

Edwin Aiwazian (SBN 232943)  
Arby Aiwazian (SBN 269827)  
**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203  
Telephone (818) 265-1020  
Facsimile (818) 265-1021

Kevin Shenkman (SBN 223315)  
Mary Hughes (SBN 222662)  
**SHENKMAN & HUGHES**  
28905 Wight Road  
Malibu, California 90265  
Telephone (310) 457-0970

*Attorneys for Plaintiff*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

KRIKOR "GREGORY" NALBANTIAN, ) Case No. BC493145  
individually, and on behalf of other )  
members of the general public similarly ) **CLASS ACTION**  
situated, )

Plaintiff,

vs.

BARNEY'S WORLDWIDE, INC., a )  
California corporation; and DOES 1 )  
through 100, inclusive, )

Defendant.

**STIPULATION OF CLASS ACTION  
SETTLEMENT**

1 This Stipulation of Class Action Settlement (hereinafter "Settlement Agreement") is  
2 made and entered into by and between Plaintiff KRIKOR "GREGORY" NALBANTIAN  
3 ("Plaintiff"), individually and on behalf of other members of the general public similarly  
4 situated, and Defendant BARNEY'S WORLDWIDE, INC. ("Defendant"), subject to the terms  
5 and conditions herein and final approval by the above-entitled Court. Plaintiff and Defendant are  
6 collectively referred to herein as the "Parties."

7 **PROCEDURAL HISTORY AND BACKGROUND FACTS**

8 1. On October 3, 2012, Plaintiff filed the above-entitled class action complaint on  
9 behalf of himself and all other members of the general public similarly situated against  
10 Defendant (the "Action") alleging false advertising and unfair business practices in violation of  
11 California Business and Professions Code §§ 17500 *et seq.* and §§ 17200 *et seq.* Plaintiff also  
12 alleged that Defendant's actions constitute fraud, intentional misrepresentation, negligent  
13 misrepresentation, and violations of the Consumer Legal Remedies Act.

14 2. Plaintiff alleged that "Kobe" beef is only available from Japan, and that the term  
15 "Kobe" signifies that beef comes from the "Wagyu" bloodline of cattle which are isolated in the  
16 Kobe region of Japan and that the beef comes from cattle slaughtered within the Kobe region of  
17 Japan. Plaintiff further alleged that the United States Department of Agriculture has banned  
18 importation of beef and cattle from Japan since approximately May 2010. Plaintiff further  
19 alleged that the menu items at Defendant's Barney's Worldwide, Inc.'s restaurants that purport  
20 to contain "Kobe" beef do not actually contain "Kobe" beef. Plaintiff further alleged that  
21 Defendant's in store and online menu items have misled consumers into believing that their  
22 menu items which purport to contain "Kobe" beef offered at Barney's Worldwide, Inc.'s  
23 restaurants do in fact contain "Kobe" beef.

24 3. Defendant denied and continues to deny all of Plaintiff's allegations, and further  
25 denies that the Action is appropriate for class treatment for any purpose other than this  
26 settlement. Defendant contends that it has complied at all times with the California Business &  
27 Professions Code and Consumer Legal Remedies Act sections at issue. Defendant has  
28

1 concluded, however, that further litigation of the Action would be protracted and expensive and,  
2 therefore, acknowledges that certification of a settlement class is appropriate.

3 4. By entering into this Settlement Agreement, including without limitation  
4 stipulating to Court approval of it and a class settlement, Defendant does not admit and shall not  
5 be deemed to have admitted any violation of or right to remedies or relief under the California  
6 Unfair Competition Law (Cal. Bus. and Prof. Code §§ 17200 *et seq.*), California False  
7 Advertising Act (Cal. Bus. and Prof. Code §§ 17500 *et seq.*), the Consumer Legal Remedies  
8 Act, or any of Plaintiff's other causes of action. Nothing in this Settlement Agreement shall  
9 be construed as an admission by Defendant of any fact, issue of law or violation of law, nor shall  
10 Defendant's compliance with the terms of this Settlement Agreement constitute or be construed  
11 as an admission of any fact, issue of law or violation of law. This Settlement Agreement is a  
12 settlement document and shall be governed by California Evidence Code Sections 1152 and  
13 1154.

14 5. On April 8, 2013, the Parties participated in a full-day of private mediation before  
15 Hon. Carl J. West (Ret.) of JAMS. At the conclusion of the mediation, Judge West prepared a  
16 mediator's proposal, the Parties continued their settlement discussions for several weeks  
17 following the mediation, and the Parties ultimately agreed upon the proposed settlement  
18 described herein.

