IT IS HEREBY STIPULATED AND AGREED that pursuant to Rule
2 41(a)(1) of the Federal Rules of Civil Procedure all claims for relief and causes of
3 action in the above-entitled action be dismissed with prejudice, with each party to
4 bear its own costs.

5 IT IS FURTHER STIPULATED AND AGREED that an Order approving
6 this Stipulation may be entered.
7

8 Dated: May __, 2014
9

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP

10
11 By: _____
12 Janine Pollack

13 Attorneys for Plaintiff
14 ALI SAFAVI

15 Dated: May __, 2014
16

JONES DAY

17 By: _____
18 Christopher Lovrien

19 Attorneys for Defendants
20 VIBRAM USA INC. AND VIBRAM
21 FIVEFINGERS
22
23
24
25
26
27
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If you bought Vibram FiveFingers® Footwear you may benefit from a class action settlement.

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If you bought Vibram FiveFingers® Footwear you may benefit from a class action settlement.

If you bought certain models of Vibram® FiveFingers® Footwear you may be entitled to receive a benefit from a class action settlement.

Prepared by HF Media LLC



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