19 6. Plaintiff and his counsel have diligently pursued an investigation of Plaintiff's and  
20 the putative class members' claims against Defendant and have conducted a thorough  
21 investigation into the facts of the Action, including a review and verification of sales data and  
22 other facts and information provided by Defendant. Class Counsel have also investigated the  
23 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and  
24 potential defenses thereto, and the damages claimed by Plaintiff. Based on their own  
25 independent investigation and evaluation, Plaintiff and Class Counsel are of the opinion that the  
26 settlement with Defendant for the consideration and on the terms set forth in this Settlement  
27 Agreement is fair, reasonable and adequate, and is in the best interest of the class in light of all  
28 known facts and circumstances, including the risks and delay associated with continued

1 litigation, the risks associated with a motion for class certification, the defenses asserted by  
2 Defendant and numerous potential appellate issues.

3 7. Plaintiff had the benefit of experienced counsel in evaluating the reasonableness  
4 of this Settlement, had sufficient time and opportunity to conduct discovery into the merits of  
5 the claims and allegations, and relies on nothing other than his own judgment and that of his  
6 counsel (and not any representation by Defendant) in reaching the conclusion that the  
7 Settlement set forth herein is fair, reasonable, adequate and in the best interests of the Class  
8 Members.

9 8. Defendant also considers it desirable to resolve the Action on the terms stated  
10 herein in order to avoid further expense, inconvenience, and interference with ongoing business  
11 operations, and to dispose of this litigation and the potential liability this litigation represents,  
12 and thus has determined that settlement of the Action on the terms set forth herein is in its best  
13 interest.

14 9. It is the desire of the Parties to fully, finally, and forever settle, compromise, and  
15 discharge all disputes and causes of action raised in the Action.

16 **NOW, THEREFORE**, in consideration of the mutual promises contained herein, and  
17 other good and valuable consideration, the sufficiency of which is hereby acknowledged, it is  
18 hereby stipulated and agreed, by and between the Parties, by and through their respective  
19 undersigned counsel, that the Action shall be fully, finally and forever resolved, discharged,  
20 settled and compromised, subject to Court approval, in the manner and upon the terms and  
21 conditions hereafter set forth:

22 **PRELIMINARY TERMS AND DEFINITIONS**

23 10. "Class Counsel" is Edwin Aiwazian and Arby Aiwazian of Lawyers for Justice,  
24 PC, and Kevin Shenkman and Mary Ruth Hughes of Shenkman & Hughes.

25 11. Subject to Court approval, the Parties have agreed to the appointment of Kurtzman  
26 Carson Consultants ("KCC") to perform the duties of the "Settlement Administrator."

27 ///

28 ///

12. "Subject Food Product" shall mean all menu items at Defendant's restaurants advertised as "Kobe" beef or represented to be "Kobe" beef on the restaurant or on-line menus as identified in Paragraphs 1 and 4 of Plaintiff's Complaint.

13. "Class Period" shall mean October 3, 2008 to the date of preliminary approval.

14. "Class Members" shall mean all California based consumers who were exposed to Defendant's online and/or in store menus, and who purchased a Subject Food Product (or any menu item that was advertised to contain "Kobe" beef on Defendant's online and/or in store menus) at or from a Defendant's restaurant located in the State of California at any time during the Class Period.

15. "BARNEY'S" shall mean Defendant BARNEY'S WORLDWIDE, INC.

16. "Opt-Out Deadline" shall mean forty-five (45) calendar days after the date Defendant commences giving notice to the Settlement Class pursuant to Paragraph 44, below.

17. "Settlement" shall refer to the settlement between Defendant and Plaintiff memorialized in this Settlement Agreement.

**CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

18. Pursuant to California Rules of Court, Rule 3.769, for settlement purposes only, the Parties agree that there shall be a certified "Settlement Class," defined as follows:

All California based consumers who were exposed to Defendant's online and/or in store menus, and who purchased the Subject Food Product at or from a Barney's Worldwide, Inc. owned, managed and/or operated restaurant located in the State of California at any time during the period of four years preceding the filing of this Complaint to final judgment.

19. The Parties agree that the class described herein may be certified and that any motion for preliminary approval seeking, *inter alia*, certification of a class is for purposes of the Settlement only. If for any reason the Settlement is not approved, the certification will have no force or effect and will be immediately revoked. The Parties further agree that certification for purposes of the Settlement is in no way an admission that class certification is proper under the more stringent standard applied for litigation

1 and that evidence of this limited stipulation for settlement purposes only will not be  
2 admissible in this or any other proceeding.

3 20. The Settlement is contingent upon the final approval and certification by  
4 the Court of the Settlement Class for settlement purposes only. Defendant does not  
5 waive, and expressly reserves, its right to challenge the propriety of class certification for  
6 any purpose should the Court not approve this Settlement Agreement and certify the  
7 Settlement Class. Plaintiff does not waive, and expressly reserves, his right to move for  
8 class certification should the Court not approve this Settlement Agreement and certify the  
9 Settlement Class.

10 **TERMS OF SETTLEMENT**

11 21. Following notice of the Action, and without admitting any liability or  
12 fault, Defendant shall forebear from using the term "Kobe beef" on BARNEY'S menus,  
13 and will refer to Subject Food Products in a manner reasonably certain to communicate to  
14 consumers that the beef does not originate from Japan, or will refrain from describing its  
15 menu items as including "Kobe" beef without the qualifier "American." If, however,  
16 BARNEY'S sells "Kobe" beef that originates in Japan in the future, BARNEY'S may  
17 describe such food product as "Kobe" beef without the "American" qualifier.

18 22. Subject to Court approval, and the provisions of this Agreement,  
19 BARNEY'S shall make available up to a maximum of two hundred and twenty thousand  
20 U.S. dollars and no cents (\$220,000.00) on a claims-made basis subject to a guaranteed  
21 floor (the "Gross Settlement Value" or "GSV") to be paid in consideration for the  
22 settlement, administrative closure of the Action, and the related release of claims  
23 pursuant to Paragraphs 49 and 50 by the members of the Settlement Class who do not  
24 timely opt-out of the settlement. For avoidance of doubt, the Gross Settlement Value is  
25 the maximum amount that BARNEY'S shall be required to pay for the settlement of the  
26 Action.

27 23. No portion of the GSV shall be disbursed or distributed until after the  
28 conditions stated in Paragraph 53 have occurred.

1           24.     The Gross Settlement Value is the maximum amount that BARNEY'S  
2 shall be required to pay for the settlement of the Action. The GSV will cover  
3 compensation to the Settlement Class, compensation to the Plaintiff as class  
4 representative, the cost of claims administration and notice, and attorneys' fees and  
5 reimbursement of litigation costs and expenses to Class Counsel as set forth below.

6           25.     The GSV shall be allocated as follows:

7               a.     First, to any attorneys' fees of Class Counsel, as may be awarded  
8 by the Court pursuant to Paragraph 28 of this Agreement, and which shall be  
9 capped at 35% of the GSV

10              b.     Second, to any reasonable and necessary attorney's costs and  
11 expenses of Class Counsel which shall be capped at \$10,000, as may be awarded  
12 by the Court pursuant to Paragraph 30 of this Agreement.

13              c.     Third, to any Incentive Award not to exceed \$5,000, as may be  
14 awarded by the Court pursuant to Paragraph 32 of this Agreement.

15              d.     Fourth, to the costs and expenses incurred by, or fees imposed by,  
16 the Claims Administrator in performing its duties under this Agreement, which  
17 shall be capped at an agreed-upon amount of \$10,000 pursuant to Paragraph 33 of  
18 this Agreement.

19              e.     Fifth, to the "Net Settlement Value" ("NSV"). The NSV shall be  
20 defined as the maximum possible value of the GSV less the items described in  
21 Paragraphs 25(a)–(d). The NSV shall be made available to the Settlement Class  
22 as follows:

23                   (i) Each Class Member who timely submits a valid claim form without any  
24 documentary evidence of proof of his/her purchase of a menu item from  
25 Defendant (a receipt, credit card statement, or other document(s) deemed  
26 sufficiently reliable by the Settlement Administrator, in the Settlement  
27 Administrator's sole discretion) shall receive \$10 in the form of a gift card to  
28 Barney's Beanery restaurant from the NSV;

(ii) Each Class Member who timely submits a valid claim form with documentary evidence of proof of his/her purchase of a menu item from Defendant (a receipt, credit card statement, or other document(s) deemed sufficiently reliable by the Settlement Administrator, in the Settlement Administrator's sole discretion) shall receive \$15 in the form of a gift card to Barney's Beanery restaurant from the NSV;

(iii) Notwithstanding 25(e)(i) and 25(e)(ii), in the event that the total claims exceed the NSV, the amount distributed to each Class Member who submits a valid claim form shall be reduced proportionally, with the full amount of the NSV being distributed to those Class Members;

(iv) The gift cards described above to be distributed to the class members pursuant to 25(e)(i) and 25(e)(ii) shall be usable at all Barney's Beanery restaurants, and shall comply in all respects with California's gift certificate law – California Civil Code Section 1749.45 et seq.

26. The Settling Parties intend that at least forty percent (40%) of the NSV (the "Guaranteed Floor") shall be distributed as set out herein. If the aggregate number resulting from the calculation in paragraph 25 applied across all members of the Settlement Class who file a timely and complete Claim Form (the "Total Claimed Amount") does not equal or exceed the Guaranteed Floor, BARNEY'S agrees that the difference between the amount paid out to class members and the Guaranteed Floor shall be subject to a cy pres distribution to an appropriate charity chosen by Class Counsel.

27. Upon entry of the Court's order finally approving this Settlement, the Court shall enter a judgment approving class action settlement, in a form substantially similar to the one attached hereto as Exhibit "A," so as to permanently bar Plaintiff and the Settlement Class and each of its members, other than those who timely opt-out, from prosecuting the claims released herein against Defendant and/or others released herein.

///

///



**ATTORNEYS' FEES AND COSTS**

28. Subject to Court approval, Defendant agrees to pay the total amount of 35% of the Gross Settlement Value ("GSV") to Class Counsel for all attorneys' fees relating to the Settlement and Court approval thereof, and any appeals thereon. Defendant will not object to Class Counsel's request for preliminary and final approval of an award of attorneys' fees, expenses and court costs in the amount of 35% of the GSV.

29. Class Counsel agrees and stipulates that they will not request attorneys' fees in an amount greater than 35% of the GSV. In the event the Court awards Class Counsel an amount greater than 35% of the GSV, Class Counsel agree and stipulate that they will accept the amount of 35% of the GSV as full and complete satisfaction of and compliance with any such order and award.

30. Defendant agrees to pay the total amount of costs incurred by Class Counsel, not to exceed \$10,000, out of the GSV to Class Counsel for all reasonable and necessary expenses and court costs incurred in this Action (other than costs of the Settlement Administrator).

31. Class Counsel agrees and stipulates that they will not request compensation for expenses and court costs in an amount greater than \$10,000 out of the GSV. In the event the Court awards Class Counsel an amount greater than \$10,000, Class Counsel agree and stipulate that they will accept the amount of \$10,000 as full and complete satisfaction of and compliance with any such order and award.

32. Class Counsel agrees and stipulates that they will not request a named-plaintiff incentive award in an amount greater than \$5,000. Defendant will not object to any request for an incentive award in an amount not greater than \$5,000. Defendant agrees to pay the incentive award, in addition to the other items contemplated in this Settlement Agreement. In the event that the Court awards Plaintiff an amount greater than \$5,000, then Plaintiff agrees that he will accept the amount of \$5,000 as full and complete satisfaction and compliance with any such order and award.

///

33. Defendant agrees to pay the Settlement Administrator all costs associated with administering the proposed Settlement, not to exceed ten thousand dollars (\$10,000). Any costs or fees associated with administering this Settlement in excess of \$10,000 shall be paid by Plaintiff or Class Counsel.

34. Defendant shall provide to the Settlement Administrator all gift cards to be distributed pursuant to paragraph 25 and pay to the Settlement Administrator 35% of the GSV (or any lesser amount if so awarded by the Court) in attorneys' fees, up to \$10,000 in expenses and court costs, up to \$10,000 in costs associated with administering the proposed Settlement, and the named-plaintiff incentive award of \$5,000 (or any lesser amount if so awarded by the Court), no later than sixty (60) calendar days from the date the Court enters the order granting final approval of the proposed settlement herein and awarding attorneys' fees, expenses and court costs to Class Counsel and a named-plaintiff incentive award to Plaintiff. The Settlement Administrator shall thereafter pay 35% of the GSV (or any lesser amount if so awarded by the Court) to Lawyers for Justice, PC and Shenkman & Hughes according to the fee splitting agreement entered into by the lawyers of each firm and consented to by Plaintiff, and the \$5,000 (or any lesser amount if so awarded by the Court) to Plaintiff, no later than ten (10) calendar days after the Settlement Agreement becomes final and effective upon occurrence of all of the events set forth in Paragraph 53.

36. Plaintiff and Class Counsel understand and agree that neither Defendant nor Defendant's counsel are providing any tax or legal advice, and that they make no representations regarding tax obligations or consequences, if any, related to this Settlement Agreement.

37. Plaintiff and Class Counsel agree that they shall be exclusively responsible for the payment of any applicable federal and state taxes which may be due as the result of the consideration paid under this Settlement, and they shall not seek any indemnification or contribution from Defendant in that regard. Class Counsel shall provide Defendant with a W-9 form in order to process the above-referenced payment.

**SETTLEMENT ADMINISTRATOR**

38. All proceedings with respect to the administration of the Settlement shall be subject to the exclusive jurisdiction of this Court.

**DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

39. Promptly after execution of this Settlement Agreement, Plaintiff shall move the Court for preliminary approval of this Settlement and entry of an order scheduling a fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable and adequate as to the Class Members. Plaintiff shall submit this Settlement Agreement in support of the motion for preliminary approval of the Settlement. Defendant shall thereafter file a Notice of Non-Opposition (or similarly-captioned pleading).

40. Promptly following preliminary approval of this Settlement, Defendant shall cooperate with Settlement Administrator to ensure that notice is provided to the Class Members in the manner provided for in this Settlement Agreement.

41. In connection with the hearing on final approval of the Settlement provided for in this Settlement Agreement, Plaintiff through Class Counsel, will submit a proposed final order at least ten (10) days prior to the scheduled date of the hearing on final approval:

a. approving the settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

b. approving Class Counsel's application for an award of attorneys' fees and reimbursement of documented litigation costs and expenses, the Plaintiff's incentive award, and the costs of administering the settlement; and;

c. entering Judgment in conformance with the Settlement Agreement and permanently barring all Class Members from prosecuting any Released Claims against any of the Released Parties.

1           42.     Class Counsel will file an application for attorneys' fees and  
2 reimbursement of costs and expenses at least ten (10) calendar days prior to the scheduled  
3 date of the hearing on final approval.

4           43.     The Parties each expressly waive any right to appeal they may have in  
5 connection with any ruling of the Court in connection with the Action and settlement of  
6 it; except that Plaintiff and/or Class Counsel may appeal any reduction in the award of  
7 attorneys' fees and costs; and the Parties may jointly agree to appeal any ruling  
8 notwithstanding this waiver.

9                               **NOTICE TO THE CLASS MEMBERS**

10           44.     For a period of ninety (90) calendar days, commencing no later than  
11 fourteen (14) calendar days after the date the Court enters the order granting preliminary  
12 approval of the proposed settlement herein, a short form notice, in the form attached  
13 hereto as Exhibit "B" (actual size of notice) and approved by the Court, shall be posted in  
14 a manner readily viewable by the public at the host/hostess station at all BARNEY'S  
15 California restaurants generally notifying customers that a class action lawsuit involving  
16 the Subject Food Product was filed and has been conditionally settled without admission  
17 of liability. In addition, Defendant shall provide a notice in a form substantially similar  
18 to Exhibit "B" in its main dining area and bar area at all BARNEY'S California  
19 restaurants. All notices will direct customers to a website URL maintained by the  
20 Settlement Administrator, which will provide customers with additional information  
21 about the lawsuit and Notice of Proposed Class Action Settlement, a copy of which is  
22 attached hereto as Exhibit "D." Said website shall remain active and viewable for a  
23 period of one hundred and twenty (120) calendar days, commencing no later than  
24 fourteen (14) calendar days after the date the Court signs the order granting preliminary  
25 approval of the proposed Settlement herein. Said website will provide, free of charge,  
26 viewable, printable, and downloadable copies of the Settlement Agreement, Preliminary  
27 Approval Order, Claim Forms, and the Notice of Proposed Class Action Settlement.  
28

Counsel for Defendant agrees to notify Class Counsel and the Settlement Administrator, in writing, of the start date of both of these forms of notice.

#### **OPT-OUT PROCEDURE**

45. Class Members have a right to opt-out of the Settlement. To opt-out, the Class Member must complete and submit an opt-out form made available on the settlement website, on or before the Opt-Out Deadline. This form shall require the Class Member to (a) provide his or her full name and address, (b) attest that he/she purchased a menu item purporting to include Kobe beef at a BARNEY'S restaurant in the State of California on a date between October 3, 2008 to the date of preliminary approval, and (c) check a box stating that they wish to opt-out of the Settlement. Class Members who opt-out must send their opt out form via U.S. Mail to the Settlement Administrator at the physical address provided on the Settlement Administrator's website. Requests to opt-out that do not include all required information, or that are not submitted on a timely basis, will be deemed null, void and ineffective. Class Members who submit valid and timely requests to opt-out of the Settlement will not participate in the Settlement, nor will they be bound by the terms of the Settlement, if it is approved. The timeliness of requests to opt-out submitted by mail will be determined by valid postmark.

46. The Settlement Administrator will provide to the Parties, at least seven (7) calendar days prior to the deadline for filing a motion for final approval (based on the date set by the Court for the final approval hearing), a report listing the amount of all valid Claim Forms and Opt-Out Notices that have been submitted. The Settlement Administrator shall deposit the Total Distribution Amount from Defendant in a non-interest-bearing distribution account immediately upon receipt of the fund transfer from Defendant. The Claims Administrator shall pay out the Total Distribution Amount – by mailing Member Payments via first-class mail to members of the Settlement Class who filed a timely Claim Form – within five (5) calendar days of receipt of the Total Distribution Amount, but not until after the conditions stated in Paragraph 53 have occurred.

1           47. Defendant may choose to void the Settlement if five hundred (500) Class  
2 Members timely and validly opt-out of the Settlement. If Defendant wishes to void this  
3 Settlement Agreement pursuant to this paragraph, Defendant must do so by delivering  
4 written notice to Class Counsel and the Settlement Administrator at least twenty (20)  
5 court days prior to the Final Approval Hearing.

6                           **OBJECTIONS TO THE PROPOSED SETTLEMENT**

7           48. Class Members have a right to object to the Settlement if they do not opt-  
8 out of the proposed Settlement. Class Members who object to the Settlement will still be  
9 bound by the terms of the Settlement. To object, Class Members must complete and  
10 submit an objection form available on the settlement website, on or before the Opt-Out  
11 Deadline. This form shall require the Class Member to provide his or her full name,  
12 address, and check a box stating that they object to the Settlement. Class Members who  
13 object to the Settlement must also send to the Settlement Administrator via U.S. Mail at  
14 the address provided on said website a copy of their Claim Form signed under penalty of  
15 perjury, evidencing their purchase of a Subject Food Product from one of BARNEY'S  
16 restaurants in California during the Class Period.

17                           **RELEASE OF CLAIMS BY THE SETTLEMENT CLASS**

18           49. Upon the final approval by the Court of this Settlement Agreement and the  
19 class action settlement, and except as to such rights or claims as may be created by this  
20 Settlement Agreement, Plaintiff, the Settlement Class, and each Class Member (other  
21 than those who timely opt-out), including their respective successors, assigns, legatees,  
22 heirs, and personal representatives, fully, finally, and forever release and discharge  
23 Defendant, including its respective parents, subsidiaries, sister corporations and affiliates,  
24 owners, officers, directors, employees, agents, representatives, attorneys, insurers,  
25 successors, assigns, and all persons acting by, through, under or in concert with them, or  
26 any of them ("Released Parties"), from any and all claims, debts, liabilities, demands,  
27 obligations, penalties, guarantees, costs, expenses, attorneys' fees, damages, actions or  
28

1 causes of action of whatever kind or nature, which were alleged, or which could have  
2 been alleged based on the facts and claims alleged, in the Action.

3 50. In addition to the release given in Paragraph 49, above, upon the final  
4 approval by the Court of this Settlement Agreement and the class action settlement, and  
5 except as to such rights or claims as may be created by this Settlement Agreement,  
6 Plaintiff, on behalf of himself and his successors, assigns, legatees, heirs, and personal  
7 representatives, does hereby completely release and forever discharge Defendant and the  
8 Released Parties from any and all claims, rights, demands, actions, obligations, liabilities,  
9 indebtedness, and causes of action, of any and every kind, nature and character  
10 whatsoever, whether known or unknown, which Plaintiff may now have or has ever had  
11 against Defendant and/or the Released Parties.

12 51. Upon the final approval by the Court of this Settlement Agreement and the  
13 class action settlement, and except as to such rights or claims as may be created by this  
14 Settlement Agreement, Defendant does hereby completely release and forever discharge  
15 Plaintiff from any and all claims, rights, demands, actions, obligations, liabilities,  
16 indebtedness, and causes of action, of any and every kind, nature and character  
17 whatsoever, whether known or unknown, which Defendant may now have or has ever  
18 had against Plaintiff.

19 52. In order to achieve full and complete releases of the Parties and the  
20 Released Parties, as set forth in Paragraph 50 above, the Parties acknowledge that this  
21 Settlement Agreement is intended to include in its effect all causes of action and  
22 allegations which were alleged, or which could have been alleged based on the facts and  
23 claims alleged, in the Action, including any claims that the Parties do not know or  
24 suspect to exist in their favor. Consequently, with regard to the causes of action which  
25 were alleged, or which could have been alleged based on the facts and claims alleged, in  
26 the Action, the Parties waive all rights and benefits afforded by California Civil Code  
27 Section 1542, or any other similar provision under federal or state law, and do so  
28 understanding the significance of that waiver. Section 1542 provides:

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

5 **CONDITIONS OF SETTLEMENT**

6 53. This Settlement Agreement will become final and effective upon  
7 occurrence of all of the following events:

- 8 a. execution of the Settlement Agreement by the Defendant, Plaintiff,  
9 Defendant's counsel and Class Counsel;
- 10 b. entry by the Court of a preliminary approval order;
- 11 c. the Court's certification of the Settlement Class for settlement  
12 purposes;
- 13 d. entry by the Court of a final approval order and judgment; and
- 14 e. unless the Parties otherwise agree in writing to waive all or any  
15 portions of the following provisions, there has occurred (i) in the event that there  
16 is a properly and timely filed objection to entry of the final approval order and  
17 judgment, the expiration (without the filing or noticing of an appeal) of the time  
18 to appeal from the final approval order and judgment; (ii) the final dismissal of an  
19 appeal from the final approval order and judgment; (iii) affirmance on appeal of  
20 the final approval order and judgment in substantially the same form as approved  
21 by the Court; (iv) if a ruling or decision is entered by an appellate court with  
22 respect to affirmance of the final approval order and judgment, the time to petition  
23 for a writ of certiorari with respect to such ruling or decision has expired; or (v) if  
24 a petition for a writ of certiorari with respect to the final approval order and  
25 judgment is filed, the petition has been denied or dismissed or, if granted, has  
26 resulted in affirmance of the final approval order and judgment in substantial  
27 form.  
28



1           54.     A failure of the Court to approve any material condition of this Settlement  
2 Agreement other than a modification or reduction of the request for an award of  
3 attorneys' fees, expenses, court costs, or incentive award, which effects a fundamental  
4 change of the Settlement, or if the Settlement is reversed or materially modified on  
5 appellate review, shall render the entire Settlement Agreement voidable and  
6 unenforceable as to all Parties herein at the option of any Party. Except as otherwise  
7 provided herein, in the event the Settlement is terminated for any reason or any of the  
8 conditions set forth in Paragraph 53 are not satisfied, then the Parties shall be deemed to  
9 have reverted to their respective status in the Action as of April 8, 2013, and the Parties  
10 shall proceed in all respects as if this Settlement Agreement and any related orders had  
11 not been entered, and any monies, including without limitation any attorneys' fees and  
12 costs awarded by the Court, paid by or on behalf of the Defendant to the Settlement  
13 Administrator for Class Counsel shall be returned to Defendant forthwith.

14                               **PARTIES' AUTHORITY**

15           55.     The signatories hereto represent that they are fully authorized to enter into  
16 this Settlement Agreement and bind that respective Party to the terms and conditions  
17 hereof.

18                               **MUTUAL FULL COOPERATION**

19           56.     The Parties agree to fully cooperate with each other to accomplish the  
20 terms of this Settlement Agreement, including, but not limited to, execution of such  
21 documents and to take such other action as may reasonably be necessary to implement  
22 the terms of this Settlement Agreement. The Parties shall use their best efforts, including  
23 all efforts contemplated by this Settlement Agreement and any other efforts that may  
24 become necessary by order of the Court, or otherwise, to effectuate this Settlement  
25 Agreement and the terms set forth herein. As soon as practicable after execution of this  
26 Settlement Agreement, Class Counsel shall, with the cooperation of Defendant and their  
27 counsel, take all necessary steps to secure the Court's preliminary and final approval of  
28 the Settlement.

1           57. Defendant agrees not to encourage Class Members to opt-out of or object  
2 in any way to the proposed Settlement.

3                           **MISCELLANEOUS PROVISIONS**

4           58. This Settlement Agreement may not be changed, altered, or modified,  
5 except in writing and signed by the Parties, and approved by the Court. This Settlement  
6 Agreement may not be discharged except by performance in accordance with its terms or  
7 by a writing signed by the Parties.

8           59. This Settlement Agreement contains the entire agreement between the  
9 Parties relating to the proposed Settlement and transaction contemplated herein, and all  
10 prior or contemporaneous agreements, understandings, representations, and statements,  
11 whether oral or written and whether by a party or such party's legal counsel, are merged  
12 herein. No rights hereunder may be waived except in writing.

13           60. This Settlement Agreement shall be binding upon and inure to the benefit  
14 of the Parties hereto and their respective heirs, trustees, executors, administrators,  
15 successors, and assigns.

16           61. The Parties hereto represent, covenant, and warrant that they have not  
17 directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer,  
18 or encumber to any person or entity any portion of any liability, claim, demand, action,  
19 cause of action or rights released and discharged by this Settlement Agreement.

20           62. The Parties agree that the terms and conditions of this Settlement  
21 Agreement are the result of arm's-length negotiations between the Parties, and that this  
22 Settlement Agreement shall not be construed in favor of or against any of the Parties by  
23 reason of their participation in the drafting of this Settlement Agreement.

24           63. Headings are inserted as a matter of convenience and for reference, and in  
25 no way define, limit, extend, or describe the scope of this Settlement Agreement or any of  
26 its provisions.  
27  
28

1           64. Pursuant to California Code of Civil Procedure Section 664.6, and  
2 California Rules of Court, rule 3.679(h), the Court shall retain jurisdiction of the Action  
3 to implement the Settlement and enforce this Settlement Agreement.

4           65. This Settlement Agreement shall be subject to and governed by the laws of  
5 the State of California and subject to the continuing jurisdiction of the Court.

6           66. Should any provision of this Settlement Agreement, or any portion  
7 thereof, be declared or be determined to be illegal, invalid, void, or otherwise  
8 unenforceable, such invalidity shall not affect the enforceability of the remaining terms  
9 hereof.

10           67. This Settlement Agreement may be executed in counterparts, and when  
11 each party has signed and delivered at least one such counterpart, each counterpart shall  
12 be deemed an original, and, when taken together with other signed counterparts, shall  
13 constitute one Settlement Agreement, which shall be binding upon and effective as to the  
14 Parties. For purposes of this Settlement Agreement, a facsimile or email signature shall  
15 be as valid and enforceable as an original.

16           68. It is agreed that, because the members of the Settlement Class are  
17 numerous, it is impossible or impractical to have each Class Member execute this  
18 Settlement Agreement. The Class Notice, attached hereto as Exhibit D, will advise all  
19 Class Members of the binding nature of the release provided herein and such shall have  
20 the same force and effect as if this Settlement Agreement were executed by each Class  
21 Member.

22           69. Whenever this Settlement Agreement requires or contemplates that one  
23 Party shall or may give notice to the other, notice shall be provided by facsimile, email  
24 and/or next day (excluding Sunday) express delivery service as follows:

25 ///

26 ///

27 ///

28 ///

1 If to Plaintiff, then to:

2 LAWYERS FOR JUSTICE, PC  
3 Edwin Aiwazian  
4 410 West Arden Avenue, Suite 203  
5 Glendale, California 91203  
6 Telephone: (818) 265-1020  
7 Facsimile: (818) 265-1021

8 If to Defendant, then to:

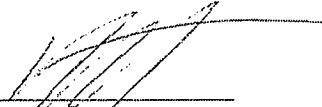
9 LATHROP & GAGE LLP  
10 John J. Shaeffer  
11 Amber Henry  
12 1888 Century Park East, Suite 1000  
13 Los Angeles, California 90067  
14 Telephone: (310) 789-4600  
15 Facsimile: (310) 789-4601

16 **SO STIPULATED AND AGREED.**

17 Dated: KRIKOR "GREGORY" NALBANTIAN

18 By: \_\_\_\_\_  
19 Krikor "Gregory" Nalbantian, Plaintiff

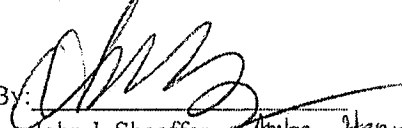
20 Dated: BARNEY'S WORLDWIDE, INC.

21 By:   
22 David Houston, CEO

23 APPROVED AS TO FORM:

24 Dated: 11/25/13

25 LATHROP & GAGE LLP  
26 John J. Shaeffer  
27 Amber Henry

28 By:   
John J. Shaeffer & Amber Henry  
Attorneys for Defendant BARNEY'S  
WORLDWIDE, INC.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: 12/11/13

LAWYERS for JUSTICE, PC  
Edwin Aiwazian  
Arby Aiwazian

By: Edwin Aiwazian  
Edwin Aiwazian

*Attorneys for Plaintiff KRIKOR*  
"GREGORY" NALBANTIAN

Dated:

SHENKMAN & HUGHES  
Kevin Shenkman

By: \_\_\_\_\_  
Kevin Shenkman  
*Attorneys for Plaintiff KRIKOR*  
"GREGORY" NALBANTIAN